

Your claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/hicrush>.

United States Bankruptcy Court for the Southern District of Texas

Indicate Debtor against which you assert a claim by checking the appropriate box below. (Check only one Debtor per claim form.)

- | | | |
|--|--|--|
| <input type="checkbox"/> Hi-Crush Inc. (Case No. 20-33495) | <input type="checkbox"/> Hi-Crush Holdings LLC (Case No. 20-33509) | <input checked="" type="checkbox"/> Hi-Crush Whitehall LLC (Case No. 20-33498) |
| <input type="checkbox"/> BulkTracer Holdings LLC (Case No. 20-33511) | <input type="checkbox"/> Hi-Crush Investments Inc. (Case No. 20-33504) | <input type="checkbox"/> Hi-Crush Wyeville Operating LLC (Case No. 20-33500) |
| <input type="checkbox"/> D & I Silica, LLC (Case No. 20-33501) | <input type="checkbox"/> Hi-Crush LMS LLC (Case No. 20-33503) | <input type="checkbox"/> OnCore Processing LLC (Case No. 20-33496) |
| <input type="checkbox"/> FB Industries USA Inc. (Case No. 20-33513) | <input type="checkbox"/> Hi-Crush Permian Sand LLC (Case No. 20-33505) | <input type="checkbox"/> PDQ Properties LLC (Case No. 20-33499) |
| <input type="checkbox"/> FB Logistics, LLC (Case No. 20-33516) | <input type="checkbox"/> Hi-Crush PODS LLC (Case No. 20-33507) | <input type="checkbox"/> Pronghorn Logistics Holdings, LLC (Case No. 20-33512) |
| <input type="checkbox"/> Hi-Crush Augusta LLC (Case No. 20-33497) | <input type="checkbox"/> Hi-Crush Proppants LLC (Case No. 20-33506) | <input type="checkbox"/> Pronghorn Logistics, LLC (Case No. 20-33515) |
| <input type="checkbox"/> Hi-Crush Blair LLC (Case No. 20-33502) | <input type="checkbox"/> Hi-Crush Services LLC (Case No. 20-33510) | <input type="checkbox"/> PropDispatch LLC (Case No. 20-33514) |
| <input type="checkbox"/> Hi-Crush Canada Inc. (Case No. 20-33508) | | |

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Broney Manka</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	<u>Atty. Timothy Jacobson Fitzpatrick Skemp & Butler LLC</u> Name <u>1123 Riders Club Rd</u> Number Street <u>Onalaska, WI 54650</u> City State ZIP Code <u>USA</u> Country Contact phone <u>(608) 784-4370</u> Contact email <u>tim@fitzpatrickskemp.com</u>	<u>Broney Manka</u> Name <u>W20244 Manka Stuve Lane</u> Number Street <u>Whitehall, WI 54773</u> City State ZIP Code <u>USA</u> Country Contact phone _____ Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	

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4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	
	Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



2033408200821000000000022

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ See Addendum. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Tort Claims

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)

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Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____%

Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
 Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.
 I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.
 I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 8/13/2020
MM / DD / YYYY

Signature B. J. Manka 8/13/2020

Print the name of the person who is completing and signing this claim:

Name Broney Manka
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address W20244 Manka Stuve Lane

Number Street
Whitehall, WI 54773
City State ZIP Code Country

Contact phone _____ Email _____

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AUG 21-2020

KURTZMAN CARSON CONSULTANTS

Personal Injury Claims
Worker's Compensation
Social Security Disability
Supplemental Security Income
Environmental Law



Fitzpatrick, Skemp & Butler, LLC

ATTORNEYS AT LAW

Helping Injured and Disabled

Tom M. Fitzpatrick*
Certified Civil Trial Specialist by
National Board of Trial Advocacy
William G. Skemp*
David J. Fitzpatrick*
Scott M. Butler*
Tim S. Jacobson*
Mark A. Siefert
Benjamin Woolley
Thomas E. Lister (ret.)
*Also Licensed in Minnesota

August 20, 2020

VIA NEXT DAY AIR

Hi-Crush Claims Processing Center
c/o KCC
222 N. Pacific Coast Hwy, Suite 300
El Segundo, CA 90245

Re: Proofs of Claim
In re: Hi-Crush Blair LLC, USBC SDTX Case No. 20-33502
In re: Hi-Crush Whitehall LLC, USBC SDTX Case No. 20-33498

Greetings:

My law firm represents 45 individual claimants who have claims against Hi-Crush Blair LLC or Hi-Crush Whitehall LLC, respectively, as listed on the second page of this letter. Enclosed is an original and one copy of the 45 Proofs of Claim with addenda. Please file the same in the respective cases and return a file-stamped copy of each one using the enclosed Federal Express Airbill addressed to me with the expense to be paid by my firm.

Thank you for your attention to this matter.

Very truly yours,

FITZPATRICK, SKEMP & BUTLER, LLC

Timothy S. Jacobson
tim@fitzpatrickskemp.com
TSJ/srh

Encl.

Mailing Address
1123 Riders Club Rd
Onalaska, WI 54650
Phone: (877) 784-1230
Fax: (608) 784-4908

Onalaska Office
1123 Riders Club Rd
Onalaska, WI 54650
Phone: (608) 784-4370
Fax: (608) 784-4908

La Crosse Office
223 3rd St N
La Crosse, WI 54601
Phone: (608) 784-4370
Fax: (608) 784-4908

Eau Claire Office
505 S Dewey St Suite 202
Eau Claire, WI 54701
Phone: (715) 318-8811
Fax: (608) 784-4908

In re: Hi-Crush Blair LLC, USBC SDTX Case No. 20-33502

Cory Berg
Julie Berg
Greg Bluem
Lorraine Bluem
Dianna Brown
Deborah Clare
Kate Connell
Leland Drangstveit
Mary Drangstveit
Scott Dykstra
Danielle Holstad

Michael Johnson
Paula Knutson
Patrick Mathson
Randy Rose
Cara Rose
S.S., a minor child (Cara Rose, parent)
James Syverson
Kimberly Syverson
Beth Willers
Glenn Willers

In re: Hi-Crush Whitehall LLC, USBC SDTX Case No. 20-33498

Colton Bork
Dakotah Bork
Darrell Bork
Mary Jo Bork
Emily Guza
Kaitie Guza
Lisa Guza
Robert Guza
Amy Kulig
Todd Kulig
H.K., a minor child (Amy Kulig, parent)
Broney Manka

Jared Manka
John Manka
Mary Manka
Ann Sylla
Angela Sylla
Chase Sylla
Michael Sylla
M.S., a minor child (Stacy Sylla, parent)
Stacy Sylla
William Sylla
W.S., a minor child (Angela Sylla, parent)
Z.S., a minor child (Angela Sylla, parent)

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

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

**ADDENDUM TO PROOF OF CLAIM OF
THE BORK TORT CLAIMANTS**

On July 12, 2020 (the “Petition Date”), Hi-Crush, Inc. (“Hi-Crush”) and certain affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) commencing the above-captioned chapter 11 cases (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”).

This addendum supplements the accompanying proof of claim and is hereby expressly incorporated into the proof of claim as if set forth fully therein (collectively, the “Proof of Claim”). This Proof of Claim is filed on behalf of each Bork Tort Claimant (as defined herein) against the Debtor, Hi-Crush Whitehall, LLC (“*Hi-Crush Whitehall*”).

Each Bork Tort Claimant files this Proof of Claim to preserve any claims arising from, related to, or in connection with the underlying facts of the prepetition lawsuit that was filed against the Debtor in the Circuit Court of Trempealeau County, Wisconsin styled as *Darrell Bork, Mary*

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, Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC, 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), PB 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.

Jo Bork, Dakotah Bork, Colton Bork, Robert Guza, Lisa Guza, Emily Guza, Kaitie Guza, Todd Kulig, Amy Kulig, H.K. (a minor child), Broney Manka, Jared Manka, John Manka, and Mary Manka vs. Hi-Crush Whitehall, LLC and ABC Insurance Company, Case No. 2019CV64 (the “Lawsuit”).

Background

In April 2019, Darrell Bork, Mary Jo Bork, Dakotah Bork, Colton Bork, Robert Guza, Lisa Guza, Emily Guza, Kaitie Guza, Todd Kulig, Amy Kulig, H.K. (a minor child), Broney Manka, Jared Manka, John Manka, and Mary Manka (collectively referred to herein as the “Bork Tort Claimants”) initiated the Lawsuit against Hi-Crush Whitehall and unnamed insurance carrier(s). It is believed, but not confirmed, that the Debtor has insurance coverage applicable to the claims asserted in the lawsuit.

Hi-Crush Whitehall is engaged in the business of frac-sand mining and processing and has its facility located on a 1,447-acre site in close proximity to the properties and homes of the Bork Tort Claimants. The Bork Tort Claimants allege, among other things, that the Debtor has operated said facility in violation of mandatory state, local and federal laws, rules, ordinances and regulations governing the safe methods of operation of said mine and the Debtor has negligently created and failed to mitigate the creation of airborne pollution (both gaseous and solid), excessive noise, dust, nighttime light, polluted surface and/or underground water, caused vibrations due to blasting, destruction of landscape and reduced property values.

A. Basis for the Claims

1. As explained in greater detail in Bork Tort Claimant’s Complaint (the “Complaint”) filed in the Lawsuit attached hereto as **Exhibit A** and incorporated by reference as if fully set forth herein, the Debtor is the subject of, among other things, a declaratory judgment action and

injunctive relief. A detailed explanation of the Debtor's history and facts of the case are set forth in greater detail in the Complaint.

2. In addition, and prior to the Debtor's bankruptcy filing, the state court entered a Lone Pine order (the "Lone Pine Order"), named after a 1986 New Jersey case, requiring the plaintiffs to specify the harms they have suffered, in general terms. An excerpt from the Plaintiffs' Disclosures (the "Plaintiffs' Disclosures") filed in response to that Lone Pine Order describing those specific harms and injuries suffered by each of the Bork Tort Claimants is attached hereto as **Exhibit B** in support of the claims of each of the Bork Tort Claimants.

B. Claim Amount

3. An exact amount of the claim for each Bork Tort Claimant is unable to be calculated and stated at this time because the damages are unliquidated and were expected to be determined by a jury. In addition, the tort is continuing in nature because the Debtor continues to operate the Whitehall site thereby continuing to impact and cause damages to the Bork Tort Claimants with each passing day. Furthermore, Wisconsin Statute sec. 802.02(1m)(a) states the following: "With respect to a tort claim seeking the recovery of money, the demand for judgment may not specify the amount of money the pleader seeks" thereby barring each of the Bork Tort Claimants from demanding a specific dollar amount in the Complaint. However, it is believed that damages to the Bork Tort Claimants collectively could possibly be in excess of \$28 million.

4. As the tort is continuing in nature, the Bork Tort Claimants reserve their right to assert that any amounts owed by the Debtor arising from, related to, or in connection with any actions by the Debtor occurring on a post-petition basis, are entitled to administrative expense priority treatment under section 503(b) of the Bankruptcy Code.

C. Supporting Documents

5. The Complaint, which is attached hereto as **Exhibit A** and incorporated by reference as if fully set forth herein, is the initial supporting documentation for the claims of the Bork Tort Claimants as well as the Plaintiffs' Disclosures attached hereto as **Exhibit B**. As additional documentation is extremely voluminous in nature, copies can be made available upon written request to counsel for the Bork Tort Claimants, Tim Jacobson, Fitzpatrick, Skemp & Butler, LLC, 1123 Riders Club Road, Onalaska, WI 54650, or Patrick L. Hughes, Haynes and Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, TX 77010.

D. Additional Claims

6. Each Bork Tort Claimant may also have Claims against the Debtor for other amounts, liabilities, and obligations. The Bork Tort Claimants reserve their right to amend or supplement their Proof of Claim to include such other amounts, liabilities, and obligations.

E. Setoff; Recoupment

7. This Proof of Claim is filed without waiver and with express reservation of any and all setoff or recoupment rights that may exist at law or in equity. No effort is made to violate the automatic stay or to take any action contrary to applicable law but every reservation of rights is otherwise asserted herein with respect to setoff or recoupment rights.

F. Reservation of Rights

8. Each Bork Tort Claimant files the Proof of Claim with full reservation of rights, including the right to amend or supplement the Proof of Claim to assert or amend any theories, claims, and causes of action available for recovery against the Debtor, its estate, successors, assigns, any affiliates or any of their respective estates, successors, assigns, or any other person or entity who may be liable for all or part of the claims set forth herein. Each Bork Tort Claimant specifically preserves all of their procedural and substantive rights, remedies, and defenses

including, without limitation, the right to assert that all or a portion of its claim is entitled to administrative expense priority.

9. Each Bork Tort Claimant does not waive or abandon any claims that he or she may have against any non-debtor person or entity, and expressly reserves the right to pursue and recover from any party from which repayment of the Claims asserted herein may be made. As stated earlier, it is believed that the Debtor has insurance coverage applicable to the claims of the Bork Tort Claimants.

10. Each Bork Tort Claimant does not waive, and expressly reserves all rights and remedies at law or in equity that each has or may have against the Debtor, its estate, successors, assigns, any affiliates or any of their respective estates, successors, assigns, or any other person or entity who may be liable for all or part of the claims set forth herein. Each Bork Tort Claimant's reservation of rights includes, without limitation: (i) any obligation owed to each Bork Tort Claimant; (ii) their right to trial by jury, or right to consent to trial by jury, in any hearing, proceeding, or other matter arising in or related to this case or in any other court; (iii) their right to have final orders in non-core matters, or core matters to which *Stern v. Marshall* applies, entered only after *de novo* review by a United States District Court Judge; (iv) their right to claim that any portion of their Claims incurred or accruing after the Petition Date constitute administrative expenses to the extent such amounts owed are not otherwise paid in full and reservation of the right to file a claim or application for payment of such administrative expenses; and (v) their right to withdraw the reference, or otherwise challenge the jurisdiction of the Bankruptcy Court, with respect to the subject matter of these claims, any objection or any other proceeding commenced in this case against or otherwise involving any Bork Tort Claimant or in connection with or related to the Lawsuit.

11. The filing of the Proof of Claim is not: (i) an election of remedies; (ii) a waiver or limitation of any procedural or substantive rights or any procedural or substantive defenses to any claim that may be asserted against the Debtor; (iii) an admission by the Bork Tort Claimants that any property held by the Debtor (or any successors, assigns, subsidiaries, or affiliates thereof) is property the Debtor's (or their successors, assigns, subsidiaries, or affiliates') bankruptcy estate; (iv) a waiver or release of, or any other limitation on, the Bork Tort Claimants' right to assert that any portion of the Claims asserted herein or any other claims are entitled to treatment as priority claims under any applicable section of the Bankruptcy Code; (v) a waiver or limitation on the Bork Tort Claimants' right to vote on any plan or plans of reorganization proposed in the Debtor's bankruptcy case; (vi) a waiver of any rights to any Claims asserted herein by not ascribing a specific dollar amount thereto at this time; or (vii) a waiver of any additional claims or other rights that the Bork Tort Claimants may have against the Debtor, its estate, successors, assigns, any affiliates or any of their respective estates, successors, assigns, or any other person or entity who may be liable for all or part of the Claims set forth herein. In addition, each Bork Tort Claimant reserves the right to withdraw the Proof of Claim in full or in part with respect to any of the Claims set forth herein for any reason whatsoever.

12. Each Bork Tort Claimant expressly reserves the rights to: (i) amend, modify, update, or supplement the Proof of Claim at any time and in any respect, including, without limitation, as necessary or appropriate to amend, quantify, or correct amounts, to provide additional detail regarding the Claims set forth herein, to fix the amount of any disputed, contingent, or unliquidated claim, or to assert any alternative theories or bases for recovery; and (ii) file additional proofs of claim for additional claims which may be based on the same or additional supporting documents as described above.

G. Jurisdiction

13. This Proof of Claim is filed pursuant to Federal Rule of Bankruptcy Procedure 3002 and filed to assert and preserve each Bork Tort Claimant's claims against the Debtor as stated herein and to protect them from forfeiture of those claims. Notwithstanding anything to the contrary herein, the filing of this Proof of Claim is not and should not be construed to be: (i) a consent by the Bork Tort Claimants to the jurisdiction of this Court with respect to the subject matter of the Claims set forth in the Proof of Claim and this addendum, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in the Debtor's bankruptcy case against or otherwise involving the Bork Tort Claimants; (ii) a waiver of the right to seek to have the reference withdrawn with respect to the subject matter of these claims, any objection or other proceedings commenced with respect thereto, or any other proceeding commenced in this case against or otherwise involving the Bork Tort Claimants or in connection with or related to the Lawsuit; or (iii) a waiver of any rights that the Bork Tort Claimants may have under any applicable law.

Exhibit A

Complaint

FILED
04-22-2019
Clerk of Circuit Court
Trempealeau County
2019CV000064

STATE OF WISCONSIN CIRCUIT COURT TREMPEALEAU COUNTY

DARRELL BORK, MARY JO BORK,
DAKOTAH BORK and COLTON BORK
N34724 Poker Coulee Rd
Whitehall, WI 54773,

ROBERT GUZA, LISA GUZA,
EMILY GUZA and KAITIE GUZA
W22153 Hughes Filla Rd.
Independence, WI 54747,

TODD KULIG, AMY KULIG,
H [REDACTED] K [REDACTED], a minor by his natural parents
and guardians, Todd and Amy Kulig,
N36584 Gierok Rd.
Independence, WI 54747,

BRONEY MANKA
W20244 Manka-Stuve Ln
Whitehall, WI 54773,

JARED MANKA
W19938 Manka Stuve Ln
Whitehall, WI 54773, and

JOHN MANKA and MARY MANKA
W20243 Pine View Ln
Whitehall, WI 54773

Plaintiffs,

vs.

HI-CRUSH WHITEHALL, LLC
W20757 County Road Q
Whitehall, WI 54773

and

ABC INSURANCE COMPANY,

Defendants.

COMPLAINT

Case No. 19-CV-____

Case Codes: 30201, 30106, 30107

Plaintiffs, by their attorneys, Fitzpatrick, Skemp & Associates, LLC, allege the following complaint against the above-named defendants:

1. Plaintiffs, Darrell Bork and Mary Jo Bork, are adult residents of N34724 Poker Coulee Rd, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 29.5-acre property and home located thereon. They reside there with their two adult children, the Plaintiffs Dakotah Bork and Colton Bork.

2. Plaintiffs, Robert Guza and Lisa Guza, are adult residents of W22153 Hughes Filla Rd, Independence, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 250-acre property and home located thereon. They reside there with their two adult children, the Plaintiffs Emily Guza and Kaitie Guza.

3. Plaintiffs, Todd Kulig and Amy Kulig, are adult residents of N36584 Gierok Rd, Independence, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 10.4-acre property and home located thereon. They reside there with their minor child, H [REDACTED] K [REDACTED]

4. Plaintiff, Broney Manka, is an adult resident of W20244 Manka Stuve Ln, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto has been an owner of that 198-acre organic farm property and home located thereon.

5. Plaintiff, Jared Manka, is an adult resident of W19938 Manka Stuve Ln, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto has been an owner of that 20-acre property and home located thereon.

6. Plaintiffs, John Manka and Mary Manka, are adult residents of W20243 Pine View Ln, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 20-acre property and home located thereon.

7. Defendant, Hi-Crush Whitehall LLC (hereinafter “Hi-Crush”) is a Wisconsin limited liability company with its principal place of business at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin. Defendant Hi-Crush Whitehall is engaged in the business of frac-sand mining and processing on an approximately a 1,447-acre site at and around said address.

8. The Hi-Crush site is located in close proximity to the homes of each of the Plaintiffs.

9. Upon information and belief, the Defendant, ABC Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant ABC Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Hi-Crush at all times relevant hereto.

10. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, ABC Insurance Company issued and delivered to the Defendant, Hi-Crush, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its actions.

11. By virtue of the terms and conditions of said Hi-Crush’s insurance policy and the statutes of the State of Wisconsin, the Defendant ABC Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

12. Hi-Crush has conducted the aforementioned frac-sand mining operation in a manner that is negligent *per se* in that it has conducted said operation in violation of mandatory state, local and federal laws, rules, ordinances and regulations governing the safe methods of operation of said mine and Hi-Crush has furthermore negligently created and failed to mitigate the creation of airborne pollution (both gaseous and solid), excessive noise, dust, nighttime

light, polluted surface and underground water, caused vibrations due to blasting, destruction of landscape and reduced property values.

FACTUAL BACKGROUND ALLEGATIONS

13. Upon information and belief, the Hi-Crush frac sand facility is capable of producing 2,860,000 tons per year of 20/100 frac sand. The processing facility is located on 1,447 acres with coarse-grade Northern White sand reserves. The facility is located on a mainline of the North American rail network of the Canadian National Railway, with an on-site rail yard that contains approximately 30,000 feet of track and has storage capacity for approximately 500 rail cars. During entire seasons of the year, Hi-Crush conducts processing of sand seven days per week, 24 hours per day. The extraction of non-metallic minerals and related hauling of extracted material within the mine property runs around the clock, seven days per week. Blasting operations occur between 10:00 AM and 3:00 PM. Even during winter months, typically mid-November to mid-March, the dry plant continues processing and loading rail cars. With processing and loading of sand around the clock and every day of the year and extraction of minerals and related hauling of extracted material within the mine property seven days per week, nearby residents get no respite from the intolerable noise from the Hi-Crush facility and its related activity.

14. According to Mine Safety and Health Administration reports, Hi-Crush had seven (7) citations or orders for violations in 2015, seven (7) in 2016, and five (5) in 2017, for a total of 19 citations or orders for violations in those three years.

15. In the Wisconsin Department of Natural Resources Preliminary Determination on the Clean Air Act permit for the Hi-Crush facility, the DNR AERMOD analysis found that the facility was expected to add 8.6 ug/m³ PM^{2.5} pollution, resulting in a level of 98% of the Clean Air Act NAAQS standard of 35 ug/m³. Upon information and belief, the Hi-Crush Whitehall facility has exceeded said standard, thereby polluting the air which the plaintiffs of necessity breathe.

16. Upon information and belief, the Hi-Crush facility has been operated in a manner such that visible dust emissions have not been suppressed on multiple occasions, in violation of the standard set forth in the Wisconsin DNR Template Best Management Practices of Fugitive Dust Control Plans for the Industrial Sand Mining Industries: “The standard for fugitive dust emission quantification is by visual observation. If visible dust emissions are observed they need to be suppressed.”

17. Upon information and belief, the Hi-Crush facility has been operated in a manner such that visible silica fugitive dust emissions repeatedly have left/crossed the Hi-Crush property boundary and created air pollution on and around adjacent properties, including the properties of all of the Plaintiffs, in violation of NR 415.03 and/or NR 415.04, in that Hi-Crush has caused, allowed and permitted particulate matter to be emitted into the ambient air which substantially contributes to exceeding of an air standard, and creates air pollution, and has caused, allowed and permitted silica-containing materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.

18. Upon information and belief, the Hi-Crush Whitehall facility has been operated in a manner such that neighboring well water supplies of certain of the Plaintiffs have been polluted and rendered undrinkable due to dangerous and harmful levels of iron, arsenic (which has tested as high as approximately ten times EPA safety standards), and excessive turbidity.

19. On or about May 21, 2018, Hi-Crush breached a negligently constructed frac sand mine holding pond at its Whitehall facility. Hi-Crush officials estimated that about 10 million gallons of liquid mine sludge were spilled, a volume that would fill a 10-foot deep space larger than two football fields. Mine sludge exited the Hi-Crush property and ran across various parcels, including land owned by Darrell and Mary Jo Bork, and it entered Poker Creek, which carried sludge into the Trempealeau River, turning it orange for days. Hi-Crush environmental compliance manager Jeff Johnson publicly stated the mine sludge could contain trace elements of polyacrylamide. Tests showed lead concentrations of more than 10 times allowable levels in

water sampled near where the spill entered Poker Creek, and aluminum was measured at more than 1,000 times the limit. There also were high levels of beryllium, cadmium, chromium, copper, magnesium, nickel and other contaminants.

20. Upon information and belief, Hi-Crush has conducted its frac-sand mining, processing and transload operations in a manner that is negligent, negligent *per se*, and/or reckless by virtue of its violation of statutes, administrative regulations, permit conditions, and/or local ordinances, and has furthermore created, and failed to mitigate the creation of, airborne pollution (both gaseous and solid, including crystalline silica dust), water pollution (both surface and groundwater), soil and water pollution by releasing 10-million gallons of mine sludge from a holding pond, some of which ran over property owned by Darrell and Mary Jo Bork, harmful shockwaves and vibrations due to blasting and other operations, noise pollution, light pollution, destruction of landscape and viewshed, and severe reduction of property values.

21. As a result of groundwater contamination, fugitive crystalline silica dust emissions (including PM²⁻⁵), noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and damage to the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility has severely impaired the value of the Plaintiffs' properties, both as to the properties' marketability and the ability to use the property in order to secure by mortgage any present or future financial obligations of the Plaintiffs, and has substantially and adversely affected the ability of the Plaintiffs to use and enjoy their properties, including their homes.

DESCRIPTION OF HARMS TO THE PLAINTIFFS

22. During operation of the aforementioned Hi-Crush frac sand facility, the Plaintiffs experience having to see, hear, and feel the mine site and dry plant operation around the clock seven days a week. They hear crushing operations, vehicles beeping, conveyor noise and construction equipment 24 hours a day, and are exposed to constant harmful and/or annoying levels of noise.

23. The Plaintiffs' windows and dishes shake from blasting at the mine, and it frightens their pets.

24. Some of the Plaintiffs have had to put opaque coverings over their windows to block light pollution from the frac sand facility; and some leave their television with the volume up all night in an effort to cancel out the frac sand facility operation's noise.

25. Dust from the frac sand facility operations is visible in the air around the Plaintiffs' homes, and windows and siding have gotten covered with dust, and the Plaintiffs can no longer open their windows due to the dust.

26. Plaintiffs have experienced problems with their well water quality since the commencement of Hi-Crush blasting and high-capacity well operations, including increased turbidity and plugging of water filters, water softeners and/or water heaters. At least one nearby residential well has experienced significantly elevated an harmful arsenic levels since commencement of Hi-Crush operations.

27. The stress caused by the frac sand facility has caused marital discord for married Plaintiffs around the frac sand facility. In addition, some of the Plaintiffs have consulted with physicians and/or psychiatrists for issues such as high blood pressure, anxiety, depression, and/or sleep deprivation believed to be caused by the frac sand facility operations.

28. Due to the frac sand facility, social interactions with friends and other community members at the Plaintiffs' homes have declined dramatically with friends commenting on vibrations and the unpleasant change in the setting.

29. Plaintiffs' view now includes a mine, wash plant, dry plant and/or conveyor system where there used to be beautiful, lush farmland and trees.

30. Noise from the frac sand facility is constant, and is a serious annoyance and has caused loss of concentration, sleep disturbance, and increased stress levels.

31. The Plaintiffs' view of the night sky is diminished due to light and air pollution from the Hi-Crush facility.

32. There is train and rail related noise throughout the day and night due to the loading and hauling of sand from the Hi-Crush facility.

33. Some of the Plaintiffs suffer from difficulty breathing, frequent coughing and bronchitis, and have been under a doctor's care.

34. Wildlife sightings have declined due to the frac sand facility operations, thereby making the Plaintiffs' living environment less attractive and less enjoyable.

35. The Plaintiffs' homes are suffering from structural damage including but not limited to sheetrock cracking and drywall screws protruding because of Hi-Crush's blasting.

36. The value of Plaintiffs' real estate has significantly diminished due to the proximity to the Hi-Crush facility and the manner in which Hi-Crush conducts its operations.

**CLAIM I
NEGLIGENCE AND NEGLIGENCE *PER SE***

As for their first claim for relief, the Plaintiffs allege:

37. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

38. At all times relevant hereto, Hi-Crush has owed Plaintiffs a duty to act with reasonable care, so as not to jeopardize the Plaintiffs' rights, property values, health and welfare.

39. Hi-Crush breached its duty of care by creating and/or failing to mitigate the creation of the following: (1) offensive airborne pollution (both gaseous and solid, including crystalline silica dust); (2) water pollution (both surface and groundwater); (3) soil and water pollution by releasing 10-million gallons of mine sludge from a holding pond, some of which ran over property owned by one or more of the Plaintiffs; (4) damaging shockwaves and vibrations due to blasting and other operations; (5) noise and light pollution; (6) destruction of landscape and viewshed; and (7) severe reduction of property values. Hi-Crush also breached its duty of care to the Plaintiffs by failing to adequately supervise and train employees. Hi-Crush has failed to properly train and supervise employees and contractors performing ultra-hazardous activities

while working at the facility; failed to exercise reasonable care to contain silica dust and other toxins once Hi-Crush knew it had polluted a large area in and about Plaintiffs' properties and knew the harmful silica dust and toxins which permeated air, groundwater, and/or soil in and about of the area of Plaintiffs' properties, created a substantial health risk to Plaintiffs and others; failed to warn the residents of the neighborhood, including the Plaintiffs, of health hazards associated with the crystalline silica dust and other toxins, and failed to take appropriate measures to prevent the spread of silica dust and other toxins; failed to notify authorities in a timely fashion of the full gravity and nature of fugitive dust emissions and ground and surface water contamination; failed to prevent or mitigate health hazards and damage to the value of the property in and about the neighborhood, including the real property owned by Plaintiffs; failed to timely and effectively remediate the spill of 10-million gallons of mine sludge; and failed to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations and standards.

40. The acts of Hi-Crush constitute negligence and negligence *per se* as a result of Hi-Crush's violations of state, federal and local rules, regulations, statutes and ordinances. The acts of negligence are a substantial factor in causing Plaintiffs to suffer damages, as set forth more particularly below, including without limitation, actual or imminent damage to their residential and business water supplies, permanent severe diminution of property values, the need for modifications to the quiet and peaceful use and enjoyment of their homes and property, annoyance, inconvenience and discomfort and harm to their home and business property, persons and livestock. The negligently created environmental harms and property value reductions have been a substantial factor in creating personal fear, worry, anxiety, marital discord, inconvenience, discomfort, harassment, and harm and destruction of Plaintiffs' right to enjoy their properties in a reasonably quiet and peaceful manner and further forcing Plaintiffs to incur expenses for monitoring the supply and control of water and air, and expert consultants' fees, all to Plaintiffs' damage.

41. The Plaintiffs have been damaged as a result of a decrease in the value of their properties and businesses and through a loss of enjoyment of their properties due to the nuisances set forth above, loss of neighborhood aesthetics; personal fear, anxiety, inconvenience and discomfort; and other and further damages as the evidence may establish.

**CLAIM II
PUBLIC NUISANCE**

As and for their second claim for relief, the Plaintiffs allege:

42. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

43. Plaintiffs are members of the public and the rural community surrounding the Hi-Crush facility. The Plaintiffs regularly use public roadways which have been unreasonably interfered with and blocked by Hi-Crush's operation more than the general public's use of public roadways because the public roads in the vicinity of Plaintiffs' homes are closer to the railroad crossings being blocked between their homes and the rail operations servicing the Hi-Crush facility. Plaintiffs further use and benefit from public waterways, groundwater, and air in the vicinity of the Hi-Crush facility.

44. The conduct and activities of Hi-Crush constitute a public nuisance in that such activities substantially or unduly interfere with the use of public places, including public roadways between the Plaintiffs' homes and rail facilities servicing the Hi-Crush facility (including an unreasonable risk of impeding emergency vehicles that may need to reach the Plaintiffs' properties, and impeding Plaintiffs traveling to and from work), public waterways including Poker Creek and the Trempealeau River, and the air and groundwater in common use by the Plaintiffs.

45. The activities of Hi-Crush further substantially or unduly interfere with the activities of the entire community, and are specially injurious to the health and offensive to the senses of Plaintiffs and specially interferes with and disturbs their comfortable enjoyment of

their life and of their property, which is different in kind from the injury suffered by the general public.

46. As a direct and proximate result of the public nuisance created and perpetuated by Hi-Crush's tortious conduct, Plaintiffs have suffered, and will in the future continue to suffer, interference with their use and enjoyment of public places, including public roadways, waterways, air and groundwater, and their own private property, diminution in property value, present and future remediation costs, past and future loss of earning capacity, and present and future personal injury and emotional distress.

47. Unless the public nuisance caused by the tortious conduct of Hi-Crush is abated, the use and enjoyment of public spaces, including public roadways and waterways, air and groundwater, and Plaintiffs' property and rights of enjoyment therein will be progressively further diminished in value and their health will be further jeopardized.

48. As a direct and proximate result of the public nuisance caused by Hi-Crush as alleged herein, Plaintiffs were injured and suffered damages as more fully described below.

CLAIM III PRIVATE NUISANCE

As and for their third claim for relief, the plaintiffs allege:

49. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

50. Plaintiffs have proprietary interests in certain real and personal property in the areas adversely affected by Hi-Crush's frac sand mining, processing and transload operations, fugitive crystalline silica dust, and the spill of mine sludge. Plaintiffs also have the right to the exclusive use and quiet enjoyment of their property.

51. The tortious conduct of Hi-Crush constitutes a private nuisance in that it has caused substantial injury and significant harm to, invasion and/or interference with, the comfortable enjoyment and private use by Plaintiffs of their private real and personal property,

and their rights to use in the customary manner their property and residences without being exposed to the dangers of airborne crystalline silica dust, water pollution, shockwaves, vibrations, and noise pollution from blasting and other operations, destruction of the viewshed, and diminution/damage to property values.

52. The interference and invasion by Hi-Crush exposing the Plaintiffs to the aforementioned dangers is substantially offensive and intolerable.

53. The aforementioned conduct by Hi-Crush causing said interference and invasion has occurred because Hi-Crush has been and continues to be negligent and has failed to exercise ordinary care to prevent their activities from causing significant harm to the Plaintiffs' rights and interests in the private use and enjoyment of their property.

54. Unless the nuisance is abated, Plaintiffs' property and their right to enjoy their property will be progressively further diminished in value and their health will be further jeopardized.

55. As a direct and proximate result of the nuisance created by Hi-Crush, Plaintiffs have suffered, and continue to suffer, substantial interference with their normal use and enjoyment of their own private property and rights incidental thereto, diminution in property value, personal injuries, severe emotional distress, and damages as more fully described herein.

CLAIM IV TRESPASS

As and for their fourth claim for relief, the Plaintiffs allege:

56. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

57. At all times relevant to this Complaint, landowner and/or lessee Plaintiffs, Darrell Bork and Mary Jo Bork, Robert Guza and Lisa Guza, Todd Kulig and Amy Kulig, Broney Manka, Jared Manka, John Manka and Mary Manka, were in lawful possession of certain real

and personal property in the areas affected by Hi-Crush's frac sand mining, processing and transload operations, as set forth above.

58. Hi-Crush intentionally and/or recklessly committed the wrongful act of trespass by causing hazardous crystalline silica dust and/or other hazardous substances or toxins to invade the real and personal property of the landowner and/or lessee Plaintiffs through the air, groundwater, surface water, and/or soil.

59. Hi-Crush's breach of its holding pond and the resulting 10-million-gallon spill caused mine sludge to trespass and run over and onto neighboring properties, including the land owned by Darrell Bork and Mary Jo Bork at N34724 Poker Coulee Rd, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin.

60. Upon information and belief, the well water of at least one family in the Town of Lincoln, County of Trempealeau, Wisconsin, was contaminated with high levels of arsenic due to the trespassory actions of Hi-Crush.

61. As a direct and proximate result of Hi-Crush's acts of trespass, landowner and lessee Plaintiffs were injured, and continue to be injured, in that they suffered damage to their real and personal property and to their health and wellbeing, including hazardous crystalline silica dust leaving the Hi-Crush property which was, and is, deposited on Plaintiffs' properties, along with contamination of groundwater and/or surface water moving from the Hi-Crush property onto one or more of Plaintiffs' properties, and mine sludge running onto land owned by one or more of the Plaintiffs, and such actions constitute a trespass on properties owned or lawfully possessed by Plaintiffs, and has been and still is a substantial factor in causing past and future damages to the Plaintiffs.

**CLAIM V
STRICT LIABILITY FOR ULTRA-HAZARDOUS ACTIVITY**

As and for their fifth claim for relief, the Plaintiffs allege:

62. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

63. The blasting, crushing, mining, processing, movement and storage of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and heavy metals in holding ponds, and the operation of a railroad loading station adjacent to residential and family farm properties by Hi-Crush, individually and in combination, constitute ultra-hazardous activities in that:

(a) there exists a high degree of risk of serious harm to the environment, persons, land and chattels of others, including Plaintiffs, which cannot be eliminated by the exercise of reasonable care;

(b) there is a strong likelihood that the harm resulting from an escape of fugitive crystalline silica dust and mine sludge, along with the effects of repeated blasting, will be great;

(c) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting adjacent to a residential and family farm properties is not a matter of common usage such as would be carried on by the great mass of mankind or by many people in the community.

(d) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to residential and family farm properties is inappropriate, especially as conducted by Hi-Crush; and

(e) the value to society and to Hi-Crush of the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of

bedrock with explosives adjacent to a residential and family farm properties is outweighed by the dangerous attributes and the likelihood of harm resulting therefrom.

64. As a direct and proximate result of Hi-Crush's actions, Plaintiffs were, and remain, injured, and will continue to suffer injuries and damages as more fully described herein.

DAMAGES

65. As a direct and proximate result of Hi-Crush's aforementioned acts and omissions as alleged above, Plaintiffs suffered the following damages:

(a) Serious annoyance, intolerable inconvenience and loss of enjoyment of legal rights as a result of the fugitive crystalline silica dust emissions (including PM^{2.5}), groundwater contamination, noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and destruction of the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility;

(b) The adult landowner plaintiffs have suffered a substantial loss of the value of real property and rights incidental thereto;

(c) Bodily physical injuries and/or an unreasonable risk of future injuries due to exposure to fugitive crystalline silica dust (including PM^{2.5}) and/or exposure to contaminated groundwater;

(d) Severe emotional pain and suffering, emotional distress and anxiety resulting from exposure to hazardous respirable crystalline silica dust and/or other hazardous substances invading their bodies and/or property, and polluted water, all of which has caused physical injuries and the possibility of severe future health problems;

(e) Severe emotional pain and suffering, emotional distress and anxiety over the loss of the quiet enjoyment of their land and the loss, and prospective loss, of economic opportunities and ways of life;

(f) Physical injuries to and/or loss of use and enjoyment of real and personal property;

(g) Costs for clean-up and protection of property, property rights and equipment, and the purchase and transportation of clean water;

(h) Medical expenses and/or future medical monitoring expenses for the Plaintiffs; and

(i) Other damages to be proven at trial.

**CLAIM VI
INJUNCTIVE AND/OR DECLARATORY RELIEF**

As and for their sixth claim for relief, the plaintiffs allege:

66. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

67. As a direct and proximate result of the above-described conduct by Hi-Crush and the injuries and damages described herein, Plaintiffs request the following equitable relief:

A. That a judicial determination and declaration be made of the rights of the Plaintiffs and the responsibilities of Hi-Crush with respect to the damages and injuries caused by Hi-Crush;

B. That Hi-Crush be required to establish a fund, in an amount to be determined by the Court, for the purpose of establishing and maintaining a testing and treatment program whereby Plaintiffs will receive on-going medical testing and monitoring and if necessary, medical treatment until it can be determined that their exposure to fugitive crystalline silica dust (including PM^{2.5}), groundwater pollution, and the 10-million gallon spill of mine sludge and its contents and by-products, is no longer and will not be a threat to their health.

C. That Hi-Crush be required to restore Plaintiffs' property and its own property to the condition it was in prior to being contaminated by crystalline silica dust, arsenic, and/or other contaminants, and/or the diminution/loss of viewshed.

WHEREFORE, Plaintiffs demand judgment as follows:

- A. Compensatory damages in an amount to be determined by verdict, together with interest on said sum;
- B. Punitive and exemplary damages against Hi-Crush in an amount sufficient to punish Hi-Crush and to deter it and others similarly situated from engaging in similar wrongdoing, together with interest on said sum;
- C. For their costs and disbursements;
- D. Equitable and injunctive relief as specified herein; and
- E. Such other and further relief as this Court deems just and equitable.

Dated this 22nd day of April, 2019.

FITZPATRICK, SKEMP & ASSOCIATES, LLC
Attorneys for Plaintiffs

/s/ Timothy S. Jacobson

By: _____

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PLAINTIFFS HEREBY DEMAND TRIAL BY A JURY OF TWELVE (12).

Exhibit B

**Plaintiffs' Disclosures Excerpt
List of Harms Suffered**

Claimant: Broney Manka

Category of Harm	*
Property Value Loss	Y
Airborne Pollution	Y
Well Water / Groundwater Contamination	Y
Surface Water Pollution	N
Blasting Shockwaves	Y
Destruction of Landscape & View	N
Livelihood Impacts / Econ. Loss	Y
Physical Illness or Disease	U
Sleep Disruption	Y
Emotional Health Impacts	Y
Family Relationship Impacts	Y
Community Stigma / Ostracism	Y
Excessive Noise	Y
Excessive Nighttime Light	Y
Traffic / Road Impacts	N
Wildlife Impacts	Y

*Y = yes; N = no; U = undetermined