



ENTERED
07/01/2021

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

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 In re: : Chapter 11
 :
 HI-CRUSH PERMIAN SAND LLC, *et al.*,¹ : Case No. 20-33505 (DRJ)
 : (Jointly Administered)
 Reorganized Debtors. : (Formerly Jointly Administered under Lead
 : Case: Hi-Crush Inc., Case No. 20-33495)²
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**STIPULATION AND AGREED ORDER
REGARDING REORGANIZED DEBTORS' FOURTEENTH
OMNIBUS OBJECTION TO CERTAIN CLAIMS (WISCONSIN TORT CLAIMS)
[Relates to Docket No. 83]**

WHEREAS, on July 12, 2020, (the "**Petition Date**") the above-captioned reorganized debtors (the "**Reorganized Debtors**") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**");

WHEREAS, on September 23, 2020, the Court entered an order (the "**Confirmation Order**") [Case No. 20-33495, Docket No. 420] confirming the *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors under Chapter 11 of the Bankruptcy Code* (as amended, modified, or supplemented, the "**Plan**");³

WHEREAS, On October 9, 2020, the Plan was substantially consummated, and the Effective Date occurred;⁴

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized 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 Reorganized Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

² On December 11, 2020, the Court entered the *Final Decree Closing Certain of the Chapter 11 Cases* [Case No. 20-33495, Docket No. 505], which closed each Reorganized Debtor's case except for Hi-Crush Permian Sand LLC, Case No. 20-33505, and directed that all further filings be made in this case.

³ Capitalized terms used but not defined herein have the meanings given to them in Plan.

⁴ See *Notice of (I) Effective Date of the Joint Plan or Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code and (II) Establishing Deadline for the Filing of Administrative Claims Against the Debtors* [Case No. 20-33495, Docket No. 452].



WHEREAS, prior to the Petition Date, the Wisconsin Tort Claimants⁵ initiated litigation asserting claims against the Reorganized Debtors in the following state court cases:

- *Michael Sylla, et al. v. Hi-Crush Whitehall, et al.*, Trempealeau (Wis.) County Case No. 19-CV-63
- *Darrell Bork, et al. v. Hi-Crush Whitehall, LLC, et al.*, Trempealeau (Wis.) County Case No. 19-CV-64
- *Cory Berg, et al. v. Hi-Crush Blair, LLC et al.*, Trempealeau (Wis.) County Case No. 19-CV-65; and
- *Leland and Mary Drangstveit v. Hi-Crush Blair, LLC, et al.*, Trempealeau (Wis.) County Case No. 19-CV-66.

(collectively, the “**Wisconsin Tort Litigation**”). The Claims asserted in the Wisconsin Tort Litigation, together with any other Claims, Causes of Action, rights, or remedies of the Wisconsin Tort Claimants, whether arising under contract or tort, at law, in equity, including, without limitation, the Proofs of Claim,⁶ or otherwise are hereinafter referred to as the “**Wisconsin Tort Claimants’ Claims**”;

WHEREAS, paragraph 54 of the Confirmation Order contains language preserving the rights of the Reorganized Debtors and the Wisconsin Tort Claimants with respect to the Wisconsin Tort Claimants’ Claims and the forum for liquidating such claims;

WHEREAS, Article VIII.A of the Plan authorizes the Reorganized Debtors to settle or compromise any Disputed Claim and to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court;

⁵ “Wisconsin Tort Claimants” shall mean the following persons represented by Fitzpatrick, Skemp & Butler, LLC: (A) (i) Cory Berg, Julie Berg, and Danielle Holstad; (ii) Greg Bluem and Lorraine Bluem; (iii) Dianna Brown; (iv) Michael Johnson and Paula Knutson; (v) Patrick Mathson and Deborah Clare; (vi) Randy Rose, Cara Rose, and S.S. (a minor child, by her natural parent and guardian Cara Rose); (vii) James Syverson and Kimberly Syverson; (B) (i) Darrell Bork, Mary Jo Bork, Dakotah Bork, and Colton Bork; (ii) Robert Guza, Lisa Guza, Emily Guza, and Kaitie Guza; (iii) Todd Kulig, Amy Kulig, and H.K. (a minor child by his natural parents and guardians Todd and Amy Kulig); (iv) Broney Manka; (v) Jared Manka; and (vi) John Manka and Mary Manka; (C) Leland Drangstveit and Mary Drangstveit; (D) (i) Michael J. Sylla, Stacy L. Sylla, Chase Sylla, and M.S. (a minor child by her natural parents and guardians Michael and Stacy Sylla); (ii) William J. Sylla, Angela Sylla, W.S. and Z.S. (minor children by their natural parents and guardians William and Angela Sylla); and (iii) Ann Sylla and (E) the following additional claimants with as yet unfiled claims: Kate Connell, Scott Dyk Ilers, and Beth Willers.

⁶ The “Proofs of Claim” shall mean any proof of claim filed by the Wisconsin Tort Claimants, including, without limitation, Claim Nos. 632, 633, 634, 635, 637, 638, 639, 640, 641, 642, 643, 644, 645, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 659, 660, 661, 662, 663, 664, 665, 673, 675, 678, 679, 681, 682, 683, 684, 685 and 686, as identified in the Claim Register maintained by Kurtzman Carson Consulting.

WHEREAS, on April 8, 2021, the Reorganized Debtors filed the *Reorganized Debtors' Fourteenth Omnibus Objection to Certain Claims (Wisconsin Tort Claims)* [Docket No. 83] (the "**Objection**") objecting to the Wisconsin Tort Claimants' claims;

WHEREAS, on May 6, 2021, the Wisconsin Tort Claimants filed a response to the Objection [Docket No. 97];

WHEREAS, the Reorganized Debtors and the Wisconsin Tort Claimants engaged in discussions and have reached an agreement on the Wisconsin Tort Claimants' Claims and the Objection on the terms set forth herein; and

WHEREAS, the Reorganized Debtors and the Wisconsin Tort Claimants have filed this Stipulation on notice to other parties-in-interest.

IT IS THEREFOR STIPULATED, AGREED, AND ORDERED THAT,

1. Upon the Court's approval of this stipulation, the Proofs of Claim are hereby deemed irrevocably withdrawn. Notwithstanding irrevocable withdrawal of the Proofs of Claim, all rights, claims and remedies, including damages, of the Wisconsin Tort Claimants against any other person other than the Debtors or Reorganized Debtors, including, without limitation, available insurance, are expressly reserved and preserved and such rights, claims and remedies are not impacted or altered by the irrevocable withdrawal of the Proofs of Claim.

2. As a result of the irrevocable withdrawal, and expressly by agreement of all parties hereto and without prejudice in any manner to the Wisconsin Tort Claimants Claims or rights of recovery against any other person, including, without limitation, any available insurance, the Wisconsin Tort Claimants shall not receive any payment from, or any distribution or recovery under the Plan from, the Reorganized Debtors on account of the Wisconsin Tort Claimants' Claims for any relief, damages or Claims arising or occurring prior to the Effective Date.

3. The Wisconsin Tort Claimants' Claims against the Reorganized Debtors for any relief, damages or Claims arising after the Effective Date are expressly preserved and the Reorganized Debtors and the Wisconsin Tort Claimants reserve all rights with respect to any such Claims, and the irrevocable withdrawal of the Proofs of Claim shall not impair and shall have no

effect on the Wisconsin Tort Claimants' Claims against the Reorganized Debtors for any relief, damages or Claims arising after the Effective Date.

4. The Reorganized Debtors shall not raise any of the following arguments in the Wisconsin Tort Litigation: (i) that the Wisconsin Tort Litigation should be adjudicated by the Bankruptcy Court, (ii) that the Wisconsin Tort Claimants' Claims against any non-debtor parties, including, without limitation, available insurance, are extinguished by the bankruptcy cases, or (iii) that the Plan prohibits amendment of the complaints in the Wisconsin Tort Litigation. The Reorganized Debtors shall withdraw their objection(s) to the Wisconsin Tort Claimants' motions for leave to amend complaints in the Wisconsin Tort Litigation solely to the extent of foregoing (i)–(iii) on or before two (2) business days following the entry of this Order.

5. The Reorganized Debtors shall not attempt to use this Order to preclude the Wisconsin Tort Claimants from any recovery against any other person in the Wisconsin Tort Litigation.

6. The Wisconsin Tort Claimants are authorized to continue prosecuting the Wisconsin Tort Claimants' Claims against the Reorganized Debtors (solely as nominal defendants with respect to Claims arising or damages occurring prior to the Effective Date) and against any other persons or parties in Wisconsin state court. Nothing in this Order, the Plan, or the Confirmation Order shall prevent the Wisconsin state court from entering any orders or judgments against the Reorganized Debtors (or any other party) on account of the Wisconsin Tort Claimants' Claims, regardless of whether such claims arose prior to or after the Effective Date; *provided that*, in no event will the Reorganized Debtors be responsible to pay any judgment obtained by the Wisconsin Tort Claimants for any relief or damages occurring or Claims arising prior to the Effective Date. Any recovery on the Wisconsin Tort Claimants' Claims arising and damages

occurring for the period prior to the Effective Date shall be payable from available insurance or persons or parties to the Wisconsin Tort Litigation other than the Reorganized Debtors, subject to the provisions of any such insurance policies and applicable law. Nothing in this Order, the Plan, or the Confirmation Order shall preclude the Wisconsin Tort Claimants from seeking or obtaining any such recovery from available insurance, and nothing in this Order shall affect or limit the Reorganized Debtors' rights or coverage under its applicable insurance policies.

7. Neither the irrevocable withdrawal of the Proofs of Claim nor any other provision of this Order, the Plan, or the Confirmation Order shall alter or impair the rights of the Wisconsin Tort Claimants to pursue (i) any contractor or person who operated on the Debtors' facilities that are the subject of the Wisconsin Tort Claimants' Claims for alleged relief or damages related to the Wisconsin Tort Claimants' Claims, (ii) any director or officer of Hi-Crush Blair LLC or Hi-Crush Whitehall LLC in regard to the operation of the Debtors' facilities that are the subject of the Wisconsin Tort Claimants' Claims for alleged relief or damages related to the Wisconsin Tort Claimants' Claims, and (iii) any insurance, surety, or person alleged liable for alleged relief or damages related to the Wisconsin Tort Claimants' Claims.

8. Except as specifically provided herein, nothing in this stipulation shall be deemed (a) an admission of the validity, categorization, priority, or amount of any claims against the Reorganized Debtors, (b) a waiver or impairment of any rights, claims, or defenses of the Reorganized Debtors or any other party in interest to dispute any Claim on any grounds, (c) an admission of liability or wrongdoing on the part of any party hereto or involved in the Wisconsin Tort Litigation, or (d) a waiver of the rights of the Reorganized Debtors and/or the Wisconsin Tort Claimants' under the Bankruptcy Code or any other law.

9. The Reorganized Debtors and the Wisconsin Tort Claimants have presented this stipulation for the Court's approval on notice to the following parties-in-interest:

Starr Surplus Lines Insurance Company
399 Park Avenue, 8th Fl.
New York, NY 10022
Email: Claims@starrcompanies.com

Aspen Specialty Insurance Company
Attn: General Counsel
316 N 5th St.
Bismarck, ND 58502

Ironshore Specialty Insurance Company
75 Federal Street, 5th Fl.
Boston, MA 02110

CRC Insurance
One Metroplex Dr.
Birmingham, AL 35209

**Aspen Specialty Insurance Company
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Attn: General Counsel
314 East Thayer Avenue,
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**American Guarantee and Liability
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1299 Zurich Way
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Aspen Specialty Insurance Company
Attn: General Counsel
175 Capital Blvd, Suite 100
Rocky Hill, CT 06067

CRC Insurance Services Inc.
199 Water St., Fl 28
New York, NY 10038-3526
Email: WMcBurnie@crcins.com

10. Upon the Court's approval of this stipulation, the Objection is withdrawn as moot because the Wisconsin Tort Claimants irrevocably withdrew their Proofs of Claim.

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

Signed: July 01, 2021.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED TO BY:

June 17, 2021

/s/ Joseph P. Rovira

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Joseph P. Rovira (TX Bar No. 24066008)

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