

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re:)	Chapter 11
)	
EMERGE ENERGY SERVICES LP, et al.,)	Case No. 19-11563 (KBO)
)	
)	Jointly Administered
Debtors.)	
_____)	
)	
SUPERIOR SILICA SANDS LLC, a Texas)	Adv. Proc. No. 20-51052-TMH
limited liability company,)	
)	
Plaintiff,)	
)	
vs.)	
)	
IRON MOUNTAIN TRAP ROCK COMPANY,)	
a Missouri corporation, and FRED WEBER, INC.,)	
a Delaware corporation.)	
)	
Defendants.)	
_____)	

**IRON MOUNTAIN TRAP ROCK COMPANY AND FRED WEBER, INC.’S
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

COME NOW Defendants Iron Mountain Trap Rock Company (“IMTR”) and Fred Weber, Inc. (“FWI”) (together, “Defendants”), and, pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure and Rule 56 of the Federal Rules of Civil Procedure, respectfully move this Court for Partial Summary Judgment on Defendants’ affirmative defense of offset based on IMTR’s Proof of Claim and on the following legal issues regarding Plaintiff’s Third Claim for Relief (1) based on the terms of the WSSA, Defendants were never responsible for final reclamation thereunder, (2) even assuming the WSSA covered final reclamation, it was admittedly a future performance obligation that Superior’s rejection excused, and (3) as FWI’s Guaranty only guaranteed IMTR’s obligations under the WSSA, Superior’s rejection, excusing those future



1911563230825000000000010

obligations, likewise excused FWI's Guaranty. In support of their Motion, Defendants respectfully submit the accompanying Memorandum of Law and Statement of Additional Material Facts, which are incorporated herein by reference.

Dated: August 24, 2023

/s/ Zhao Liu

Scott J. Leonhardt (DE 4885)
Zhao (Ruby) Liu (DE 6436)
THE ROSNER LAW GROUP LLC
824 N. Market Street, Suite 810
Wilmington, Delaware 19801
Tel.: (302) 777-1111
Email: leonhardt@teamrosner.com
liu@teamrosner.com

and

Robert J. Golterman (admitted *pro hac vice*)
John J. Hall (admitted *pro hac vice*)
Oliver H. Thomas (admitted *pro hac vice*)
Sarah A. Milunski (admitted *pro hac vice*)
LEWIS RICE LLC
600 Washington Ave., Suite 2500
St. Louis, MO 63101
Phone: (314) 444-7600
Fax: (314) 612-7822
E-Mail: rgolterman@lewisrice.com
jhall@lewisrice.com
othomas@lewisrice.com
smilunski@lewisrice.com

*Attorneys for Iron Mountain Trap Rock
Company and Fred Weber, Inc.*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re:)	Chapter 11
)	
EMERGE ENERGY SERVICES LP, et al.,)	Case No. 19-11563 (KBO)
)	
Debtors.)	Jointly Administered
)	
SUPERIOR SILICA SANDS LLC, a Texas limited liability company,)	Adv. Proc. No. 20-51052-TMH
)	
Plaintiff,)	
)	
vs.)	
)	
IRON MOUNTAIN TRAP ROCK COMPANY, a Missouri corporation, and FRED WEBER, INC., a Delaware corporation.)	Re: Adv. D.I. 80
)	
Defendants.)	
)	

**ORDER GRANTING IRON MOUNTAIN TRAP ROCK COMPANY AND
FRED WEBER, INC.’S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

UPON CONSIDERATION of Defendants Iron Mountain Trap Rock Company (“IMTR”) and Fred Weber, Inc.’s (“FWI”) (collectively, “Defendants”) Cross-Motion for Partial Summary Judgment in the above-captioned adversary proceeding (the “Motion”); and the Court having reviewed the Motion, the accompanying Memorandum of Law in Support of the Motion, Response to Plaintiff’s Statement of Undisputed Material Facts and Omnibus Statement of Additional Material Facts, and the responses thereto, if any; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Plaintiff's Third Claim for Relief is DISMISSED WITH PREJUDICE.
3. Defendants are entitled to judgment as a matter of law on their affirmative defense of setoff in the amount of \$32,334,904.87. As such, any amounts Superior may be entitled to recover must first be setoff against the \$32,334,904.87 that was due and owing to IMTR immediately before the date of the filing of Superior's bankruptcy petition. *See* 11 U.S.C. § 365(g).
4. As Defendants' entitlement to offset exceeds all amounts sought by Superior in this action, all other pending Motions for Summary Judgment are DENIED AS MOOT and Superior's First Amended Complaint is DISMISSED WITH PREJUDICE.
5. This Court shall retain jurisdiction over all matters arising from or related to the interpretation or implementation of this Order.