

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EMERGE ENERGY SERVICES LP, *et al.*,

Debtors.¹

SUPERIOR SILICA SANDS LLC, a Texas
limited liability company,

Plaintiff,

vs.

IRON MOUNTAIN TRAP ROCK
COMPANY, a Missouri corporation, and
FRED WEBER, INC., a Delaware corporation.

Defendants.

Chapter 11

Case No. 19-11563 (KBO)

Jointly Administered

Adv. Proc. No. 20-51052 (TMH)

**PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL DECLARATION
OF SCOTT WAUGHTAL REGARDING UPDATED DAMAGES**

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Dated: March 4, 2024
Wilmington, Delaware

Attorneys for Superior Silica Sands LLC

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



I. INTRODUCTION

Plaintiff and reorganized debtor Superior Silica Sands LLC (“Superior”), by and through its undersigned counsel, hereby files this *Plaintiff’s Motion for Leave to File Supplemental Declaration of Scott Waughtal Regarding Updated Damages* (the “Motion”), requesting leave to file a declaration of Superior’s President and CEO that would update the Court on Superior’s damages and the resolution that has been reached with the Wisconsin Department of Natural Resources (“DNR”) for the scope of Phase II reclamation at the subject quarry.

II. RELIEF REQUESTED

On March 26, 2024 (the “MSJ Hearing”), this Court will hold oral argument on the competing motions for summary judgment (and related motions to strike, described below) that have been filed in the above-captioned adversary proceeding by Superior and by defendants Fred Weber, Inc. and Iron Mountain Trap Rock Company (collectively, the Defendants”).

It is almost one year since Superior filed its *Reorganized Debtor Superior Silica Sands LLC’s Supplemental Motion for Partial Summary Judgment on Third Claim for Relief for Breach of Contract* [D.I. 61] (the “Breach of Contract MSJ”) on April 13, 2023. As Superior filed its Breach of Contract MSJ while in the process of carrying out reclamation of the subject sand quarry, Superior’s damages described in the Motion were largely estimated, particularly with respect to Phase II of the reclamation.

On August 22, 2023, in advance of Defendants’ continued deadline for opposing the Breach of Contract MSJ, Superior filed the *Supplemental Declaration of Scott Waughtal in Support of Reorganized Debtor Superior Silica Sands LLC’s Supplemental Motion for Partial Summary Judgment on Third Claim for Relief for Breach of Contract* [D.I. 74] (the “August 2023 Waughtal Decl.”) to provide Defendants and this Court with updated information on the actual

expenses incurred by Superior over the previous four months. Defendants responded to the August 2023 Waughtal Decl. by filing a motion to strike the declaration, claiming that the filing was improper. Therefore, out of an abundance of caution, Superior has filed the instant Motion seeking leave to file a further update of its damages.²

The MSJ Hearing will take place almost one year after Superior first calculated its breach of contract damages, and seven months after Superior filed the August 2023 Waughtal Decl. Since that time, Superior has further confirmed the final costs to reclaim the quarry by carrying out most of the estimated costs for Phase I, and—most importantly—has obtained confirmation from DNR that Phase II of the reclamation may be performed in a manner that will substantially reduce the costs that were estimated for the originally-required process. Superior is presently finalizing testing that will confirm the scope of Phase II reclamation, and expects to be able to update the Court and Defendants in advance of the MSJ Hearing with a firm estimate for the cost of Phase II reclamation to be performed in 2024.

A court's discretion to accept updated damages information is broad and even encompasses the discretion to supplement the record post-trial. *See United States Bank N.A. v. LP*, No. 21-0502, 2023 WL 4216091 (E.D. Pa. June 27, 2023) (citing cases to find that it is within a court's discretion to supplement the record post-trial with updated damages information).

Superior believes that it is in the best interests of all parties to ensure that the Court has the most recent damages information prior to the MSJ Hearing. Wherefore, Superior respectfully requests entry of the proposed order filed herewith granting Superior leave to file a supplemental

² Superior reached out to Defendants to request a streamlined or stipulated procedure, but Defendants have refused to stipulate to any procedure for the filing of a supplemental Waughtal declaration on damages, or a shortened time period for fully briefing the instant Motion in advance of the MSJ Hearing.

declaration of Scott Waughtal in advance of the MSJ Hearing to provide the Court and Defendants with updated damages information.

Dated: March 4, 2024

BAKER & HOSTETLER LLP

/s/ Jeffrey J. Lyons

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Adv. Proc. No. 20-51052 (TMH)

**ORDER APPROVING PLAINTIFF'S MOTION FOR LEAVE TO FILE
SUPPLEMENTAL DECLARATION OF SCOTT WAUGHTAL REGARDING
UPDATED DAMAGES**

Upon consideration of *Plaintiff's Motion for Leave to File Supplemental Declaration of Scott Waughtal Regarding Updated Damages* (the "Motion"), having considered all papers filed in opposition and support thereof, and the Court having determined that good and adequate cause exists for the relief requested in the Motion; it is hereby **ORDERED** that:

1. The Motion is **GRANTED**.

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2. Plaintiff may file a supplemental declaration of Scott Waughtal in advance of this Court's hearing scheduled for March 26, 2024, to provide the Court and the parties with updated damages information.
3. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____

Hon. Thomas M. Horan