

Fill in this information to identify the case:

Debtor Superior Silica Sands LLC

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 19-11566

**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. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

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. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

<p>1. Who is the current creditor?</p>	<p><u>Chicago Freight Car Leasing Co.</u></p> <p>Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p> <p>Chicago Freight Car Leasing Co. E. Todd Sable, Esq. 2290 First National Building 660 Woodward Avenue Detroit, MI 48226-3506</p> <p>Contact phone <u>3134657000</u></p> <p>Contact email <u>tsable@honigman.com</u></p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Chicago Freight Car Leasing Co. Maggie Lesniewski 425 N. Martingale Road, 6th Floor Schaumburg, IL 60173</p> <p>Contact phone <u>8475982152</u></p> <p>Contact email <u>Maggie.Lesniewski@crdx.com</u></p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>
<p>4. Does this claim amend one already filed?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	



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: 1295 ____

7. How much is the claim? \$ 415,786.47. 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.
Defaults under lease terminated pre-petition.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle 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.)
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. \$ N/A

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)?

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

<input type="checkbox"/> No		
<input checked="" type="checkbox"/> Yes. Check all that apply:		Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).		\$ _____
<input type="checkbox"/> 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).		\$ _____
<input type="checkbox"/> 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).		\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).		\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).		\$ _____
<input checked="" type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(<u>2</u>) that applies.		\$ <u>25,362.90</u>

* 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 09/09/2019
MM / DD / YYYY

/s/Jay D. Wilensky
Signature

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

Name Jay D. Wilensky
First name Middle name Last name

Title Vice President, Accounting and Finance

Company Chicago Freight Car Leasing Co.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 425 N. Martingale Road, 6th Floor, Schaumburg, IL, 60173

Contact phone 8473844414 Email jay.wilensky@crdx.com



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 634-7165 | International 001-310-823-9000

Debtor: 19-11566 - Superior Silica Sands LLC		
District: District of Delaware		
Creditor: Chicago Freight Car Leasing Co. E. Todd Sable, Esq. 2290 First National Building 660 Woodward Avenue Detroit, MI, 48226-3506 Phone: 3134657000 Phone 2: Fax: Email: tsable@honigman.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded	
	Related Document Statement:	
	Has Related Claim: No	
	Related Claim Filed By:	
Filing Party: Authorized agent		
Disbursement/Notice Parties: Chicago Freight Car Leasing Co. Maggie Lesniewski 425 N. Martingale Road, 6th Floor Schaumburg, IL, 60173 Phone: 8475982152 Phone 2: Fax: E-mail: Maggie.Lesniewski@crdx.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No	
	Acquired Claim: No	
Basis of Claim: Defaults under lease terminated pre-petition.	Last 4 Digits: Yes - 1295	Uniform Claim Identifier:
Total Amount of Claim: 415,786.47	Includes Interest or Charges: Yes	
Has Priority Claim: Yes	Priority Under: 11 U.S.C. §507(a)(2): 25,362.90	
Has Secured Claim: No	Nature of Secured Amount:	
Amount of 503(b)(9): No	Value of Property:	
Based on Lease: Yes, N/A	Annual Interest Rate:	
Subject to Right of Setoff: No	Arrearage Amount:	
	Basis for Perfection:	
	Amount Unsecured:	
Submitted By: Jay D. Wilensky on 09-Sep-2019 12:02:34 p.m. Eastern Time Title: Vice President, Accounting and Finance Company: Chicago Freight Car Leasing Co.		

Optional Signature Address:

Jay D. Wilensky
425 N. Martingale Road
6th Floor
Schaumburg, IL, 60173

Telephone Number:

8473844414

Email:

jay.wilensky@crdx.com

Attachment to Proof of Claim of Chicago Freight Car Leasing Co. ("Lessor")

I. Lease

Lessor and Superior Silica Sands LLC ("Debtor"), as lessee, were parties to that certain Master Lease of Railcars, dated October 9, 2014, as amended, supplemented and modified (the "Lease"). Upon information and belief a copy of the Lease is in the possession of the Debtor.

Pursuant to a Notice of Termination, dated and effective as of February 20, 2019, the Lease was terminated by Lessor for cause and without liability on the part of Lessor to Debtor, due to Debtor's material default under and anticipatory repudiation of the Lease. A copy of the Notice of Termination is attached hereto as Exhibit A.

Notwithstanding the termination of the Lease, Debtor has wrongfully retained the possession and use of, and Debtor has failed and refused to surrender to Lessor, certain railcars that were subject to the Lease. See copy of May 8, 2019 demand letter attached hereto as Exhibit B. As of the date of this proof of claim, Debtor continues to wrongfully retain the possession and use of at least 42 of Lessor's railcars.

On July 15, 2019 (the "Petition Date"), Debtor and its affiliated debtors in possession filed their respective Chapter 11 cases in the United States Bankruptcy Court for the District of Delaware (the "Court") to commence the pending cases being jointly administered as Case No. 19-11563 (KBO), In re: Emerge Energy Services LP, et al. (the "Case"). Debtor's case is Case No. 19-11566.

II. Claims

Lessor has incurred the following damages related to and arising from Debtor's defaults and nonperformance under the Lease and Debtor's wrongful retention of certain railcars subsequent to the date of termination of the Lease and prior to the Petition Date.

Pre-Petition Defaults Under the Lease: Debtor defaulted under the Lease prior to the Petition Date by failing to pay certain charges due under the Lease, which resulted in the termination of the Lease prior to the Petition Date, as described above. As of the Petition Date, and exclusive of additional future damages, Debtor incurred charges to Lessor in the aggregate amount of not less than \$415,786.47. An account statement itemizing such amounts is attached hereto as Exhibit C. A prorated portion of July 2019 base rental charges of \$46,250.00 (for the period July 15-31, 2019), being \$25,362.90, constitutes "stub rent", that is entitled to administrative priority pursuant to 11 U.S.C. §507(a)(2).

Total Claims: Accordingly, as of the date of this proof of claim, the total amount of Lessor's claim is not less than \$415,786.47, subject to amendment and/or future supplementation.

III. Reservation of Rights

Lessor reserves all of its rights and remedies at law, in equity, and otherwise, including all of its rights under the Lease. Lessor reserves, without limitation, the right to amend or supplement this proof of claim. Lessor reserves the right to file a motion seeking the payment of administrative expense claims, pursuant to 11 U.S.C. §503(b)(1) and 11 U.S.C. §507(a)(2), or otherwise.

IV. Documentation

Additional documents, if any, supporting Lessor's claims may be made available by contacting:

E. Todd Sable, Esq.
Honigman LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226-3506
Telephone: (313) 465-7000
Email: tsable@honigman.com

EXHIBIT A
NOTICE OF TERMINATION



CHICAGO FREIGHT
CAR LEASING CO.
A Sasser Family Holdings Company

February 20, 2019

VIA FEDEX

Superior Silica Sands LLC
6000 Western Place
Suite 465
Fort Worth, TX 76107
Attention: Richard J. Shearer, President and CEO

Re: Notice of Termination of Master Lease of Railcars

Dear Mr. Shearer:

Reference is made to the Chicago Freight Car Leasing Co. ("CFCL") Master Lease of Railcars with Superior Silica Sands, LLC ("Superior"), dated October 9, 2014 (the "Lease"). Capitalized terms used but not otherwise defined herein have the meanings given to them in the Lease. As used herein, references to the Lease include, without limitation, Rider 1204-13-01 to Master Lease 1204-13 of Railcars with Superior Silica Sands, LLC, Amendment No. 1 to Rider 1204-13-01 of [Master Lease of] Railcars with Superior Silica Sands, LLC dated October 9, 2014, and the Amendment to Lease Rider 1204-13-01 dated October 9, 2014 between Chicago Freight Car Leasing Co. and Superior Silica Sands, LLC.

This constitutes notice by CFCL that, effective immediately, the Lease is terminated for cause and without liability to Superior due to Superior's material Default under and anticipatory repudiation of the Lease.

As you are aware, Superior has advised CFCL that it cannot and will not perform under the Lease, and its continued performance, if any, is dependent on a significant restructuring of the terms and conditions of the Lease including, but not limited to, the waiver of past-due Monthly Rent, the adjustment of prospective Monthly Rent, the addition of a new option to terminate in favor of Superior, the waiver of certain maintenance and storage fees to be paid by Superior, and the amendment of the liquidated damages provision. CFCL has no obligation to, and does not, agree to Superior's demands or to any changes to the Lease.

These demands by Superior, and Superior's attendant statements that it cannot and will not perform the Lease in accordance with its terms demonstrate a material and continuing Default under and repudiation of the Lease by Superior, and further preclude any need for awaiting—prior to the effectiveness of this termination—the expiration of any cure period that might otherwise apply. Notwithstanding the foregoing, even if a cure period did apply (for example, in accordance with Section 15(a)(ii) of the Lease) written notice of Superior's Default under the Lease by failing

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**CHICAGO FREIGHT
CAR LEASING CO.**
A Sasser Family Holdings Company

to pay Rent when due was provided on January 21, 2019; no payment has since been made and this Default remains uncured.

Accordingly, in light of the foregoing, Superior has no further right or interest in or to the Cars, and all Cars must be returned to CFCL to the Return Point in accordance with the Lease, including Section 15(b). Upon return, the Cars must be in a Clean condition as required by Sections 8(e) and 15(d) of the Lease. Superior is fully responsible for any loss, theft, appropriation, destruction and damage to the Cars. See Lease, § 9(a). Representatives of CFCL will contact Superior shortly to coordinate such return of the Cars.

Attached to this notice is an invoice of amounts due to CFCL pursuant to the Lease, in the aggregate amount of \$125,000. This amount must be paid to CFCL immediately. CFCL reserves the right to issue further invoices to Superior in the event that additional amounts due to CFCL pursuant to the Lease are identified. For example, but without limitation, CFCL will issue subsequent invoices for, and Superior must promptly pay, all additional amounts due and owing under the Lease for Superior's return, maintenance and damage obligations with respect to the Cars.

This notice is without prejudice to CFCL's rights, powers, privileges, remedies, and defenses in accordance with the Lease and applicable law, all of which are reserved.

Should you have questions regarding the attached invoice or coordination of return of the Cars, please contact Josh Chesser, Sr. Vice President Sales & Marketing at (847) 384-4437 or by email at Josh.Chesser@CRDX.com.

Very truly yours,

A handwritten signature in cursive script that reads "Josh Chesser".

c. Bryan H. Zair, Senior Vice President & General Counsel
E. Todd Sable, Honigman LLP
Paul Deasy, President

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INVOICE

RENTAL INVOICE

SUPERIOR SILICA SANDS LLC
DAN MCCABE
6000 WESTERN PLACE
SUITE 465
FORT WORTH, TX 76107

Invoice #: LI2019010428
PO Number:
Date: 12/1/2018
Lease #: 1204-13-01
Due Date: 1/1/2019

Total Amount Due: \$62,500.00

DESCRIPTION OF SERVICE:

Lease of Covered Hopper Car(s) numbered CRDX 22498 through CRDX 22597 for the month of January 2019, lease supplement dated 1/21/2015

Base Rentals		
Quantity	Description	Rental Total
100	Rental of Covered Hopper Car(s) @\$625.00 per month	\$62,500.00

Amount Due
\$62,500.00

Please Remit Amount Due:

Preferred Payment: ACH or Wire

Chicago Freight Car Leasing Co.
The Northern Trust Co. Account No: 0152-021
50 South LaSalle Street ABA No: 071000152
Chicago, IL 60603 Acctg.Grp@crdx.com

Check Payment

Chicago Freight Car Leasing Co.
P.O. Box 75129
Chicago, IL 60675-5129



INVOICE

RENTAL INVOICE

**SUPERIOR SILICA SANDS LLC
DAN MCCABE
6000 WESTERN PLACE
SUITE 465
FORT WORTH, TX 76107**

**Invoice #: LI2019020428
PO Number:
Date: 1/1/2019
Lease #: 1204-13-01
Due Date: 2/1/2019**

Total Amount Due: \$62,500.00

DESCRIPTION OF SERVICE:

Lease of Covered Hopper Car(s) numbered CRDX 22498 through CRDX 22597 for the month of February 2019, lease supplement dated 1/21/2015

Base Rentals		
Quantity	Description	Rental Total
100	Rental of Covered Hopper Car(s) @\$625.00 per month	\$62,500.00

Amount Due
\$62,500.00

Please Remit Amount Due:

Preferred Payment: ACH or Wire

Chicago Freight Car Leasing Co.
The Northern Trust Co. Account No: 0152-021
50 South LaSalle Street ABA No: 071000152
Chicago, IL 60603 Acctg.Grp@crdx.com

Check Payment

Chicago Freight Car Leasing Co.
P.O. Box 75129
Chicago, IL 60675-5129

EXHIBIT B

MAY 8, 2019 DEMAND LETTER

May 8, 2019

*Via FedEx
Priority Overnight Delivery*

Mr. Richard J. Shearer
Superior Silica Sands LLC
6000 Western Place
Suite 465
Fort Worth, TX 76107

Re: *Chicago Freight Car Leasing Co. Master Lease of Rail Cars with Superior Silica Sands LLC Dated October 9, 2014 (together with all associated riders, "the Lease")*

Dear Mr. Shearer:

This firm represents Chicago Freight Car Leasing Co. ("Chicago Freight") in connection with its Lease with Superior Silica Sands LLC ("SSS"). As you are aware, Chicago Freight terminated the Lease and all applicable riders on February 20, 2019, due to SSS's material breaches and defaults. More than two months have passed since the Lease's termination, yet, contrary to Chicago Freight's instructions and without Chicago's Freight's consent, SSS has continued its failure to both pay the substantial amount owed to Chicago Freight and to return all of Chicago Freight's railcars.

Upon SSS's default and the termination of the Lease, Chicago Freight demanded—and the Lease requires—that SSS immediately return all of the leased railcars. Not only has SSS failed to return Chicago Freight's property, but it has continued to unlawfully use Chicago Freight's railcars for its own benefit without payment to Chicago Freight. To date, SSS is improperly refusing to return 83 of Chicago Freight's railcars, and is actively using at least 66 (and possibly more) of those cars in SSS's business. SSS has no lawful basis to continued possession or use of Chicago Freight's property.

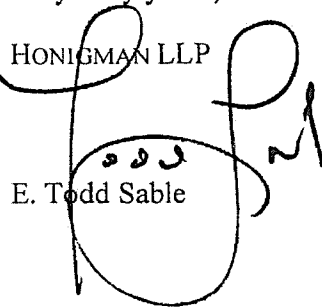
SSS's continued conduct has created and is exposing SSS to serious, and increasing, financial liability under the Lease and Illinois law. Indeed, SSS's conduct amounts, among other things, to conversion of the railcars, which exposes SSS to punitive damages. Within fourteen (14) days of this letter, SSS must (1) return all of Chicago Freight's railcars in SSS's possession (in the condition required by the Lease), and (2) pay Chicago Freight the amount of \$348,146.33 in accrued rent and other charges required by the Lease. If SSS fails to comply, Chicago Freight intends to exercise all of its legal remedies, including seeking damages, penalties, and a judicial order mandating the immediate return of the railcars. Please also be advised that the Lease

May 8, 2019

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provides for Chicago Freight to recover all of its legal costs, including attorneys' fees, if it is forced to seek judicial intervention.

If SSS is represented by counsel in this matter, please forward this letter and ask your counsel to contact me directly. Otherwise, please respond with your confirmation that SSS will comply with its obligations as requested in this letter and as required by the Lease and applicable law.

Very truly yours,
HONIGMAN LLP

E. Todd Sable

c. Bryan H. Zair

EXHIBIT C
STATEMENT OF ACCOUNT

Superior Silica (C001295)
 Balance Due as of 9/01/19
 Lease #1204-13-01
 Filing date: 7/15/2019

	Open Invoices	Type of Invoice	Invoice Date	Due Date	Invoice Amount
<u>Pre-petition invoices:</u>	CH2017060451 - CREDIT	Car Hire	5/26/2017		-\$44.23
	LI2019010428	Base Rental	12/1/2018	1/1/2019	\$62,500.00
	LI2019020428	Base Rental	1/1/2019	2/1/2019	\$62,500.00
	LI2019030424	Base Rental	2/1/2019	3/1/2019	\$62,500.00
	LI2019040421	Base Rental	3/1/2019	4/1/2019	\$62,500.00
	LI2019050426	Base Rental	4/1/2019	5/1/2019	\$45,892.88
	RB19040056	Repair	4/30/2019	5/15/2019	\$330.45
	RB19050055	Repair	4/30/2019	5/15/2019	\$761.82
	SW2019040013	Switch	4/30/2019	5/15/2019	\$48.00
	LI2019060420	Base Rental	5/1/2019	6/1/2019	\$51,875.00
	SW2019050012	Switch	5/31/2019	6/15/2019	\$1,332.80
	RB19060026	Repair	6/30/2019	7/15/2019	\$7,822.73
	SW2019060010	Switch	6/30/2019	7/15/2019	\$3,119.84
	LI2019070418	Base Rental	6/1/2019	7/1/2019	\$46,250.00
					\$407,389.29

Additional pre-petition cost incurred:

Storage Expenses	\$768.00
Legal Fees	\$7,629.18
	\$8,397.18

Total pre-petition costs:

\$415,786.47