

In re:

DEMCO, INC.,

Case No.: 12-12465-MJK

Debtor.

**NOTICE OF HEARING ON DEBTOR'S MOTION SEEKING TO
AMEND AND TO INCREASE FINAL DEBTOR-IN-POSSESSION
FINANCING AGREEMENT WITH ALBA INVESTMENTS, LLC**

PLEASE TAKE NOTICE that the Debtor-in-Possession, Demco, Inc. (the "Debtor"), by its attorneys, Andreozzi Bluestein LLP, will appear before the Hon. Michael J. Kaplan, U.S. Bankruptcy Judge, in the courtroom usually occupied by him at the United States Bankruptcy Court, Part I, Olympic Towers, 300 Pearl Street, Suite 250, Buffalo, New York 14202, on **July 26, 2017, at 2:00 p.m.**, or as soon thereafter as counsel can be heard, seeking the entry of an Order, pursuant to 11 U.S.C. §§105(a), 362, 363 and 364 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtor to modify its Senior, Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement dated May 10, 2017 with Alba Investments, LLC to increase the Maximum Amount¹ from \$1,000,000.00 to \$1,500,000.00 and to change the deadline for approval of the Debtor's Disclosure Statement from July 15, 2017 to August 18, 2017.

PLEASE TAKE FURTHER NOTICE that any entity choosing to file written support of or opposition to the Motion with the Court shall also serve it upon: (1) Andreozzi Bluestein LLP, Attn: Daniel F. Brown, Esq., 9145 Main Street, Clarence, New York 14031; and (2) Halperin Battaglia Benzija, LLP, Attn: Julie Dyas Goldberg, Esq. and Alan D. Halperin, Esq., 40 Wall Street, 37th Floor, New York, New York 10005, as soon as practicable, pursuant to Local Rule of Bankruptcy Procedure 9013-1.

Dated: Clarence, New York
July 11, 2017

ANDREOZZI BLUESTEIN LLP

By: /s/ Daniel F. Brown

Daniel F. Brown, Esq.
Attorneys for the Debtor
9145 Main Street
Clarence, New York 14031
Direct Dial: (716) 235-5030
Office Number: (716) 633-3200, Ext. 318
Facsimile: (716) 565-1920
E-mail: dfb@andreozzibluestein.com

¹ Capitalized terms used but not defined herein have the meaning ascribed to them in the DIP Financing Agreement. (00267976.1 / 1174-001)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

DEMCO, INC.,

Case No.: 12-12465-MJK

Debtor.

**DEBTOR’S MOTION SEEKING TO AMEND AND TO INCREASE FINAL DEBTOR-IN-
POSSESSION FINANCING AGREEMENT WITH ALBA INVESTMENTS, LLC**

The Debtor-in-Possession, Demco, Inc. (“Demco” or the “Debtor”), by its attorneys, Andreozzi Bluestein LLP, hereby moves this Court (the “Motion”), pursuant to 11 U.S.C. §§105(a), 362, 363 and 364 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure, seeking the entry of an Order authorizing the Debtor to modify its Senior, Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement dated May 10, 2017 (the “DIP Financing Agreement”) with Alba Investments, LLC (“Alba” or the “Lender”) to increase the Maximum Amount¹ from \$1,000,000.00 to \$1,500,000.00 and to change the deadline in the DIP Financing Agreement for approval of the Debtor’s Disclosure Statement from July 15, 2017 to August 18, 2017.

A blacklined copy of the Debtor’s DIP Financing Agreement, which reflects the proposed changes to the existing DIP Financing Agreement, is being filed and served herewith as Exhibit A. A copy of the Debtor’s proposed additional Promissory Note is being filed and served herewith as Exhibit B. A summary cash flow forecast for Demco through October 31, 2017 is being filed and served herewith as Exhibit C. A proposed Order approving the modification to the DIP Financing Agreement is being filed and served herewith as Exhibit D.

In support of its Motion, the Debtor respectfully represents as follows:

¹Capitalized terms used but not defined herein have the meaning ascribed to them in the DIP Financing Agreement.

JURISDICTION

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§1334 and 157(b). This is a “core” proceeding, pursuant to 28 U.S.C. §§ 157(b)(2)(A), (D) and (K).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409.
3. The statutory predicates for the relief requested herein are §364(c) and (d) of the Bankruptcy Code and Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

4. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 6, 2012 (the “Filing”).
5. The Debtor is a specialty trade contractor based in East Aurora, New York which provides demolition services, nuclear work, environmental clean-up, disaster response and a variety of other services throughout the United States and, on a project-by-project basis, internationally.
6. After the Filing, the Debtor initially substantially curtailed its operations. It thereafter filed a series of motions through which it marketed and sold substantially all of its equipment, which allowed it to pay down approximately \$3 million in secured debt.
7. On March 22, 2013, this Court authorized the Debtor to obtain up to \$500,000.00 in DIP Financing from National Environmental Safety Company, Inc. (“NESCO”), which allowed the Debtor to begin pursuing new post-petition commercial and light industrial demolition and environmental remediation work. Thereafter, by an Order entered on December 11, 2013 and an Amended Order entered on December 16, 2013, the Debtor was authorized to borrow up to \$1,000,000.00 from NESCO. NESCO has not at any time loaned more than \$500,000.00 to the Debtor, however.

8. Since the approval of the NESCO DIP Orders, the Debtor has bid on and has obtained contracts to perform a number of demolition and site remediation projects in many parts of the country.

9. NESCO has not loaned any funds to Demco for several years and Demco has been self-funding its operations from its cash flow, without any operating line of credit during that time period.

10. On April 24, 2017, the Debtor filed its motion pursuant to 11 U.S.C. §§105(a), 362, 363 and 364 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure, seeking the entry of an Order authorizing the Debtor to enter into the DIP Financing Agreement with the Lender, which was granted on a final basis by order dated May 10, 2017 (the “Final DIP Order”). The DIP Financing Agreement and the Final DIP Order authorized a loan in a Maximum Amount of \$1,000,000.00. Alba has funded that borrowing.

11. Demco is now seeking authorization to increase the Maximum Amount of borrowing from Alba to \$1,500,000.00 because delays in certain of the projects on which Demco is currently working have delayed the timing of Demco’s receipt of certain revenues which had been projected in the cash flow budget which was a part of the Final DIP Order.

12. For example, contemporaneously with this Court’s approval of the Final DIP Order, work at the Florida Power & Light (Cedar Bay) project was temporarily put on hold by the owner. While it is anticipated that that work will be continuing, Demco had anticipated generating approximately \$1,225,000.00 in receivables from this project for the months of May, June and July, 2017, while incurring job costs of approximately \$750,000.00 during the same period. Therefore, Demco’s net revenues for this period are anticipated to be reduced by approximately \$475,000.00 from what had previously been projected.

13. Additionally, the Santee Cooper Moncks Corner project has been progressing slightly more slowly than anticipated. Excessive groundwater flooding the basement of that power plant has slowed the progress of that job, which has slowed Demco's receipt of the revenues previously projected to be received from that contract.

14. Demco's proposed additional borrowing from Alba will enable it to move forward towards confirmation on substantially the same schedule as originally proposed.

15. Demco is in the final stages of preparing its proposed Plan of Reorganization and accompanying Disclosure Statement, which, in accordance with the DIP Loan Agreement, must be approved by the Court no later than September 30, 2017. Given the progress that the Debtor has made toward reaching its exit strategy goals, the Lender has indicated a willingness to further fund the Debtor's operations by increasing the Maximum Amount from \$1,000,000.00 to \$1,500,000.00. This increased funding will enable to the Debtor to timely perform on all of its post-petition obligations, including performance on current ongoing jobs that are essential to the reorganization efforts. A copy of the Debtor's summary cash flow forecast through October 31, 2017 is being filed and served with this Motion as Exhibit C.

PROPOSED MODIFICATIONS TO DIP FINANCING AGREEMENT

16. As is evidenced in Exhibit A hereto, the sole proposed modifications to the DIP Financing Agreement are to modify the defined term "Maximum Amount", which was previously \$1,000,000.00 to allow for a Maximum Amount of \$1,500,000.00, and to change the deadline for approval of the Debtor's Disclosure Statement from July 15, 2017 to August 18, 2017. All other terms shall remain unaffected, including but not limited to the proposed DIP Financing coming due on September 30, 2017, or potentially earlier in the event of a default. As has been the case from the inception of this DIP Financing, the Debtor is seeking to confirm a Chapter 11 Plan of Reorganization prior to September 30, 2017 and anticipates that Alba will

provide exit financing in connection with that Plan; however, no formal commitment to make such financing is currently in place.

17. It is currently the Debtor's anticipation that this DIP Financing from Alba will be in the nature of a "bridge loan" which is intended to help the Debtor with its short-term cash needs and to move forward with efforts to confirm a Chapter 11 plan of reorganization. The Debtor anticipates that the Obligations will accrue interest but will not be repaid prior to confirmation. It is also the contemplation of the parties that Alba will provide additional exit financing to the Debtor to assist it to fund payments to be made pursuant to its Chapter 11 plan, however, no such financing agreement exists at this time. It is still also anticipated that after confirmation, Alba will exercise the Lender Election and become the majority owner of Demco.

WHEREFORE, the Debtor requests the entry of an Order approving the modification to the DIP Financing Agreement to modify the definition of Maximum Amount from \$1,000,000.00 to \$1,500,000.00 and to change the deadline in the DIP Financing Agreement for approval of the Debtor's Disclosure Statement from July 15, 2017 to August 18, 2017 and granting to the Debtor such other and further relief as this Court deems just and proper.

Dated: Clarence, New York
July 11, 2017

ANDREOZZI BLUESTEIN LLP

By: /s/ Daniel F. Brown

Daniel F. Brown, Esq.
Attorneys for the Debtor
9145 Main Street
Clarence, New York 14031
Direct Dial: (716) 235-5030
Office Number: (716) 633-3200, Ext. 318
Facsimile: (716) 565-1920
E-mail: dfb@andreozzibluestein.com