MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 5, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*DEMCO, Official Committee of Unsecured Creditors of, v. County of Erie and Patrick J. Callahan*
Document Received:	Summons and Complaint
Name of Claimant:	Official Committee of Unsecured Creditors of DEMCO, Inc.
Claimant's attorney:	Arthur G. Baumeister, Jr., Esq. Amigone, Sanchez & Mattrey, LLP 1300 Main Place Tower 350 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

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SEP 2 - 2014
ERIE COUNTY
DEPARTMENT OF LAW
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Form B 250A (12/09)

United States Bankruptcy Court

WESTERN District Of NEW YORK

In re DEMCO, INC., Debtor	)	Case No. 1-12-12465 MJK
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF DEMCO, INC.	)	Chapter 11
Plaintiff	)	
v.	)	Adv. Proc. No. 1-14-01063 MJK
COUNTY OF ERIE and PATRICK J. CALLAHAN,	)	
Defendant	)	

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of the clerk: U.S. Bankruptcy Court, W.D.N.Y.
Olympic Towers
300 Pearl Street, Suite 250
Buffalo, New York 14202

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney:
Arthur G. Baumeister, Jr., Esq.
Amigone, Sanchez & Mattrey, LLP
1300 Main Place Tower, 350 Main Street, Buffalo, NY 14202

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

Lisa B. Bacon/ATP (Clerk of the Bankruptcy Court)

Date: August 19, 2014

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)

PLAINTIFFS	DEFENDANTS
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF DEMCO, INC.	COUNTY OF ERIE PATRICK J. CALLAHAN
ATTORNEYS (Firm Name, Address, and Telephone No.) Arthur G. Baumiester, Jr. Amigone, Sanchez & Mattrey, LLP 1300 Main Place Tower, 350 Main Street, Buffalo, NY 14202 (716) 852-1300	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☒ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Fraudulent Transfer Proceeding pursuant to 11 U.S.C. Sections 544, 548, 550 and 551 and NYDCL Sections 272, 273, 274, 275 and 278

NATURE OF SUIT

(Number to cause of action in order of importance, if more than one, should be listed in numerical sequence on a separate sheet)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☒ 13-Recovery of money/property - §548 fraudulent transfer
- ☒ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR DEMCO, INC.	BANKRUPTCY CASE NO. 1-12-12465-MJK	
DISTRICT IN WHICH CASE IS PENDING Western District of New York	DIVISION OFFICE Buffalo	NAME OF JUDGE Hon. Michael J. Kaplan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) s/Arthur G. Baumeister, Jr.		
DATE August 5, 2014	PRINT NAME OF ATTORNEY (OR PLAINTIFF) ARTHUR G. BAUMEISTER, JR.	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Proceedings Under Chapter 11

In Re:

DEMCO, INC.,

Debtor

BK No. 1-12-12465-MJK
Hon. Michael J. Kaplan, U.S.B.J.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF DEMCO, INC.

Plaintiff,

A.P. No. 1-14-

-vs.-

COUNTY OF ERIE and
PATRICK J. CALLAHAN,

Defendants.

COMPLAINT

Plaintiff, the Official Committee of Unsecured Creditors of Demco, Inc. ("Plaintiff"), by and through its attorneys, Amigone, Sanchez & Mattrey, LLP, respectfully alleges and represents as follows:

NATURE OF THE CASE

1. This Adversary Proceeding ("Proceeding") has been commenced by Plaintiff derivatively on behalf of the debtor DEMCO, Inc. ("DEMCO") and its bankruptcy estate ("Estate") and additionally on behalf of the unsecured creditors of

DEMCO seeking, *inter alia*, and without limitation, the avoidance of fraudulent transfers made by DEMCO, and recovery from transferees including transferees for whose benefit the transfers were made, pursuant to 11 U.S.C. §§544, 548, 550 and applicable New York law including the New York Debtor and Creditor Law ("DCL"), §§272, 273, 274, 275.

2. During the course of this proceeding, the Plaintiff may learn (through discovery or otherwise) of additional avoidable transfers by DEMCO. It is the Plaintiff's intention to avoid and recover all such transfers made by DEMCO of its interests in property. Plaintiff reserves the right, without limitation, to seek Court authorization to amend this Complaint so as to include further causes of action as may be discovered, revision of any defendant's name, adding causes of action including but not limit to causes of action under 11 U.S.C. §§542, 544, 545, 547, 548 and 549 that may be known to Plaintiff at any time during the pendency of the Proceeding through formal discovery or otherwise, and to make amendments to relate back to the date of this Complaint.

THE PARTIES

3. Plaintiff is the Official Committee of Unsecured Creditors of DEMCO.

4. On August 22, 2012, the Office of the United States Trustee appointed Plaintiff.

5. DEMCO is a New York corporation with its principal place of business as of the Petition Date located at 238 Lein Road, West Seneca, New York. DEMCO's current mailing address is 3800 Lakeshore Road, Buffalo, New York 14219.

6. Upon information and belief, DEMCO was, and still is, a specialty trade contractor engaged in the business of providing demolition services, nuclear work, environmental clean-up, disaster response and similar services throughout the United States.

7. DEMCO filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 6, 2012 (the "Petition Date").

8. DEMCO is a debtor in possession and is currently in possession of its assets under 11 U.S.C. §§ 1101, 1107 and 1108.

9. Upon information and belief, the defendant, County of Erie ("Defendant") is and was at all relevant times thereto a governmental unit with a place of business located at 95 Franklin St. #100, Buffalo, NY 14202.

10. Upon information and belief, the defendant, Patrick J. Callahan ("Callahan") is an individual residing at 8900 Lakeshore Road, Angola, New York 14006

11. On July 31, 2014, this Court granted Plaintiff authority to commence this Proceeding against the Defendant.

JURISDICTION AND VENUE

12. This Proceeding is commenced pursuant to §§544, 548 and 550 of the Bankruptcy Code and §§272, 273, 274, 275 and 278 of the DCL.

13. This Court has jurisdiction to consider the Proceeding pursuant to 28 U.S.C. §§157 and 1334.

14. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and to the extent it is determined not to be constitutionally core, request is made of this Court to make

recommendation to the District Court of its findings of fact and conclusions of law pursuant to 28 U.S.C. §157(c)(1) and the standing order of reference of the United States District Court for the Western District of New York dated February 29, 2012..

15. Venue is proper for this Court pursuant to 28 U.S.C. §§1408 and 1409.

16. This Proceeding has been brought in accordance with Fed. R. Bankr. P. 7001.

FIRST CAUSE OF ACTION AGAINST THE COUNTY OF ERIE TO AVOID TRANSFERS PURSUANT TO 11 U.S.C. §544, 548, 550 AND NEW YORK DEBTOR AND CREDITOR LAW §§272, 273, 274, 275 AND 278

17. DEMCO has heretofore disclosed transfers of assets during the two year period prior to the Petition Date to the Defendant.

18. Upon information and belief, DEMCO made payments to the Defendant within the six year period prior to the Petition Date (the "Avoidable Transfers").

19. On the dates and in the amounts set forth on Exhibit "A" hereto, DEMCO made payments to the Defendant within the two year period prior to the Petition Date in the total amount of $67,135.39 constituting that portion of the Avoidable Transfers made within said two year period.

20. Upon information and belief, the Defendant was not a creditor of DEMCO at the time the Avoidable Transfers were made.

21. Upon information and belief, DEMCO was not indebted to, did not owe, or was not otherwise obligated to the Defendant at the time the Avoidable Transfers were made.

22. Upon information and belief, each of the Avoidable Transfers was in payment of debts or otherwise for the exclusive benefit of Patrick J. Callahan, with no consideration having been given to DEMCO for any of the Avoidable Transfers.

23. Accordingly, DEMCO did not receive fair consideration or reasonably equivalent value in exchange for the Avoidable Transfers.

24. The balance sheets of DEMCO, as set forth on its 2010 and 2011 federal income tax returns show that as of January 1, 2010 and thereafter, its liabilities substantially exceeded its assets.

25. The schedules filed by DEMCO in the bankruptcy proceeding show that its liabilities substantially exceeded its assets as of the Petition Date.

26. Upon information and belief, at the time DEMCO made the Avoidable Transfers: (a) it was insolvent or thereby rendered insolvent as a result thereof; (b) it was engaged in business with unreasonably small capital; and/or (c) it intended to incur, or believed that it would incur debts that would be beyond its ability to pay as such debts matured.

27. Patrick J. Callahan is a director of DEMCO, an officer of DEMCO, a person in control of DEMCO or a relative of a director, officer or person in control of DEMCO.

28. Patrick J. Callahan is an insider of DEMCO pursuant to 11 U.S.C. §101(31).

29. None of the Avoidable Transfers were made in the ordinary course of business of DEMCO.

30. The Avoidable Transfers constituted fraudulent conveyances under DCL §§273, 274 and/or 275.

31. The Avoidable Transfers constituted fraudulent transfers under 11 U.S.C. §548(a)(1)(B).

32. By virtue of the foregoing, the payments to the Defendant constituted fraudulent conveyances and transfers which are voidable by the Plaintiff under 11 U.S.C. §§544(b), 548 and 500, and DCL §§273, 274, 275 and 278.

33. Plaintiff is entitled to judgment voiding the Avoidable Transfers pursuant to 11 U.S.C. §§544(b), 548 and 550 and DCL §§273, 274, 275 and 278, and preserving said conveyances and transfers for the benefit of the Estate pursuant to 11 U.S.C. §§550 and 551.

34. Alternatively, Plaintiff is entitled to judgment against Defendant in the amount of the conveyance, together with interest thereon pursuant to 11 U.S.C. §§544(b), 548 and 550 , and DCL §§273, 274, 275 and 278.

SECOND CAUSE OF ACTION AGAINST PATRICK J. CALLAHAN TO AVOID TRANSFERS PURSUANT TO 11 U.S.C. §544, 548, 550 AND NEW YORK DEBTOR AND CREDITOR LAW §§272, 273, 274, 275 AND 278

35. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 114 as if set forth in their entirety.

36. Each Avoidable Transfer was made for the benefit of Patrick J. Callahan.

37. The payments to the Defendant constituted fraudulent conveyances and transfers which are voidable by the Plaintiff under 11 U.S.C. §§544(b), 548 and 500, and DCL §§273, 274, 275 and 278.

38. Plaintiff is entitled to judgment voiding the Avoidable Transfers pursuant to 11 U.S.C. §§544(b), 548 and 550 and DCL §§273, 274, 275 and 278, and preserving said conveyances and transfers for the benefit of the Estate pursuant to 11 U.S.C. §§550 and 551.

39. Alternatively, Plaintiff is entitled to judgment against Patrick J. Callahan in the amount of the conveyance, together with interest thereon pursuant to 11 U.S.C. §§544(b), 548 and 550 , and DCL §§273, 274, 275 and 278.

WHEREFORE, Plaintiff demands judgment as follows:

A. With respect to its First Cause of Action:

i. adjudging the Avoidable Transfers to have been fraudulent conveyances and fraudulent transfers;

ii. declaring the Avoidable Transfers to be null, void and of no effect;

iii. vacating and setting aside all Avoidable Transfers;

iv. directing Defendant to disgorge same, or in the alternative, entering judgment against the Defendant equal to the total amount of the Avoidable Transfers;

v. awarding interest on the Avoidable Transfers.

B. With respect to its Second Cause of Action:

i. adjudging the Avoidable Transfers to have been fraudulent conveyances and fraudulent transfers;

ii. declaring the Avoidable Transfers to be null, void and of no effect;

iii. vacating and setting aside all Avoidable Transfers;

iv. directing Patrick J. Callahan to disgorge same, or in the alternative, entering judgment against Patrick J. Callahan equal to the total amount of the Avoidable Transfers;

v. awarding interest on the Avoidable Transfers.

C. Awarding the costs and disbursements of this Proceeding.

D. Granting such other and further relief as this Court may deem just and proper.

Dated: Buffalo, New York
August 5, 2014

AMIGONE, SANCHEZ & MATTREY, LLP

By: /s/ Arthur G. Baumeister, Jr.

Arthur G. Baumeister, Jr., Esq.
Counsel for the Official Committee of Unsecured Creditors
1300 Main Place Tower
350 Main Street
Buffalo, New York 14202
Phone: (716) 852-1300
Email: abaumeister@amigonesanchez.com

EXHIBIT A

COUNTY OF ERIE

DATE		AMOUNT PAID
8/17/2011		20,386.80
11/29/2010		424.95
1/13/2011		45,818.85
1/18/2012		504.79
TOTAL		67,135.39