Hearing Date and Time: June 30, 2009 at 10:00 a.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
QUEBECOR WORLD (USA) INC., *et al.*,	)	Case No. 08-10152 (JMP) (Jointly Administered)
Debtors.	)	Hon. James M. Peck

DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THIRD AMENDED JOINT PLAN OF REORGANIZATION OF QUEBECOR WORLD (USA) INC. AND CERTAIN AFFILIATED DEBTORS AND DEBTORS-IN-POSSESSION AND (II) CONSOLIDATED REPLY TO OBJECTIONS TO CONFIRMATION OF THIRD AMENDED JOINT PLAN OF REORGANIZATION OF QUEBECOR WORLD (USA) INC. AND CERTAIN AFFILIATED DEBTORS AND DEBTORS-IN-POSSESSION

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The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") submit this memorandum of law in support of confirmation of the Third Amended Joint Plan of Reorganization of Quebecor World (USA) Inc. and Certain Affiliated Debtors and Debtors-in-Possession, dated May 18, 2009 (Docket No. 1662) (as it may be modified or amended, the "Plan"),[1] pursuant to section 1129 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). In support of this memorandum of law and confirmation of the Plan, the Debtors submit the Affidavit of Ronald Howard Certifying the Ballots Accepting or Rejecting the Third Amended Joint Plan of Reorganization of Quebecor World (USA) Inc. and Certain Affiliated Debtors and Debtors-in-Possession (Docket No. 1768) (the "Voting Declaration")[2] and respectfully represent as follows:

PRELIMINARY STATEMENT

On January 20, 2008, the Debtors, together with their Canadian parent company Quebecor World Inc. ("QWI") commenced a proceeding before the Superior Court for the Province of Quebec, Commercial Division, for the Judicial District of Montreal for a plan of compromise or arrangement under the Canadian Creditors Arrangement Act. Each of the Debtors was joined in the Canadian Proceedings in order that each Debtor could obtain the protection of a stay under the CCAA as well as under the Bankruptcy Code.

On January 21, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District

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[1] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan.

[2] The Voting Declaration summarizes the results of voting on the Plan and has been filed with the Bankruptcy Court contemporaneously with this memorandum of law. A copy of the Voting Declaration (not including the voluminous tabulation report, which is available on the Court's docket) is attached hereto as Exhibit A and incorporated herein by reference.

of New York, commencing the above captioned Chapter 11 Cases (together with the Canadian Proceeding, the "Insolvency Proceedings").

Between the Petition Date and the date hereof, the Debtors and QWI (together with the QWI's non-debtor subsidiaries, the "Company" or "Quebecor World") have undertaken a careful review of their business operations and implemented various restructuring efforts, including the divestiture of their European operations, in an effort to improve the Company's business results and financial condition. At the same time, the Debtors and QWI engaged in a series of detailed discussions with the Syndicate Agreement Agent, as representative of the holders of indebtedness outstanding under their prepetition secured credit agreement, the Ad Hoc Group of Noteholders representing certain holders of Senior Notes, and with the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases, regarding the terms of a potential restructuring of the Company's equity and capital structure.

Ultimately, the Debtors and QWI reached agreement with certain of their principal creditors, including the Creditors' Committee, the lenders under the Syndicate Agreement and the holders of the Senior Notes, regarding a restructuring of the obligations of QWI and the Debtors that will provide for their emergence from the Insolvency Proceedings with the ability to carry on their businesses and maximize the recovery to holders of Allowed Claims. Consistent with the cross-border nature of the operation and management of the Debtors' and QWI's businesses, the Plan, together with the Canadian Plan, contemplates a coordinated resolution and restructuring of the obligations of the Debtors and QWI. Moreover, the Plan and the Canadian Plan together provide that the lenders under the Syndicate Agreement and the holders of the SocGen Claims, together with the holders of the Senior Notes and certain other holders of claims against the Nonoperating Debtors and QWI, will, in full satisfaction of their respective claims, share in the New Equity Securities that will be issued on the Effective Date.

As discussed in further detail herein, the Debtors believe that any alternative to confirmation of the Plan, such as liquidation or attempts by another entity to file a different plan of reorganization, could result in significant delays, litigation, costs and lower recoveries to the holders of Impaired Classes of Claims. As set forth in the Disclosure Statement, the Debtors believe that their businesses and assets have significant value that would not be realized in a liquidation scenario, either in whole or in substantial part. Further, the Creditors' Committee supports the Plan and has recommended that the Debtors' unsecured creditors vote in favor of the Plan, as more specifically set forth in the letter of the Creditors' Committee dated May 15, 2009, a copy of which attached as Appendix I to the Disclosure Statement.

The Debtors have received 21 timely objections to the Plan (each, an "Objection"), which is not an inordinate number considering the size and scope of these Chapter 11 Cases and the number of interested parties. The Debtors are endeavoring to resolve these Objections consensually in advance of the Confirmation Hearing. The Debtors have addressed the substance of these Objections in Section IV of this Memorandum.

Accordingly, because (1) the Plan implements the Restructuring Transactions that are critical to the Debtors' emergence from chapter 11 as a viable and competitive going concern, (2) the Plan is supported by each of the Debtors' primary creditor constituencies, (3) the Plan has been accepted by each Class of Impaired Claims, (4) the Plan fully complies with all requirements of the Bankruptcy Code and (5) each of the Objections should be overruled on the merits, the Plan should be confirmed.

STATEMENT OF FACTS

The facts relevant to Confirmation of the Plan are set forth in the Disclosure Statement, the Plan, the Voting Declaration, certain other declarations that may be submitted by the Debtors in advance of the hearing on confirmation of the Plan and any evidence presented or testimony

that may be adduced at the Confirmation Hearing, all of which are incorporated herein by reference.

ARGUMENT

I. THE PLAN MEETS EACH OF THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE

To obtain confirmation of a chapter 11 plan, the proponent must demonstrate by a preponderance of the evidence[3] that the plan satisfies each of the requirements set forth in section 1129 of the Bankruptcy Code. Through evidence to be presented in connection with the Confirmation Hearing, as set forth in the Voting Declaration and as demonstrated herein, the Debtors will demonstrate that the Plan satisfies such requirements and should be confirmed.

A. Section 1129(a)(1) — The Plan Complies with the Applicable Provisions of Title 11

Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the plan "complies with the applicable provisions of this title." The legislative history of section 1129(a)(1) of the Bankruptcy Code indicates that the primary focus of this requirement is to ensure that the form of the plan complies with the provisions of section 1122 (classification of claims and interests) and section 1123 (contents of a plan) of the Bankruptcy Code. See S. Rep. No. 95-989, at 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, at 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986), aff'd in part, rev'd in part on other grounds, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom., Kane v. Johns-Manville Corp., 843

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[3] In re Kent Terminal Corp., 166 B.R. 555, 561 (Bankr. S.D.N.Y. 1994) (stating that "[t]he final burden of proof at ... confirmation hearings remains a preponderance of evidence"); In re Cellular Info. Sys., Inc., 171 B.R. 926, 937 (Bankr. S.D.N.Y. 1994) (Lifland, C.J.) (stating that "a plan proponent must demonstrate that its plan satisfies section 1129(b) by a preponderance of the evidence")

F.2d 636 (2d Cir. 1988) (stating that "[o]bjections to confirmation raised under § 1129(a)(1) generally involve the failure of a plan to conform to the requirements of § 1122(a) or § 1123"); In re Texaco, Inc., 84 B.R. 893, 905 (Bankr. S.D.N.Y. 1988) ("In determining whether a plan complies with section 1129(a)(1), reference must be made to Code §§ 1122 and 1123 with respect to the classification of claims and the contents of a plan of reorganization.") (citing In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984), appeal dismissed, 92 B.R. 38 (S.D.N.Y. 1988). As demonstrated below, the Plan fully complies with all of the applicable provisions of the Bankruptcy Code (as required by section 1129(a)(1) of the Bankruptcy Code), including, without limitation, sections 1122 and 1123 of the Bankruptcy Code.

1. Classification of Claims and Interests

Section 1122 of the Bankruptcy Code sets forth the basic rule governing the classification of claims and interests: with the exception of a "convenience class" of unsecured claims, the claims or interests within a given class must be "substantially similar" to the other claims or interests in that class. See 11 U.S.C. § 1122(a). Notably, the Bankruptcy Code does not require the converse — that all similar claims be placed in one class. "Separate classification of similar claims is permissible only upon proof of a legitimate reason for separate classification." Boston Post Road L.P. v. Fed. Deposit Ins. Corp. (In re Boston Post Road L.P.), 21 F.3d 477, 481 (2d Cir. 1994) (citation omitted), cert. denied, 513 U.S. 1109 (1995); In re WorldCom, Inc., No. 02-13533(AJG), 2003 WL 23861928, at *47 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that "[a] debtor need not place all substantially similar claims in the same class as long as the debtor has a

reasonable basis for the separate classification.") (citation omitted);[4] In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) (stating that "[c]ourts frequently interpret § 1122 to permit separate classification of different groups of unsecured claims where a reasonable basis existed for the classification.") (citation omitted); see also 7 COLLIER ON BANKRUPTCY COLLIER ON BANKRUPTCY, Alan N. Resnick & Henry J. Sommer eds.,¶ 1 122.03[4][a] (15th ed. 2007) (stating that unsecured claims "may be divided into separate classes if separate classification is reasonable.").

The Plan properly classifies Claims. Article II of the Plan reasonably provides for the separate classification of Claims and Interests into seven (7) distinct Classes based upon (a) their security position, if any, (b) their legal priority against the Debtors' assets and (c) other relevant criteria:[5]

- the Syndicate Claims/SocGen Claims (Class 1);
- Secured Claims (Class 2);
- General Unsecured Claims against the Operating Debtors (Class 3);
- Senior Notes Claims and General Unsecured Claims against the Nonoperating Debtors (Class 4);
- Convenience Claims (Class 5);
- Intercompany Claims (Class 6); and
- Debtor Interests (Class 7).

[4] Because of the voluminous nature of the unreported orders and opinions cited herein, the Debtors have not attached copies of such orders and opinions as an exhibit hereto. Copies of any of the unreported orders and exhibits cited herein are available from Debtors' counsel upon request.

[5] In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, 503(b)(9)/Reclamation Claims and Priority Tax Claims have not been classified.

The legal rights under the Bankruptcy Code of each of the holders of Claims or Interests within a particular Class are substantially similar to other holders of Claims or Interests within that Class. The Debtors' classification of Claims and Interests under the Plan (a) is not an attempt to manufacture an impaired class that will vote in favor of the Plan and (b) does not discriminate unfairly between or among holders of Claims or Interests.

Valid business, factual and legal reasons exist for the separate classification of Claims and Interests. At a threshold level, the Plan separates Claims from Interests, and Secured Claims from Unsecured Claims. More particularly, due to differences in legal rights and in the facts and circumstances giving rise to certain claims:

- the Debtors' secured prepetition credit facilities, *i.e.*, Syndicate Claims arising under the Syndicate Agreement and SocGen Claims arising under the Equipment Financing Agreement, which share certain prepetition collateral and other guaranties on a *pari passu* basis, are classified in Class 1;
- General Unsecured Claims against Operating Debtors are separately classified in Class 3;
- Senior Notes Claims (which constitute obligations of certain of the Nonoperating Debtors) and General Unsecured Claims against the Nonoperating Debtors are separately classified in Class 4;
- Convenience Claims are separately classified in Class 5;[6] and
- due to their unique nature, Intercompany Claims have been separately classified in Class 6.

Accordingly, the classification of Claims and Interests in the Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code.

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[6] Section 1122(b) of the Bankruptcy Code provides that "[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

2. Mandatory Contents of a Plan

Section 1123(a) of the Bankruptcy Code identifies seven requirements for the contents of a plan of reorganization filed by a corporate debtor. Specifically, section 1123(a) of the Bankruptcy Code requires that the Plan: (a) designate Classes of Claims and Interests; (b) specify unimpaired Classes of Claims and Interests; (c) specify treatment of impaired Classes of Claims and Interests; (d) provide for equality of treatment within each Class; (e) provide adequate means for the Plan's implementation; (f) prohibit the issuance of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (g) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of the Reorganized Debtors' officers and directors.

a. The Plan Designates Classes and Provides for the Treatment of Each Class.

The Plan fully complies with each requirement of section 1123(a) of the Bankruptcy Code described above. As previously noted with respect to the Plan's compliance with section 1122, Article III of the Plan designates Classes of Claims and Interests (other than Administrative Claims, 503(b)(9)/Reclamation Claims and Priority Tax Claims), as required by section 1123(a)(1) of the Bankruptcy Code. Article III of the Plan further: (a) specifies each Class of Claims or Interests that is not impaired under the Plan (Class 2 and Class 7), in accordance with section 1123(a)(2) of the Bankruptcy Code; (b) specifies the treatment of each Class of Claims and Interests that is impaired under the Plan (Classes 1, 3, 4, 5 and 6), in accordance with section 1123(a)(3) of the Bankruptcy Code; and (c) provides the same treatment for each Claim or Interest of a particular Class unless the holder of a Claim or Interest agrees to

less favorable treatment on account of its Claim or Interest, as required by section 1123(a)(4) of the Bankruptcy Code.

b. The Plan Provides Adequate Means for Implementation.

In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Article VI ("Means for Implementation of the Plan") of the Plan (as well as various other provisions thereof) provide adequate means for the Plan's implementation. Those provisions relate to, among other things: (a) the continued corporate existence of the Debtors and QWI (subject to the Restructuring Transactions) and the vesting of the Debtors' assets in the Reorganized Debtors; (b) limited consolidation of the Debtors for purposes of voting, confirmation and distribution while recognizing and preserving the Debtors' legal separateness for other purposes; (c) the implementation of the Restructuring Transactions, including the execution and transfer of appropriate documents and all other actions determined to be necessary or appropriate to consummate the Restructuring Transactions; (d) corporate governance matters, including (i) the adoption of the articles of reorganization of Reorganized QWI, [which shall provide for the issuance of an unlimited number of shares of New Common Stock and such number of shares of New Preferred Stock as are specified in the Plan], (ii) amendment of certificates of incorporation, bylaws and other constitutive documents of the Debtors' and (iii) the change of the Debtors' corporate names; (e) the identities and/or method for appointing the directors and officers of Reorganized QWI and the continued service of the directors and officers of the Reorganized Debtors; (f) the sources of cash for Plan distributions; (g) the establishment of a cash reserve in an amount to be agreed upon by the Debtors, the Creditors' Committee, the Ad Hoc Group of Noteholders and the Syndicate Agreement Agent necessary to make required future payments with respect to Administrative Claims, 503(b)(9)/Reclamation Claims, Priority Tax Claims and as otherwise required by the Plan; (h) post-Effective Date financing pursuant to

the Exit Financing Arrangements; (i) the issuance of new securities, *i.e.*, New Common Stock, New Preferred Stock, New Warrants and New Unsecured Notes, and the listing and registration of certain new securities in accordance with the Plan; (j) the cancellation of the Senior Notes and certain other instruments and documents evidencing indebtedness; (k) the establishment and management of, and transfer of certain assets to, the Litigation Trust; (l) the treatment of employee and retirement benefits; (m) the preservation of certain causes of action; (n) the reservation of rights to object to certain claims of parties that are subject to Contributed Avoidance Actions and the SocGen Adversary Proceeding; (o) the settlement of the Syndicate Adversary Proceeding and the implementation of the Syndicate Compromise; (p) the retention of the Debtors' right to amend or modify the Plan through the Effective Date; (q) the continuation of the SocGen Adversary Proceeding and provisions related to the terms and implementation of any settlement of the SocGen Adversary Proceeding; (r) the authorization of corporate action in connection with the implementation and consummation of the Plan; (s) the authorization with respect to the execution, delivery, filing and recordation of documents required to effectuate and further evidence the terms and conditions of the Plan; (t) the consummation of the Restructuring Transactions; (u) exemptions from certain transfer taxes and recording fees; and (v) treatment of certain insured claims. Following the Debtors' entry into the Exit Financing Arrangements, the Debtors will have sufficient Cash to make all payments required to be made on the Effective Date pursuant to the terms of the Plan.

c. The Plan Prohibits the Issuance of Non-Voting Securities.

Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. In accordance with this requirement, Section 6.4(b) of the Plan provides that the certificates of incorporation and bylaws

(or comparable constituent documents) of the Reorganized Debtors shall, among other things, comply with section 1123(a)(6) of the Bankruptcy Code.

d. The Plan's Provisions Regarding Selection of Officers and Directors are Consistent with the Interests of Creditors and Equity Security Holders and with Public Policy.

Section 1123(a)(7) of the Bankruptcy Code requires that a plan of reorganization "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director or trustee." Section 6.5 of the Plan complies with section 1123(a)(7) and ensures that the selection of the officers and directors of Reorganized QWI and the Reorganized Debtors is consistent with the interests of creditors and equity security holders and with public policy. The initial Board of Directors of Reorganized QWI as of the Effective Date was determined by a search committee through a search process designed to obtain board participation from independent, respected individuals having such experience, reputation, contacts and skills as are relevant to the success of the business of Reorganized QWI and the Reorganized Debtors. The search committee was comprised of four (4) representatives of the Syndicate Committee, two (2) representatives of the Ad Hoc Group of Noteholders and one (1) representative of the Creditors' Committee.

The Board of Directors of Reorganized QWI was announced on June 23, 2009, and will consist of the following individuals:

- **Mark Angelson**, is the current chairman of MidOcean Partners and former CEO of R.R. Donnelley & Sons Company, was named Chairman of the Board;
- **Michael Allen**, a commercial printing industry veteran;
- **Raymond Bromark**, a retired senior partner of PricewaterhouseCoopers;
- **Gabriel de Alba**, managing director and partner of Catalyst Capital Group of Toronto, Canada;

- **James Gaffney**, an experienced turnaround specialist;
- **Jack Kliger**, former President of publisher Hachette Filipacchi and former Chairman of the Magazine Publishers' Association;
- **Jacques Mallette**, the current CEO of QWI;
- **David McAusland**, a former Alcan executive;
- **Tom Ryder**, former CEO of Reader's Digest and former chairman of the Magazine Publishers' Association. Mr. Ryder also sits on the boards of Amazon.com, Virgin Mobile and Starwood Hotels.

Unless otherwise provided in the Debtors' Disclosure Statement, the officers and directors of each of the Debtors will continue to serve in their current capacities following the Effective Date. Similarly, unless otherwise provided in the Canadian Plan or the Disclosure Statement, the officers of QWI shall continue to serve in their current capacities after the Effective Date. In light of the foregoing, the manner of selection of the initial officers and directors of the Reorganized Debtors is consistent with the interests of creditors, equity security holders and public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

3. Permitted Contents of a Plan

Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization, provided they are "not inconsistent with" applicable provisions of the Bankruptcy Code.

As permitted under section 1123(b) of the Bankruptcy Code, the Plan provides for (a) the impairment or unimpairment of Classes of Claims (Article III); (b) the assumption, assumption and assignment or rejection of certain Executory Contracts or Unexpired Leases under section 365 of the Bankruptcy Code, (Article VII); (c) the retention and enforcement of certain claims, demands, rights, defenses and causes of action by the Reorganized Debtors, including Avoidance Claims (Article VI); (d) the settlement of the Syndicate Adversary Proceeding and the

implementation of the Syndicate Compromise; and (e) certain provisions governing any settlement of the SocGen Adversary Proceeding.

The Plan contains other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code, including, but not limited to: (a) Article VIII, governing distributions on account of Allowed Claims and establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims once resolved; (b) Article X, regarding the discharge, release and injunction against the pursuit of Claims; (c) Article VII, providing for the limited consolidation of the Debtors solely for the purposes of implementing the Plan; and (d) Article XII, regarding the retention of jurisdiction by the Court over certain matters after the Effective Date.

Accordingly, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code (as well as with the other applicable provisions of the Bankruptcy Code) and thus satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

B. Section 1129(a)(2) — The Debtors Have Complied With Applicable Provisions of Title 11

Section 1129(a)(2) requires the proponent of a plan to comply with the relevant provisions of the Bankruptcy Code. The legislative history of this provision indicates that its principal purpose is to ensure that the proponent complies with the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code. See S. Rep. No. 95-989, at 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5912 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); H.R. Rep. No. 95-595, at 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also WorldCom, 2003 WL 23861928, at *49 (stating that " [t]he legislative history to section 1129(a)(2) reflects that this provision is intended to

encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code."); Johns-Manville, 68 B.R. at 630 ("Objections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the Bankruptcy Code") (citation omitted). The Debtors have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and Plan solicitation.

1. Compliance with Section 1125 of the Bankruptcy Code

Section 1125(b) of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." In these cases, after a hearing held on May 15, 2009, the Court approved the Disclosure Statement by an order entered on May 18, 2009 (Docket No. 1666) (the "Disclosure Statement Order"). The Disclosure Statement Order specifically found, among other things, that the Disclosure Statement contained "adequate information" for purposes of section 1125 of the Bankruptcy Code.

In addition, the Court considered and, in the Disclosure Statement Order, approved, among other things: (a) all materials to be transmitted to creditors entitled to vote on the Plan (collectively, the "Solicitation Materials"), including (i) the Plan and the Disclosure Statement (together with certain exhibits thereto), (ii) a notice of the Confirmation Hearing (the "Confirmation Hearing Notice") and related matters and (iii) appropriate forms of Ballots for each Class of Claims; (b) a notice of non-voting status to be transmitted together with the Confirmation Hearing Notice to creditors not entitled to vote on the Plan; (c) the procedures for the solicitation and tabulation of votes to accept or reject the Plan, including approval of (i) the

deadline for creditors' submission of Ballots, (ii) the rules for tabulating votes to accept or reject the Plan and (iii) the record date for Plan voting; and (d) the date for the Confirmation Hearing and certain related notice procedures. Thereafter, the Debtors (through Donlin Recano & Company, Inc., the Debtors' Claims and Noticing Agent) transmitted the approved Solicitation Materials in accordance with the provisions approved by the Court in the Disclosure Statement Order. See Affidavit of Service of Donlin Recano & Company, Inc. regarding Service of Solicitation Packages with respect to Third Amended Disclosure Statement with respect to Joint Plan of Reorganization of Quebecor World (USA) Inc. and Certain Affiliated Debtors and Debtors-in-Possession (Docket No. 1714), dated June 1, 2009, at ¶¶ 5-12 (the "DRC Service Affidavit"). The DRC Service Affidavit demonstrates that (a) the Solicitation Materials were served in accordance with the requirements of the Disclosure Statement Order and (b) the Debtors did not solicit acceptance of the Plan from any creditor or equity security holder prior to the transmission of the approved Disclosure Statement.

2. Compliance with Section 1126 of the Bankruptcy Code

Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.

As set forth in the Disclosure Statement and the Voting Declaration, in accordance with section 1126 of the Bankruptcy Code, the Debtors solicited acceptances from the holders of Claims in each Class of Impaired Claims entitled to receive distributions under the Plan. Claims in Classes 1, 3, 4 and 5 are designated as impaired under the Plan. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, holders of Claims in Classes 1, 3, 4 and 5 were entitled

to vote to accept or reject the Plan.[7] Holders of Claims in Class 6 are designated as Impaired but are nevertheless deemed to accept the Plan because each holder of a Class 6 Claim is an affiliate of the Debtors and a proponent of the Plan. Holders of Claims or Interests in Classes 2 and 7 are designated under the Plan as unimpaired. Accordingly, pursuant to section 1126(f) of the Bankruptcy Code, holders of Claims or Interests in those Classes are conclusively presumed to have accepted the Plan.[8]

Based upon the foregoing, the Debtors' solicitation of votes with respect to the Plan complied with sections 1125 and 1126 of the Bankruptcy Code and the Disclosure Statement Order, and the Debtors acted in good faith at all times with respect to the solicitation of votes on the Plan. The Debtors, therefore, have satisfied the applicable provisions of the Bankruptcy Code and have therefore met the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. Section 1129(a)(3) — The Plan Has Been Proposed in Good Faith

Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." The Second Circuit has indicated that a plan of reorganization is proposed in good faith when "'the plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.' "Kane, 843 F.2d at 649 (citing Koelbl v. Glessing (In re Koelbl), 751 F.2d 137, 139 (2d Cir. 1984)); In re Granite Broadcasting Corp., 369 B.R. 120, 128 (Bankr. S.D.N.Y. 2007) appeal dismissed, 385 B.R. 41 (S.D.N.Y. 2008) ("the important point of inquiry is the plan itself

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[7] Section 1126(a) of the Bankruptcy Code provides that "[t]he holder of a claim or interest allowed under section 502 of this title may accept or reject a plan." 11 U.S.C. § 1126(a).

[8] Section 1126(f) of the Bankruptcy Code provides that "a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required." 11 U.S.C. § 1126(f).

and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'") (citation omitted); see also In re Leslie Fay Cos., 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) ("a plan is proposed in good faith if there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the Code."). Good faith should be evaluated "in light of the totality of the circumstances surrounding confirmation." In re Oneida Ltd., 351 B.R. 79, 85 (Bankr. S.D.N.Y. 2006) (citing In re Cellular Info Sys., Inc., 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994)); In re Spiegel, Inc., No. 03-11540 (BRL), 2005 WL 1278094, at *6 (Bankr. S.D.N.Y. May 25, 2005) (determination of "good faith" under section 1129(a)(3) of the Bankruptcy Code made after "examin[ing] the totality of the circumstances surrounding the filing of the Chapter 11 Cases and the formulation of the Plan.").

In determining whether a plan will succeed and accomplish goals consistent with the Bankruptcy Code, courts look to the terms of the reorganization plan itself. See In re Sound Radio, Inc., 93 B.R. 849, 853 (Bankr. D.N.J. 1988) (concluding that the good faith test provides the court with significant flexibility and is focused on an examination of the plan itself, rather than other, external factors), aff'd in part and remanded in part on other grounds, 103 B.R. 521 (D.N.J. 1989), aff'd, 908 F.2d 964 (3d Cir. 1990). The plan proponent must show that the plan has not been proposed by any means forbidden by law and that the plan has a reasonable likelihood of success. See In re Century Glove, Inc., Nos. 90-400-SLR, 90-401-SLR, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("A court may only confirm a plan for reorganization if . . . the 'plan has been proposed in good faith and not by any means forbidden by law'. . . . Moreover, '[w]here the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied.'") (citations omitted); see also Fin. Sec. Assur., Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship), 116 F.3d 790, 802 (5th Cir. 1997) (same); Koelbl v.

Glessing (In re Koelbl), 751 F.2d 137, 139 (2d Cir. 1984) (noting that plan provisions may not contravene any law, including state law, and a plan must have been proposed with "a basis for expecting that a reorganization can be effected") (citations omitted).

The Plan has been proposed by the Debtors in good faith, with legitimate and honest purposes of reorganizing the Debtors' ongoing businesses and maximizing the value of each of the Debtors and the recovery to creditors under the circumstances of these Chapter 11 Cases. As described in the Disclosure Statement, the Debtors believe that the value of the Debtors' estates is greater in the reorganization contemplated by the Plan than in a liquidation. Accordingly, the Debtors believe the Plan will result in greater recoveries to creditors than could be realized if the Debtors were to liquidate.

To arrive at this stage in these Chapter 11 Cases, the Debtors actively involved their creditor constituencies throughout the plan formulation process. See Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.), 84 B.R. 167, 172 (9th Cir. 1988) (holding that good faith in proposing a plan "also requires a fundamental fairness in dealing with one's creditors"). As described in the Disclosure Statement, prior to and following the commencement of the Chapter 11 Cases, the Debtors initiated a comprehensive review of their businesses, assets and capital needs and initiated restructuring negotiations with their principal stakeholders. The Debtors provided substantial information to, and cooperation with, all of the Debtors' significant stakeholders and creditor constituencies. The Plan reflects the end product of those arms' length negotiations and constitutes an agreement among the Debtors and their creditors upon the terms of the Debtors' restructuring. The Creditors' Committee has indicated its support for the Plan by a letter that was filed as Exhibit I to the Disclosure Statement. In that letter, the Creditors' Committee recommended that unsecured creditors vote to accept the Plan, and stated that "[g]iven the current facts and circumstances of the Debtors' chapter 11 cases, the Creditors' Committee

believes that the Plan provides the best alternative for unsecured creditors and, therefore, recommends that the Debtors' unsecured creditors vote in favor of the Plan."

The support of the Debtors' primary constituencies and the overwhelming acceptance of the Plan by holders of Claims that cast Ballots -- across all Classes 88.92% of voting claims voted to accept the Plan by amount, and 86.43% of voting claims voted to accept the Plan by number -- reflect the overall fairness of the Plan and the acknowledgment by the Debtors' creditors that the Plan has been proposed in good faith and for proper purposes. See In re Eagle-Picher Indus., Inc., 203 B.R. 256, 274 (S.D. Ohio,1996) (finding that a plan of reorganization was proposed in good faith when, among other things, it was based on extensive arms' length negotiations among the plan proponents and other parties in interest). Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code have been fully satisfied.

Certain parties have objected to the confirmation of the Plan on grounds that it has not been proposed in good faith. For the reasons set forth above, and as further explained in Section IV.A of this Memorandum, these objections do not state grounds sufficient to find that the Plan was not filed in good faith and should be overruled.

D. Section 1129(a)(4) — All Payments to Be Made By the Debtors in Connection With These Cases Are Subject to the Approval of the Court

Section 1129(a)(4) of the Bankruptcy Code requires that all payments made by the debtor, the plan proponent or by a person issuing securities or acquiring property under a plan for services or for costs and expenses incurred in connection with the case or the plan, be approved by the Court as reasonable. "Section 1129(a)(4) has been construed to require that all payments of professional fees that are made from estate assets be subject to review and approval as to their reasonableness by the Court." WorldCom, 2003 WL 23861928, at *54; see also Johns-Manville, 68 B.R. at 632.

Pursuant to this Court's February 13, 2008 Order pursuant to Sections 105 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a) and Local Bankruptcy Rule 2016-1 for an Order Establishing Procedures Governing Interim Monthly Compensation of Professionals (Docket No. 201), this Court has authorized and approved on an interim basis the payment of certain fees and expenses of professionals retained in these Chapter 11 Cases. All such fees and expenses, as well as all other accrued fees and expenses of professionals of the Debtors through the Effective Date, remain subject to final review for reasonableness by the Court. Article II of the Plan provides for the payment only of Allowed Administrative Claims, and Article 9.2 of the Plan provides for the filing and review of final requests for payment of professional fees and reimbursement of expenses. Finally, the fees and expenses payable to Donlin Recano & Company, Inc. as Claims and Noticing Agent are set by the parties' contract, which previously was approved by the Court pursuant to the Court's January 23, 2008 Order Authorizing Retention and Employment of Donlin Recano & Company, Inc. as Claims, Notice and Balloting Agent (Docket No. 49).

The foregoing procedures for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors satisfy the objectives of section 1129(a)(4) of the Bankruptcy Code. See WorldCom, 2003 WL 23861928, at *54 (finding the "requirements of section 1129(a)(4) satisfied where plan provided for payment of only 'allowed' administrative expenses") (quoting In re Elsinore Shore Assocs., 91 B.R. 238, 268 (Bankr. D.N.J. 1988)). Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. Section 1129(a)(5) — The Plan Discloses All Required Information Regarding Postconfirmation Management and Insiders

Section 1129(a)(5) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the proponent discloses the identity and affiliations of the proposed officers and directors of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the nature of any compensation proposed to be paid to such insider. In addition, under section 1129(a)(5)(A)(ii) of the Bankruptcy Code, the appointment or continuation in office of such officers and directors must be consistent with the interests of creditors, equity security holders and public policy. 11 U.S.C. § 1129(a)(5); see also Texaco, 84 B.R. at 908 (section 1129(a)(5) of the Bankruptcy Code is satisfied when the plan discloses the debtors' existing officers and directors who will continue to serve in office after plan confirmation); Toy & Sports Warehouse, 37 B.R. at 149-50 (continuation of existing, experienced management is consistent with section 1129(a)(5) of the Bankruptcy Code).

Article 6.6(d) of the Plan provides that the officers and directors of each of the Debtors will continue to serve in their current capacities following the Effective Date. The Debtors believe that the continuity of management provided by the continuation of the existing officers and directors of the Debtors as the officers and directors of the Reorganized Debtors will provide numerous benefits. The Debtors' current officers and directors are familiar with the Debtors' businesses and will be able to provide continuity in the Reorganized Debtors' relationships with suppliers, customers and employees. Such continuity will aid in the successful implementation of the Debtors' reorganization, consistent with the interests of creditors and public policy.[9]

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[9] As noted above, for largely the same reasons set forth in this paragraph with respect to the officers of the Reorganized Debtors, the officers of QWI will continue to serve in their current

Footnote continued on next page.

The initial directors of Reorganized QWI were selected by a search committee comprised of members of the Syndicate Committee, the Ad Hoc Group of Noteholders and the Creditors' Committee as set forth in Article 6.5 of the Plan. The involvement of the representatives of the Debtors' primary creditor constituents demonstrates that the appointment of the proposed directors of Reorganized QWI is consistent with the interests of the holders of Claims and Interests and with public policy.

Based upon the foregoing, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval

Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." Section 1129(a)(6) of the Bankruptcy Code is not applicable in these Chapter 11 Cases because the Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after confirmation of the Plan.

G. Section 1129(a)(7) — The Plan Is In the Best Interests of Creditors

Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests under a plan of reorganization, each holder of a claim or interest (1) has accepted the plan or (2) will receive or retain property of a value, as of the effective date of the plan, not less than what such holder would receive or retain if the debtor were liquidated

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Footnote continued from previous page.

capacities following the Effective Date, unless otherwise provided in the Canadian Plan or the Disclosure Statement.

under chapter 7 of the Bankruptcy Code on that date. Referred to as the "best interests of creditors" test, section 1129(a)(7) focuses on individual dissenting creditors rather than classes of claims. See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship, 526 U.S. 434, 442 n.13 (1999) (stating that the "'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); ACC Bondholder Group v. Adelphia Commc'ns Corp. (In re Adelphia Communications Corp.), 361 B.R. 337, 364 (S.D.N.Y. 2007) Appeal Dismissed, 367 B.R. 84 (S.D.N.Y.) Appeal Dismissed, 371 B.R. 660 (S.D.N.Y 2007), Aff'd 544 f.3d 420 (2d Cir. 2008) (same, quoting LaSalle). Under the best interests test, the court "must find that each [non-accepting] creditor will receive or retain value that is not less than the amount he would receive if the debtor were liquidated." LaSalle, 526 U.S. at 440; U.S. v. Reorganized CF&I Fabricators, Inc., 518 U.S. 213, 228 (1996); Adelphia, 361 B.R. at 364 (same); Drexel Burnham, 138 B.R. at 761 (same).

In considering whether a plan satisfies the "best interests" test, a court is not required to consider any alternative to the plan other than the dividend projected in a liquidation of all of the debtor's assets under chapter 7 of the Bankruptcy Code. See In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 297 (Bankr. S.D.N.Y. 1990); In re Jartran, Inc., 44 B.R. 331, 389-93 (Bankr. N.D. Ill. 1984) (stating the best interests test is satisfied by showing that, upon liquidation, the cash received would be insufficient to pay priority claims and secured creditors so that unsecured creditors and stockholders would receive no recovery); In re Victory Constr. Co., 42 B.R. 145, 151 (Bankr. C.D. Cal. 1984).

Under the Plan, Classes 1, 3, 4, 5 and 6 are impaired; consequently, the "best interests" test is applicable only to holders of Claims in those Classes that have not accepted the Plan.[10] The test requires that each holder of a Claim or Interest in these Classes must either accept the Plan or receive or retain under the Plan property having a present value, as of the Effective Date, not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. To determine the value that impaired creditors and equity security holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, the Court must first determine the aggregate dollar amount that likely would be generated by the hypothetical liquidation of the Debtors' assets by a chapter 7 trustee (the "Liquidation Value"). The Liquidation Value of the Debtors would consist of the net proceeds from the disposition of the Debtors' assets, augmented by any cash held by the Debtors. As set forth in the Disclosure Statement (including particularly the Liquidation Analysis attached as Exhibit C thereto (the "Liquidation Analysis")), the "best interests" test is satisfied in these Chapter 11 Cases with respect to each non-accepting, impaired Claim or Interest. The Liquidation Analysis demonstrates that a chapter 7 liquidation of the Debtors' Estates would result in a lower recovery for holders of claims in Classes 1, 3, 4 and 5[11] as compared to the proposed distributions under the Plan. See Disclosure Statement Appendix C, Liquidation Analysis.

The Liquidation Analysis generally assumes the immediate conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code and the appointment of a trustee or

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[10] As noted above, holders of Class 6 Claims are deemed to have accepted the Plan. Accordingly, the best interests test does not apply to holders of Class 6 Claims.

[11] Notwithstanding the Debtors' election to provide in the Plan for a "convenience class" pursuant to section 1122(b) of the Bankruptcy Code, Class 5 Claims are general unsecured claims and would be treated as such for purposes of liquidation.

trustees to liquidate the assets of the Debtors.[12] The Liquidation Analysis contains a description of each of the assumptions made, including (i) realization of value from external assets such as cash and cash equivalents, trade accounts receivable, inventories, land and buildings, printing equipment and other fixed assets and prepaid expenses, non-trade receivables and other assets, (ii) realization of value from internal assets such as QWI's investments in the Debtors' non-debtor Latin American affiliates and investments of QWI and QWUSA in other non-debtor subsidiaries, (iii) wind down and liquidation costs and (iv) distributions to creditors, including on account of claims under the DIP Loan, Syndicate Claims and SocGen Claims, Senior Note Claims, administrative claims, intercompany claims and prepetition claims.

The Liquidation Analysis considered liquidation under two scenarios: a "Low Realization Estimate" and a "High Realization Estimate." The Low Realization Estimate contemplates a complete and immediate cessation of operations by QWI and the Debtors, with no customer orders printed or delivered after the assumed liquidation date. The failure to deliver time sensitive customer orders and the termination of long-term printing contracts would likely give rise to substantial customer damage claims and reduce the value on working capital assets. Under the Low Realization Estimate, the Debtors have assumed tangible assets, including equipment, land and buildings, would be sold within twelve months.

The High Realization Estimate assumes that QWI and the Debtors wind down their operations in an orderly fashion over a three month period in order to, among other things, accommodate certain customers' printing jobs during the time that such customers transition their business to other commercial printers. An orderly wind down over three months would reduce potential damage claims by customers and maximize realization on working capital

[12] Liquidation Analysis at 3-4.

assets. The High Realization Estimate assumes that, following the three month wind down period, tangible assets would be marketed and sold over a period of 21 months.

The Liquidation Analysis assumes that the Liquidation Value available to holders of Claims would be reduced by the fees, costs and expenses of a chapter 7 liquidation. The Debtors' costs of liquidation in chapter 7 cases would include the compensation of the trustee, as well as of counsel and of other professionals retained by such trustee, asset disposition expenses, applicable taxes, litigation costs, Claims arising from the operation of the Debtors during the pendency of the chapter 7 cases, and all unpaid Administrative Claims incurred by the Debtors during the Chapter 11 Cases and the ensuing chapter 7 cases that are allowed in the chapter 7 cases. The liquidation itself would trigger certain Priority Claims, such as Claims for severance pay, and would likely accelerate the payment of other Priority Claims and Priority Tax Claims that otherwise would be payable in the ordinary course of business. Pursuant to sections 726 and 507 of the Bankruptcy Code, these Priority Claims and Priority Tax Claims would be required to paid in full out of the net liquidation proceeds, after payment of Secured Claims to the extent of the value of the underlying collateral, before the balance would be made available to pay General Unsecured Claims or to make any distribution in respect of Interests. The Debtors believe that the liquidation also would generate a significant increase in General Unsecured Claims, such as rejection damages and tax Claims.

Moreover, the liquidation value of the Debtors' assets under chapter 7 of the Bankruptcy Code would be reduced substantially by, among other things: (1) the increased costs and expenses arising from fees payable to a chapter 7 trustee and professional advisors to the trustee; (2) the erosion in value of assets in a chapter 7 case in the context of the rapid liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail; (3) the adverse effects on the Debtors' businesses as a result of the likely departure of key employees; (4) the

reduction of value associated with a chapter 7 trustee's operation of the Debtors' businesses (including, but not limited to, asset disposition expenses, applicable taxes, litigation costs and Claims arising from the operation of the Debtors during the pendency of the chapter 7 cases); (5) the likely delay in distributions to holders of Claims and Interests in a liquidation scenario; (6) certain Priority Claims triggered by the liquidation itself, such as Claims for severance pay and accelerated Priority Tax Claims that otherwise would be paid in the ordinary course of business; and (7) a significant increase in unsecured Claims, such as rejection damage Claims, PBGC Claims, and tax and other governmental Claims.

As set forth in the Disclosure Statement, the best interests test is satisfied as to each impaired Class of Claims and Interests because a chapter 7 liquidation of the Debtors' estates would result in a substantial diminution in the value to be realized by holders of Claims -- and possibly no recovery to the holders of General Unsecured Claims -- as compared to the proposed distributions under the Plan.

The Liquidation Analysis contains a detailed analysis of the likely effect of a chapter 7 liquidation upon the Debtors' impaired Claim and Interest holders. The methodology used by the Debtors and their financial advisors to estimate the total liquidation proceeds available for distribution, as well as the principal assumptions and considerations underlying the liquidation analysis, are described in the Liquidation Analysis. This analysis clearly indicates that, under any reasonable set of assumptions, the overall values that may be realized by the holders of Claims and Interests in hypothetical chapter 7 cases are in all cases less than the value of the recoveries to these holders under the Plan.

By contrast, the Plan provides for greater estimated recoveries than those estimated by the chapter 7 liquidation analysis. Set forth below is a table that compares, for the groups of

creditors for which the Plan provides a distribution, the estimated recoveries under the Plan with estimated recoveries in a chapter 7 liquidation:[13]

Creditor Group	**Estimated Recovery**		
	Plan	**Liquidation Analysis Low Realization**	**Liquidation Analysis High Realization**
Bank Syndicate	75%	8.4%	10.2%
SocGen[14]	20-84%	8.4%	10.2%
Secured Claims, Administrative Claims and Priority Unsecured Claims	100%	11.0%	45.9%
Senior Notes[15]	14-20%	0.1%	7.8%
General Unsecured Claims[16]	14-20% or 50%	0%	4.6%

As the foregoing analysis indicates, no dissenting holder of a Claim or Interest in an impaired Class will receive less under the Plan than it would receive in a liquidation of the Debtors' assets. As a result, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

Certain parties in interest have objected to confirmation of the Plan on grounds that the Plan does not, in effect, satisfy the "best interests" test of section 1129(a)(7). For all of the

[13] QWI is not a debtor in the Chapter 11 Cases, and claims asserted against QWI are to be dealt with in the Canadian Proceedings. However, because many of the Claims asserted against the Debtors in the Chapter 11 Cases are either guaranteed by QWI or QWI is jointly and severally liable with respect to the Claims, and because creditors under each of the Plan and the Canadian Plan will receive a single recovery to be satisfied under the Plan and the Canadian Plan, QWI and the Debtors included in the Liquidation Analysis a discussion of the estimated liquidation value and liquidation procedures relating to QWI as well as the Debtors. Accordingly, the following table compares recoveries under the Plan and liquidation scenarios by creditor groups in the aggregate, rather than by the Classes established under the Plan.

[14] As set forth in the Disclosure Statement, SocGen's recovery will depend on the outcome of the SocGen Adversary Proceeding.

[15] As set forth in the Disclosure Statement, the recoveries of holders of the Senior Notes and other holders of Class 4 Claims will depend on the outcome of the SocGen Adversary Proceeding.

[16] Estimated recoveries for holders of General Unsecured Claims under the Plan will vary depending on whether such Claims are classified in Class 3 or Class 4.

reasons set forth above, and as further explained in Section IV.A of this Memorandum, the Debtors have provided ample evidence that recoveries to all creditors under the Plan far exceed the amounts that they would receive in a hypothetical chapter 7 liquidation, and objections to the Plan based on the "best interests" test should be overruled.

H. Section 1129(a)(8) — The Plan Has Been Accepted By the Requisite Classes of Creditors and Interest Holders

Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests under a plan has either accepted the plan or is not impaired under the plan. As noted above, Classes 2, 6 and 7 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. As set forth in the Voting Declaration, more than two-thirds in amount and one-half in number of the Claims vote in Classes 1, 3, 4 and 5 have voted to accept the plan as follows:

Class	Claims Voting to Accept by Amount	Claims Voting to Accept by Number
1	**75.43%** ($633,908,623.19)	**80.95%**
3	**86.60%** ($36,389.426.16)	**82.70%**
4	**98.67%** ($1,156,352,952.05)	**87.03%**
5	**94.76%** ($447,422.98)	**95.13%**

Accordingly, with respect to the Classes of Claims and Interests described above, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied. As there is no impaired dissenting Class, the "cram down" standards set forth in section 1129(b) of the Bankruptcy Code, including the "absolute priority rule," do not apply.

I. Section 1129(a)(9) — The Plan Provides for the Payment of Priority Claims

Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments, except to the extent that the holder of such a priority claim agrees to different treatment. In particular,

- Section 1129(a)(9)(A) of the Bankruptcy Code requires that holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code (*i.e.*, administrative claims allowed under section 503(b) of the Bankruptcy Code) must receive cash equal to the allowed amount of such claims on the effective date of the plan;

- Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in sections 507(a)(1) and sections 507(a)(4) through (7) of the Bankruptcy Code — generally, in the context of corporate chapter 11 cases, wage, employee benefit and deposit claims entitled to priority — must receive (1) if the class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (2) if the class has not accepted the plan, cash equal to the allowed amount of such claim on the effective date of the plan;

- Section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (*i.e.*, priority tax claims) must receive regular installment payments in cash

  - of a total value, as of the effective date of the plan, equal to the allowed amount of the claim;

  - over a period ending not later than 5 years after the date the order for relief was entered in the chapter 11 case; and

  - in a manner not less favorable than the most favored non-priority unsecured claim provided for by the plan (other than cash payments made to a convenience class under section 1122(b) of the Bankruptcy Code); and

- Section 1129(a)(9)(D) of the Bankruptcy Code provides that, with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code (but for the claim's secured status), the holder of such a

claim will receive cash payments in the same manner and over the same period as prescribed in section 1129(a)(9)(C) of the Bankruptcy Code.

The Plan satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.

1. Administrative Priority Claims

With respect to administrative priority claims subject to section 1129(a)(9)(A) of the Bankruptcy Code, Article II Section 2.1 of the Plan provides that, subject to the provisions of Article IX of the Plan regarding allowance of Administrative Claims, on the later of (a) the date when an Administrative Claim becomes an Allowed Administrative Claim or (b) the date when an Administrative Claim becomes payable pursuant to any agreement between a Debtor (or a Reorganized Debtor) and the holder of such Administrative Claim, or in either case, such other date as the holder of such Allowed Administrative Claim and the applicable Reorganized Debtor may agree, a holder of an Allowed Administrative Claim will receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other less favorable treatment which the Debtors (or the Reorganized Debtors) and the holder of such Allowed Administrative Claim will have agreed upon in writing. The Plan also provides that Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases and Allowed Administrative Claims arising under contracts assumed during the Chapter 11 Cases prior to the Effective Date will be paid by the Debtors or the Reorganized Debtors in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.[17]

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[17] As set forth in the Plan, any cure payments associated with assumed executory contracts and unexpired leases will be paid in accordance with Article 2.1(a) or Article 2.1(b) of the Plan, except as otherwise provided in Article VII of the Plan, and the executory contracts and unexpired leases will not have been rejected pursuant to Article 7.5 of the Plan; provided further,

Footnote continued on next page.

The Plan also provides that with respect to 503(b)(9)/Reclamation Claims, except as otherwise provided in the Plan, and subject to the requirements of the Plan, on, or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the Periodic Distribution Date immediately following the date on which a 503(b)(9)/Reclamation Claim becomes an Allowed 503(b)(9)/Reclamation Claim, or in either case, such other date as the holder of such Allowed 503(b)(9)/Reclamation Claim and the applicable Reorganized Debtor may agree, the holder of such Allowed 503(b)(9)/Reclamation Claim will receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed 503(b)(9)/Reclamation Claim, (a) Cash equal to the unpaid portion of such Allowed 503(b)(9)/Reclamation Claim or (b) such other less favorable treatment as to which such holder and the Debtors or the Reorganized Debtors will have agreed upon in writing.

2. <u>Other Priority Claims</u>

There are no classes of Claims that are required to be addressed pursuant to section 1129(a)(9)(B) of the Bankruptcy Code, the Debtors having satisfied priority employee wage and benefit claims pursuant to (a) the Court's January 23, 2008 Interim Order (A) Authorizing the Debtors to Continue to Pay and Honor Certain Prepetition Claims for (i) Wages, Salaries, Employee Benefits and Other Compensation, (ii) Withholdings and Deductions and (iii) Reimbursable Expenses; (B) Authorizing the Debtors to Continue to Provide Employee Benefits in the Ordinary Course of Business; (C) Authorizing the Debtors to Pay All Related Costs and

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Footnote continued from previous page.

that in no event will a postpetition obligation that is contingent or disputed and subject to liquidation through pending or prospective litigation, including, but not limited to, alleged obligations arising from personal injury, property damage, products liability, consumer complaints, employment law (excluding claims arising under workers' compensation law), secondary payor liability, or any other disputed legal or equitable claim based on tort, statute, contract, equity, or common law, be considered to be an obligation which is payable in the ordinary course of business.

Expenses; (D) Directing Banks to Receive, Process, Honor and Pay All Checks Presented for Payment and Electronic Payment Requests Relating to the Foregoing and (E) Setting a Final Hearing (Docket No. 41) and (b) the Court's March 24, 2008 Final Order (A) Authorizing the Debtors to Continue to Pay and Honor Certain Prepetition Claims for (i) Wages, Salaries, Employee Benefits and Other Compensation, (ii) Withholdings and Deductions and (iii) Reimbursable Expenses; (B) Authorizing the Debtors to Continue to Provide Employee Benefits in the Ordinary Course of Business; (C) Authorizing the Debtors to Pay All Related Costs and Expenses; and (D) Directing Banks to Receive, Process, Honor and Pay All Checks Presented for Payment and Electronic Payment Requests Relating to the Foregoing (Docket No. 450).

3. Priority Tax Claims

With respect to Priority Tax Claims addressed by section 1129(a)(9)(C) of the Bankruptcy Code, the Plan provides that, commencing on the the later of (a) the date a Priority Tax Claim becomes an Allowed Priority Tax Claim or (b) the date a Priority Tax Claim first becomes payable pursuant to any agreement between a Debtor (or a Reorganized Debtor) and the holder of such Priority Tax Claim, at the sole option of the Debtors (or the Reorganized Debtors), such holder of an Allowed Priority Tax Claim will be entitled to receive, on account of such Priority Tax Claim, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Priority Tax Claim, (i) Cash equal to the unpaid portion of such Allowed Priority Tax Claim, (ii) treatment in any other manner such that its Allowed Priority Tax Claims will not be Impaired, including payment in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code, or (iii) such other treatment as to which the Reorganized Debtor and such holder will have agreed upon in writing. Payment in full in cash of Priority Tax Claims is at least as favorable as the treatment accorded to the most favored non-priority

unsecured Claim under the Plan — *i.e.*, Class 3, 4 and 5 Claims, which will receive New Unsecured Notes, New Securities or Cash under the Plan. Moreover, any allowed secured tax claims will receive, on the Effective Date, on account of such allowed secured tax claims, Cash payments in the same manner and over the same period as prescribed by section 1129(a)(9)(C) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements set forth in section 1129(a)(9) of the Bankruptcy Code.

Certain creditors, in particular, certain taxing authorities, have objected to the confirmation of the Plan on grounds that the Plan does not comply with the requirements of section 1129(a)(9) regarding treatment and distributions on account of Administrative Claims and Priority Tax Claims. As explained in Section IV of this Memorandum, the Debtors intend to revise certain provisions of the Plan to make clear that the Plan complies with section 1129(a)(9). Accordingly, for the reasons set forth above, and as further explained in Section IV of this Memorandum, the Plan does meet the requirements of section 1129(a)(9) and any objections to the Plan on those grounds that have not been withdrawn should be overruled.

J. Section 1129(a)(10) — The Plan Has Been Accepted By at Least One Impaired, Non-Insider Class

Section 1129(a)(10) of the Bankruptcy Code requires that the Plan be accepted by at least one class of claims that is impaired under the plan, determined without including the acceptance of the plan by any insider. As set forth in the Voting Declaration, the Debtors have satisfied this requirement because Impaired Classes 1, 3, 4, and 5 have accepted the Plan, and holders of Class 6 Claims are deemed to have accepted the Plan.

K. Section 1129(a)(11) — The Plan Is Feasible

Under section 1129(a)(11) of the Bankruptcy Code, a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or

the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." It has been observed that section 1129(a)(11) "requires courts to scrutinize carefully the plan to determine whether it offers a reasonable prospect of success and is workable." 7 COLLIER ON BANKRUPTCY, Alan N. Resnick & Henry J. Sommer eds., ¶ 1129.03[11] (15th ed. rev. 2007); see also Leslie Fay, 207 B.R. at 788 (same); In re Woodmere Investors L.P., 178 B.R. 346, 361 (Bankr. S.D.N.Y. 1995) (same).

A determination that the Plan is feasible for purposes of section 1129(a)(11) of the Bankruptcy Code does not require a guarantee of the Plan's success; rather, the proper standard is whether the Plan offers a "reasonable prospect" of success. See, e.g., Kane, 843 F.2d at 649 ("As the Bankruptcy Court correctly stated, the feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.") (citations omitted); In re Adelphia Bus. Solutions, Inc., 341 B.R. 415, 421 (Bankr. S.D.N.Y. 2003) (same, citing Kane); Leslie Fay, 207 B.R. at 789 ("Basically, feasibility involves the question of the emergence of the reorganized debtor in a solvent condition and with reasonable prospects of financial stability and success. It is not necessary that success be guaranteed, but only that the plan present a workable scheme of organization and operation from which there may be a reasonable expectation of success."); Drexel Burnham, 138 B.R. at 762 (Bankr. S.D.N.Y. 1992) ("Feasibility does not, nor can it, require the certainty that a reorganized company will succeed."); Texaco, 84 B.R. at 910 ("All that is required is that there be reasonable assurance of commercial viability.").

Courts have identified a number of factors relevant to evaluating the feasibility of a proposed plan of reorganization, including:

- the adequacy of the capital structure;
- the earning power of the business;

- prevailing macroeconomic conditions;
- the ability of management;
- the probability of the continuation of the same management;
- the availability of prospective credit, both capital and trade;
- the adequacy of funds for equipment replacements;
- the provisions for adequate working capital; and
- any other matter bearing on the successful operation of the business to enable performance with the provisions of the plan.

See, e.g., Leslie Fay, 207 B.R. at 788; Texaco, 84 B.R. at 910. The foregoing list is neither exhaustive nor exclusive. Drexel Burnham, 138 B.R. at 763.

As described below and in the Disclosure Statement, and as will be demonstrated in connection with the Confirmation Hearing, the Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code. For purposes of determining whether the Plan satisfies the feasibility standards articulated above, the Debtors have analyzed their ability to meet their obligations under the Plan and with respect to future operations and believe that they have demonstrated that the Plan is feasible. Among other things, the Debtors (a) will have access to sufficient post-Effective Date financing pursuant to the Exit Financing Arrangements, (b) have prepared detailed financial projections that support the Debtors' view that they will be a viable entity upon emergence from these Chapter 11 Cases and (c) and have provided for the continuation of existing officers in order to provide for a seamless transition to post-Effective Date operations.

The Debtors will have access to adequate postpetition credit. As described in Article 6.8 of the Plan, the Debtors and QWI will, upon their emergence from the Insolvency Proceedings, enter into the Exit Financing Arrangements pursuant to which they will receive proceeds in an

aggregate amount of up to approximately $800 million, which are expected to include an asset-backed revolving credit facility in an aggregate principal amount of approximately $350 million and a term loan in an aggregate principal amount of approximately $450 million.[18] The proceeds of the Exit Financing Arrangements will be used by the Debtors to repay the DIP Facility Claims, make such other payments as are required to be made on the Effective Date, and conduct their post-emergence operations. Accordingly, upon emergence the Debtors will have access to adequate credit to repay the DIP Facility Claims, as well as for working capital and other purposes.

With respect to financial projections, the Debtors have attached Financial Projections as Appendix D to the Disclosure Statement (collectively, the "Projections"), which contain projected and consolidated statements of income, balance sheets and condensed statements of cash flows based on (a) the Company's audited and consolidated financial statements for 2008 prepared in accordance with Canadian GAAP, as set forth in Appendix F to the Disclosure Statement and (b) consolidated projected results of operations, cash flows and financial condition for Reorganized QWI for the four year period from 2009 through 2012.[19] Also included with the Projections is a Projected Pro Forma Fresh Start Consolidated Balance Sheet as at July 1, 2009 reflecting, in accordance with the requirements of fresh start reporting under Canadian GAAP, the assumed effect of the consummation of the transactions contemplated by the Plan on or before the Effective Date.

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[18] The terms of the Exit Financing Arrangements are further described in Exhibit 6.8 to the Plan.

[19] All summaries of and references to the Projections set forth in this Memorandum are qualified in their entirety by the notes and assumptions set forth in the Projections themselves, and in the event of conflict between the summary contained in this Memorandum and the Projections, the Projections shall control.

The Projections show that, upon emergence from these Chapter 11 Cases, the Debtors will be adequately capitalized and should have sufficient cash flow to pay and service their debt obligations and to fund their ongoing operations. Specifically, the Projected Consolidated Statements of Cash Flows contained in the Projections indicate projected cash and cash equivalents of $62 million (US) for the year ended December 31, 2009, $72 million for the year ended December 31 2010, $117 million for the year ended December 31, 2011 and $274 million for the year ended December 31, 2012. The Projected Consolidated Statements of Income (Loss) contained in the Projections indicate earnings before income taxes, financial expenses, depreciation, amortization, restructuring expenses, goodwill impairment charge and reorganization items will be $277 million for the year ended December 31, 2009, $357 million for the year ended December 31, 2010, $403 million for the year ended December 31, 2011 and $426 million for the year ended December 31, 2012.

The Projections take into account the current macroeconomic environment by recognizing that global economic conditions affect the Debtors' customers' businesses and that current economic conditions have caused constrained advertising spending, putting downward pressure on both volumes and, to a lesser extent, price, across nearly all of the Company's North American operations, particularly in the fourth quarter of 2008 and continuing into 2009. The Projections have assumed such volume decreases will last until the end of 2010, with modest increases for the remaining period covered by the Projections. Accordingly, the Projections are not unduly optimistic or unrealistic with respect to assumptions about the macroeconomic environment in which the Reorganized Debtors and QWI will operate. Rather, the Projections account for current economic conditions and indicate that, even under conservative assumptions, the Debtors will be a viable business following emergence from these Chapter 11 Cases.

The Debtors submit that the Projections demonstrate that the Reorganized Debtors will be financially viable entities on a prospective basis and that the Plan is therefore feasible. See, e.g., In re M & S Assocs., Ltd., 138 B.R. 845, 852 (Bankr. W.D. Tex. 1992) (adopting "time period contemplated by the plan" as the relevant time horizon for feasibility determination); Johns-Manville Corp., 68 B.R. at 636 (same).

The Projections indicate that, after giving effect to confirmation and consummating the Restructuring Transactions contemplated by the Plan (and subject to the limitations and assumptions described in the Projections and elsewhere in the Disclosure Statement), the Reorganized Debtors will have and maintain sufficient liquidity and capital resources to meet their future financial obligations during the projection period. In sum, the Projections demonstrate that: (1) the Plan provides a feasible means of completing a reorganization of the Debtors' businesses; (2) subject to the risks described herein and in Section IX of the Disclosure Statement, there is reasonable assurance that confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of the Reorganized Debtors; and (3) the Reorganized Debtors will have sufficient assets to satisfy their known and reasonably projected liabilities.

Finally, as set forth in the Disclosure Statement and Appendix H thereto, the Debtors' intend that the current officers of QWI and the Debtors will remain in their current positions following the Effective Date. The current officers of QWI and the Debtors are familiar with the Debtors' business and well-qualified to continue in the management of the Reorganized Debtors following the Effective Date, having successfully managed, among other things, their customer relationships, operations, employees, physical plants and equipment, credit requirements and overall financial condition in order to position the Debtors to emerge from these Chapter 11

Cases in the coming weeks. The Debtors believe that the continuation of existing management is a key element of their ability to emerge from these Chapter 11 Cases as a successful entity.

Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

Certain parties have objected to the Plan on grounds that it is not feasible as determined under section 1129(a)(11). Based on the foregoing and as set forth in Section IV.A of this Memorandum, the Debtors submit that the Plan clearly satisfies the feasibility standard of section 1129(a)(11), such that objections to the Plan on that basis should be overruled.

L. Section 1129(a)(12) — The Plan Provides for the Payment of Fees

Section 1129(a)(12) of the Bankruptcy Code requires that, as a condition precedent to the confirmation of a plan of reorganization, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." Article 13.2 of the Plan complies with section 1129(a)(12) by providing that all fees payable pursuant to section 1930 of title 28 of the United States Code, as of the entry of the Confirmation Order as determined by the Court at the Confirmation Hearing, shall be paid on the Effective Date. The Reorganized Debtors will continue to pay fees pursuant to section 1930 of title 28 until the earlier of the entry of an order dismissing, converting or closing these Chapter 11 Cases.

M. Section 1129(a)(13) — The Plan Provides for the Debtors' Obligations to Pay Retiree Benefits

Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all "retiree benefits" (as such term is defined by section 1114(a) of the Bankruptcy Code) at the level established by agreement or by court order pursuant to subsections (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code at

any time prior to confirmation of the plan, for the duration of the period that the debtor has obligated itself to provide such benefits.

The Plan provides in Article 6.12(c) that the U.S. Pension Plans will not be modified or affected by any provision of the Plan and will be continued after the Effective Date in accordance with their terms. The Debtors or the Reorganized Debtors will satisfy the minimum funding standards under 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083 and be liable for the payment of PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307 subject to any and all applicable rights and defenses of the Debtors, and administer the U.S. Pension Plans in accordance with the provisions of ERISA and the Internal Revenue Code. In the event that the U.S. Pension Plans terminate after the Effective Date, the Reorganized Debtors and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Accordingly, the Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code.

N. Section 1129(a)(14) — The Plan Does Not Provide for the Payment of Any Domestic Support Obligations

Section 1129(a)(14) of the Bankruptcy Code provides that, if a chapter 11 debtor is subject to a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor must pay all amounts related to any such obligation accruing postpetition under such order or statute. In these Chapter 11 Cases, section 1129(a)(14) of the Bankruptcy Code is not applicable because none of the Debtors are required to pay any domestic support obligations pursuant to either order or statute. See, e.g., 7 COLLIER ON BANKRUPTCY, Alan N. Resnick & Henry J. Sommer eds., ¶ 1129.03[14] n. 233 (15th ed. rev. 2007) (noting that "[a]lthough [section 1129(a)(14) of the Bankruptcy Code] does not use the term 'individual debtor,' the

nature of domestic support obligations are such that it will be the rare case when a non-individual (such as a corporation or partnership) will be liable for such a debt.").

O. Section 1129(a)(15) — The Plan Is Not Required to Provide for the Payment of Five Years' Worth of Disposable Income to Unsecured Creditors

Section 1129(a)(15) of the Bankruptcy Code applies only to chapter 11 cases involving individual debtors and requires, under certain circumstances, that the plan provide for the distribution of property to be not less than the projected "disposable income" of the debtor to be received during the five year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer. In these Chapter 11 Cases, section 1129(a)(15) of the Bankruptcy Code is not applicable because none of the Debtors are individual debtors.

P. Section 1129(a)(16) — The Plan Does Not Provide for the Transfer of Property by any Nonprofit Entities Not in Accordance with Applicable Nonbankruptcy Law

Section 1129(a)(16) of the Bankruptcy Code provides that applicable non-bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." The legislative history of section 1129(a)(16) of the Bankruptcy Code demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." See H.R. Rep. No. 109-31, 109th Cong. 1st Sess. 145 (2005). None of the Debtors are non-profit entities, and although the Debtors do not believe that any transfers of property under the Plan will be made by a nonprofit corporation or trust, to the extent that any such transfers are contemplated by the Plan, such transfers will be made in accordance with applicable non-bankruptcy law. Accordingly, the Plan satisfies the requirements of section 1129(a)(16) of the Bankruptcy Code.

II. LIMITED CONSOLIDATION OF THE DEBTORS AS PROVIDED IN THE PLAN BENEFITS ALL CREDITORS AND SHOULD BE APPROVED

Article 6.2 of the Plan provides for the limited consolidation of the Debtors for voting, confirmation and distribution. The Debtors believe that treating the Debtors as consolidated for the limited purpose of implementing the Plan and pooling of the assets and liabilities of the Debtors and QWI, for purposes of implementing the Plan and the Canadian Plan, is in the best interests of creditors.

Pursuant to the Confirmation Order, the Debtors seek the Court's approval of the Debtors' election to treat the Estates as if they were consolidated solely for the purposes of voting, confirmation and distributions to be made under the Plan and under the Canadian Plan. Specifically, for purposes of implementing the Plan: (1) all assets and liabilities of the Debtors and QWI will be treated as if they are pooled; and (2) with respect to any guarantees by one Debtor or QWI of the obligations of any other Debtor or QWI, and with respect to any joint or several liability of any Debtor or QWI with any other Debtor or QWI, the holder of any Claims for such obligations will receive a single recovery on account of any such joint obligations of the Debtors and/or QWI, in each case except to the extent otherwise provided in Article 5.5 of the Plan.

The Plan provides that such election to treat the Estates as if they were consolidated solely for the purpose of implementing the Plan will not affect: (1) the legal and corporate structures of the Debtors, subject to the right of the Debtors to effect the Restructuring Transactions; (2) pre- and post-Effective Date guarantees, liens and security interests that are required to be maintained (a) in connection with contracts or leases that were entered into during the Chapter 11 Cases or executory contracts and unexpired leases that have been or will be assumed or (b) pursuant to the Plan; (3) Interests between and among the Debtors;

(4) distributions from any insurance policies or proceeds of such policies; (5) preservation of the separate Estates for purposes of confirmation to the extent provided in Article 5.5 of the Plan; and (6) the revesting of assets in the separate Reorganized Debtors pursuant to Article 10.1 of the Plan. In addition, such election to treat the Estates as consolidated for the purpose of implementing the Plan will not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code, except to the extent otherwise expressly waived by the Debtors.

In this regard, the Plan serves as a motion seeking entry of an order allowing the Debtors to treat the Estates as if consolidated solely for purposes of voting, confirmation and distributions under the Plan (subject to the provisions of Article 5.5 of the Plan), and to that end, pooling the assets and liabilities of the Debtors and QWI solely for the purposes of implementing the Plan, as described and to the limited extent set forth in Article 6.2(a) and (b) of the Plan.

The plain text of the Bankruptcy Code contemplates that a consolidation may appropriately be used to effectuate a plan of reorganization. See 11 U.S.C. § 1123(a)(5)(C) (stating that "[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan shall . . . provide adequate means for the plan's implementation, such as . . . consolidation of the debtor with one or more persons . . . ."); see also WorldCom, 2003 WL 23861928, at *35 (noting that consolidation is contemplated by section 1123(a)(5) of the Bankruptcy Code); In re Footstar, Inc. et al., Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. Sept. 30, 2005) [Docket #2839]. Indeed, it is well established that, in circumstances where consolidation is not employed by a plan proponent "offensively to achieve advantage over one group in the plan negotiation process," courts have the general equitable power to order such consolidations. See, e.g., In re Owens Corning, 419 F.3d 195, 215 (3d Cir. 2005) cert. denied sub nom, 547 U.S. 1123 (2006). Union Sav. Bank v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.), 860 F.2d 515, 518-19

(2d Cir. 1988) (observing that, as an equitable remedy, consolidation is also used to afford creditors equitable treatment and thus may be ordered when the benefits to creditors therefrom exceed any harm suffered.)

In general, when a court analyzes whether it should grant a motion for limited consolidation the analysis is the same as in the case of traditional consolidation. For example, in cases where limited consolidation is discussed the courts cite the same standard of review and rely on the same case law. See In re Deltacorp., Inc., 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995) ("The court retains the power to order a less than complete consolidation."); In re Standard Brands Paint Co., 154 B.R. 563, 570 (Bankr. C.D. Cal 1993) ("Though it may be the norm that subsidiaries are merged out of existence in consolidation, the bankruptcy court has authority to alter the norm if it determines the benefits of allowing this outweigh any harm."); 2 COLLIER ON BANKRUPTCY, Alan N. Resnick & Henry J. Sommer eds., ¶ 105.09[3] (15th ed. rev. 2009) ("[T]he court has the power to order less than complete consolidation or to limit the effect of a substantive consolidation order.").

In order to maximize the recoveries of creditors, and in light of the Debtors' complex corporate structure, the Debtors propose limited consolidation solely to facilitate implementation of the Plan, and are not seeking to improperly enhance or impair the recoveries of any creditors. See In re Spiegel, Inc., et al., 2005 WL 1278094, at *5 (approving consolidation of debtors for plan implementation purposes only). Accordingly, the consolidation of the Consolidated Debtors proposed in Article 6.2 of the Plan should be approved.

Certain parties have objected to confirmation of the Plan on account of the proposed limited consolidation of the Debtors. As set forth above, there is ample authority for the Court to order the limited substantive consolidation of the Debtors for the purposes described in the Plan and Disclosure Statement. Moreover, as explained in Section IV.A of this Memorandum, the

limited consolidation is appropriate and in the best interests of all creditors, as it will result in substantially greater creditor recoveries than would occur if the Debtors were to be liquidated on a debtor-by-debtor basis, which is the alternative to the consolidation proposed by the Plan.

III. THE MODIFICATIONS TO THE PLAN ARE NOT MATERIAL, ARE IN COMPLIANCE WITH SECTION 1127 OF THE BANKRUPTCY CODE AND HAVE BEEN AGREED TO AMONG ALL PARTIES

In the interest of clarifying and consensually resolving certain objections to confirmation of the Plan, the Debtors intend to make certain non-material modifications to the Plan (the "Modifications"). The Modifications, which do not materially and adversely affect the way any Claim or Interest holder is treated under the version of the Plan circulated to voting creditors with the Disclosure Statement include modifications to provisions of the Plan relating to the treatment of Administrative Claims and Priority Tax Claims to make clear that the Plan treats such Claims in accordance with the applicable provisions of the Bankruptcy Code, additional provisions regarding assumption and rejection of executory contracts and unexpired leases to facilitate consensual agreements between the Debtors and their contractual counterparties and limitations on third-party releases to conform to applicable federal and state law.

Section 1127 of the Bankruptcy Code provides:

> The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of the title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan . . . .
>
> Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

11 U.S.C. § 1127(a), (d).

Bankruptcy Rule 3019, designed to implement section 1127(d) of the Bankruptcy Code, in turn, provides in relevant part that:

> In a . . . chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019.

Because all creditors in these Chapter 11 Cases have notice of the Confirmation Hearing, and will have an opportunity to object to any proposed Modifications at that time, the requirements of section 1127(d) of the Bankruptcy Code have been met. Citicorp Acceptance Co., Inc. v. Ruti-Sweetwater (In re Sweetwater), 57 B.R. 354, 358 (D. Utah 1985) (creditors who had knowledge of pending confirmation hearing had sufficient opportunity to raise objections to modification of the plan). Moreover, the Plan contemplates that the Debtors may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Hearing with the consent of the Creditors' Committee, Ad Hoc Group of Noteholders and Syndicate Agreement Agent (which consent shall not be unreasonably withheld).

Section 1127 of the Bankruptcy Code gives a plan proponent the right to modify the plan "at any time" before confirmation. This right would be meaningless if all plan modifications, ministerial or substantive, adverse to certain claimants or not, necessitated the re-solicitation of votes. Accordingly, in keeping with traditional bankruptcy practice, courts have typically

allowed a plan proponent to make non-material changes to a plan without any special procedures or vote re-solicitation. See, e.g., In re Am. Solar King Corp., 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988) (stating that "if a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well."); see also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006) ("[T]he bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated."); In re Mt. Vernon Plaza Cmty. Urban Redevelopment Corp. I, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987) (all creditors were deemed to have accepted plan as modified because "[n]one of the changes negatively affects the repayment of creditors, the length of the [p]lan, or the protected property interests of parties in interest.").

Accordingly, because (a) the proposed Modifications are (1) non-material and (2) do not materially and adversely affect the treatment of any creditor that has previously accepted the Plan and (b) the Plan, as modified, continues to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code, re-solicitation is not required.

IV. RESPONSES TO OBJECTIONS TO CONFIRMATION OF THE PLAN

As noted in this Memorandum's Preliminary Statement, the Debtors received 21 objections to the Plan. As of the date of this Memorandum the Debtors continue to have discussions with various objecting parties and intend to continue to pursue the consensual resolution of all Objections until the Confirmation Hearing. The Debtors will indicate the current status of each Objection on the Final Agenda to be filed with the Court on Monday, June 29, 2009.

The Plan, as modified, satisfies all of the requirements of the Bankruptcy Code and should be confirmed notwithstanding the Objections. The Objections either misread or misinterpret certain provisions of the Plan, or fail to state a sufficient legal basis to deny confirmation of the Plan. Several Objections raise common issues or arguments. Those arguments are summarized in the table in Section IV.A below, with the Debtors responses in the following paragraphs. In addition, other Objections raise discrete issues which are addressed in Section IV.B.

A. Issues Common to Multiple Objections

The following table summarizes certain issues that are common to multiple Objections to the Plan.

	Objection	**Objecting Parties**
1.	The Plan violates the absolute priority rule.	Former holders of certain notes issued by Quebecor World Capital Corporation (the "Private Noteholders") Riverside Claims, LLC ("Riverside") Louisiana Department of Revenue ("Louisiana") State of Arizona (*ex rel.* Arizona Department of Revenue ("Arizona")
2.	The Plan does not satisfy the best interests of creditors test under §1129(a)(7).	Société Générale (Canada) ("SocGen") Riverside Ewing Daniel Brown Nicholas Gordon Herbert Turner Brian Booker Daniel Koontz

3.	Limited consolidation of the Debtors for purposes of voting, confirmation and distributions is unwarranted or inappropriate.	Riverside Private Noteholders GCIU-Emplyer Retirement Fund ("GCIU")
4.	Certain releases should not be granted.	Riverside Louisiana State of New Jersey, Division of Taxation and Department of Labor ("New Jersey") United States Department of Justice ("United States") Virginia Department of Taxation ("Virginia")
5.	The Debtors have not demonstrated that the Plan is feasible.	Louisiana New York State Department of Taxation and Finance Arizona Virginia
6.	The Plan was not proposed in good faith.	Riverside Arizona Ewing Daniel Brown Nicholas Gordon Herbert Turner Brian Booker Daniel Koontz
7.	The Plan's Effective Date is unspecified.	Arizona
8.	The Plan does not provide for timely payment of Administrative Claims.	Louisiana Arizona

9.	The Plan does not except governmental units from the requirement of making a request for allowance and payment of Administrative Claims.	Louisiana New Jersey Virginia
10.	The Plan does not contain appropriate provisions for the payment of priority tax claims. The Plan does not provide for interest to accrue on Allowed Priority Tax Claims in accordance with the Bankruptcy Code.	Arizona Louisiana New Jersey Virginia
11.	The Plan does not provide for interest to accrue on Allowed Administrative Claims in accordance with the Bankruptcy Code.	Louisiana
12.	The Plan does not contain appropriate "default language" in the event that the Debtors fail to comply with the provisions of the Plan regarding payment on Allowed Priority Tax Claims.	Arizona Louisiana Virginia New Jersey
13.	Objections based on classification of Claims.	Export Development of Canada ("EDC") Solving IT International ("SITI")[20] Muller Martini Corp. GCIU
14.	The Plan does not provide for adequate provisions for the payment of worker's compensation benefits for work related injuries.	Ewing Daniel Brown Nicholas Gordon Herbert Turner Brian Booker Daniel Koontz
15.	Objections to cure amounts.	Multiple Parties

[20] On June 15, 2009, SITI filed a Motion for Order Re-Classifying Its Claim for Voting, Confirmation and Distribution Purposes. To the extent SITI's Motion could be construed as an objection to confirmation, the Debtors are addressing certain of the issues raised in SITI's Motion herein.

1. The Plan Has Been Approved by All Impaired Classes

The Plan does not violate the absolute priority rule, which only applies in cases where there is a dissenting impaired class of creditors. As explained in Section I.H of this Memorandum and as set forth in the Voting Declaration, all impaired Classes of Claims have voted overwhelmingly to accept the Plan.

The absolute priority rule is commonly understood to require that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property under a reorganization plan. See Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 202 (1988). It is black-letter bankruptcy law that there is no basis under the Bankruptcy Code to challenge a plan based on the absolute priority rule when all impaired classes have accepted the Plan. See 7-1100 COLLIER ON BANKRUPTCY, Alan N. Resnick & Henry J. Sommer eds., ¶ 1100.01 (15th ed. rev. 2009) ("[A] plan that is accepted by each 'impaired' class of creditors and equity interests under the terms of the plan need not satisfy the absolute priority rule."). Section 1129(b), which embodies the absolute priority rule, only applies in "cram down" cases where an impaired class has not voted to accept the plan.

The objecting Private Noteholders, Riverside, Louisiana and Arizona (and any other parties objecting to the Plan) may not rely on the absolute priority rule as a basis for their objections. The absolute priority rule only applies where there is an impaired, dissenting class, and may not be invoked by a minority group of dissenters within a class. *See* In re United Marine, Inc., 197 B.R. 942, 948 (Bankr. S.D. Fla. 1996) (where every class has accepted the plan, a "lone dissenter in an accepting class. . . . cannot invoke the absolute priority rule"). Neither case relied upon by Objecting Private Noteholders is to the contrary. See Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 202 (1988) ("the absolute priority rule provides that a

dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property [under a reorganization] plan") (emphasis added and internal quotations omitted) (citation omitted); In re Coltex Loop Central Three Partners, L.P., 138 F.3d 39, 46 (2d. Cir. 1998) (prior to cramdown over dissenting, impaired class, court should analyze absolute priority rule). Because Objecting Private Noteholders are minority dissenters holding Class 4 Claims, and no Class has rejected the plan, the absolute priority rule does not come into force.

Accordingly, all objections to the Plan on grounds that it does not satisfy the absolute priority are moot and should be overruled.

2. The Plan Otherwise Meets the Best Interests Test

Riverside and SocGen have objected to confirmation of the Plan on grounds that the best interests test has not been satisfied under section 1129(a)(7) because the Liquidation Analysis did not take account of any potential recovery that may be realized in the Private Notes Adversary Proceeding. The Liquidation Analysis discloses that potential recoveries from the Private Notes Adversary Proceeding were not factored into the Liquidation Analysis because any payments avoided pursuant to the Private Notes Adversary Proceeding would be a constant between recovery under the Plan and a hypothetical chapter 7 liquidation. Given that the purpose of the best interests test is to compare creditor recoveries under a proposed plan to those under a hypothetical chapter 7 liquidation, neither Riverside nor SocGen explain in their Objections why it is inappropriate to treat a potential preference recovery as a constant. See In re Adelphia Communications Corp., 368 B.R. 140, 255 (Bankr. S.D.N.Y. 2007) (finding that there is no reason to believe liquidation proceedings would assess the outcome of potential litigation any differently that the plan's proponents). Treating the potential preference as a constant is reasonable, given the inherent uncertainty in any attempt to estimate recovery from a litigation.

See In re Lisanti Foods, Inc., 329 B.R. 491, 508 (D. N.J. 2005), aff'd, (241 Fed. Appx. 1 (3d Cir. 2007)) (recognizing that the uncertainties of litigation recovery are common features of bankruptcy proceedings); Matter of Texas Extrusion Corp., 844 F.2d 1142, 1149 (5th Cir.), cert. denied, 488 U.S. 926 (1988) ("It must be remembered that the evaluation of any lawsuit is quite problematic and calls for a significant degree of speculation."); In re Ionosphere Clubs, Inc., 156 B.R. 414, 427-28 (S.D.N.Y. 1993) aff'd, 17 F.3d 600 (2d Cir. 1994) (recognizing that a satisfactory settlement of litigation claims could be as little as a thousandth of a single percent of the potential recovery).

Riverside also appears to dispute the Debtors' assumption that any recovery from the Private Notes Adversary Proceeding would not accrue to holders of Class 3 Claims. See Riverside's Objection at ¶ 37. Riverside's objection ignores both the separate classification of Claims against Operating Debtors (Class 3) and Nonoperating Debtors (Class 4) under the Plan and a fundamental assumption of the Liquidation Analysis: that the Debtors would be liquidated on a Debtor-by-Debtor basis rather than on a consolidated basis. Because the transfers that are the subject of the Private Notes Adversary Proceeding were made only by certain of the Nonoperating Debtors, recoveries under the Private Notes Adversary Proceeding would be for the benefit of the creditors of the Nonoperating Debtors and not available for distribution to holders of Class 3 Claims, i.e., creditors of the Operating Debtors.

Finally, Riverside suggests that the Debtors should "consider" the RRD Indication of Interest in the context of a hypothetical chapter 7 liquidation. See Riverside's Objection at ¶ 39. Riverside does not specify what assumptions or elements of the Liquidation Analysis -- which values the Debtors' assets in a hypothetical chapter 7 liquidation -- would be changed by taking into account the RRD Indication of Interest, and the Debtors do not have any basis to attribute a higher hypothetical liquidation value to their assets based on the RRD Indication of Interest.

Indeed, the RRD Indication of Interest, which was merely an unsolicited, non-binding and conditional expression of interest, was abruptly withdrawn by RRD after limited due diligence.

Accordingly, the Plan otherwise meets the best interests test, and the Objections of Riverside and SocGen should be overruled.

3. <u>Limited Consolidation of the Debtors as Provided in the Plan is Appropriate and Consistent with the Bankruptcy Law</u>

Section II of this Memorandum, as well as Section VII.F .2 of the Disclosure Statement and Article 6.2 of the Plan describe the nature of the limited consolidation sought by the Debtors for purposes of voting, confirmation and distribution. As noted in Section II, *supra*, such consolidation is permissible under applicable law. Riverside, SocGen, the Private Noteholders and GCIU (the "Consolidation Objectors") have objected to the Plan on the basis of the proposed limited consolidation. While each holds qualitatively different claims, the underlying argument of each of the Consolidation Objectors is the same, and is in effect an argument that the Plan does not meet the best interests test set forth in section 1129(a)(7).

The Private Noteholders argue that the Plan should not be confirmed because they have not voted to accept the Plan and would be deprived of their claims based on guarantees of the Private Notes. GCIU asserts that it holds claims against the GCIU-Employer Retirement Fund (the "Fund") which, under ERISA, are joint and several claims against each Debtor that is a member of the applicable "controlled group" that is liable for contributions to the Fund. GCIU asserts that the Plan should not be confirmed because the proposed limited consolidation would deprive GCIU of joint and several claims based on control group liability under ERISA. Finally, Riverside has objected to the Plan on similar grounds, although Riverside does not indicate how, if at all, its alleged claims would be adversely affected by the proposed limited consolidation.

The Plan provides that with respect to any guarantees by one Debtor or QWI of the obligations of any other Debtor or QWI, and with respect to any joint and several liability of any Debtor or QWI with any other Debtor or QWI, the holder of any Claims for such obligations will receive a single recovery on account of any such joint obligations of the Debtors and/or QWI. In seeking such limited consolidation, the Debtors have relied on the ability of a court to approve less than complete consolidation. See In re Deltacorp., Inc., 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995) ("The court retains the power to order a less than complete consolidation."); In re Standard Brands Paint Co., 154 B.R. 563, 570 (Bankr. C.D. Cal 1993) ("Though it may be the norm that subsidiaries are merged out of existence in consolidation, the bankruptcy court has authority to alter the norm if it determines the benefits of allowing this outweigh any harm."); 2 COLLIER ON BANKRUPTCY, Alan N. Resnick & Henry J. Sommer eds., ¶ 105.09[3] (15th ed. rev. 2009) ("[T]he court has the power to order less than complete consolidation or to limit the effect of a substantive consolidation order.")[21]

Not only is limited consolidation permissible, but in these Chapter 11 Cases it is in the best interests of creditors. The Consolidation Objectors seem to assert, without expressly saying so, that if the Debtors had proposed a different plan that did not provide for limited substantive consolidation, the Consolidation Objectors would receive a greater recovery and, accordingly, the proposed consolidation is impermissible because it deprives them of a greater recovery, i.e., it is not in the best interests of a dissenting creditor. This argument is misplaced on two levels.

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[21] But see In re New Century TRS Holdings, Inc., Civ. No. 08-546-SLR, 2009 U.S. Dist. LEXIS 50708, at 38 (D. Del. June 16, 2009), which involved a liquidating chapter 11 cram down plan that was accepted by all but one class of creditors, and was found by the District Court to have effectuated substantive consolidation of certain debtor groups without satisfying the standards for substantive consolidation under In re Owens Corning, 419 F.3d 195 (3d Cir. 2005).

First, the best interests test compares creditor recoveries under the proposed chapter 11 plan to those under a hypothetical chapter 7 liquidation. See In re Wireless Data, Inc., 547 F.3d 484, 495 (2d Cir. 2008) (the best interests test of section 1129(a)(7)(A) "requires that each holder of an impaired claim or interest either accept the plan or receive under the plan not less than it would receive in a Chapter 7 liquidation") (citing United States v. Reorganized CF & I Fabricators of Utah, Inc., 518 U.S. 213, 228 (1996)); Kane v. Johns-Manville Corp., 843 F.2d 636, 650 (2d Cir. 1988) (comparing amount objecting claimants would receive under the plan to the amount claimants would receive under a chapter 7 liquidation); In re Joint Eastern and Southern Dist. Asbestos Litigation, 982 F.2d 721, 736 (2d Cir. 1992) (permitting cramdown of plan where the impaired objecting class would fare better than under liquidation); In re Lisanti Foods, Inc., 329 B.R. 491, 500 (D. N.J. 2005), aff'd, 241 Fed.Appx. 1 (3d Cir. 2007) (recognizing that the "application of the best interests test involves a hypothetical application of chapter 7 to a chapter 11 plan") (citation omitted); In re Adelphia Communications Corp., 361 B.R. 337, 364 (S.D.N.Y. 2007) ("The test requires that each holder of a claim or interest either (1) accept the chapter 11 plan, or (2) receive or retain property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7."). The best interests test does not contemplate comparing recoveries under the Plan to recoveries under some other, hypothetical chapter 11 plan.

Second, applying the best interests test, as described in Section I.G, *supra*, and demonstrated in the Liquidation Analysis, consolidation of the Debtors' estates for purposes of distributions results in greater recoveries for each Class of Claims under the Plan than would be available to holders of such Claims if the Debtors were to be liquidated on an unconsolidated basis with each holder of a claim against a particular Debtor or Debtors receiving a pro rata

distribution from the liquidation proceeds available to creditors of such Debtor or Debtors against whom such creditors had valid claims. Specifically, a review of the Liquidation Analysis confirms that if the Debtors were liquidated on an unconsolidated basis, and each of the Consolidation Objectors was allowed to recover on account of its Claims against those separate Debtors that were jointly and severally liable for such Claims, the aggregate recovery that such Consolidation Objector would receive on account of such Claims would, in all events, be less than the amount that would be recovered by such Consolidation Objector under the Plan in respect of such Claims. Accordingly, such consolidation is in the best interests of creditors.

4. The Releases and Exculpations Granted in the Plan are Appropriate and Permissible under Applicable Law

Pursuant to Articles 10.5 and 10.8 of the Plan, certain parties are granted exculpations and releases from certain liability under the Plan. Article 10.5 contains the Plan's release provisions and provides for certain third party releases by the holders of claims and interests. Article 10.8 contains the Plan's exculpation provisions and provides generally that the exculpated parties shall not be liable for any cause of action arising out of these Chapter 11 Cases.

i. The Plan's Release Provisions are Permissible and Should be Approved

Objecting creditors argue that the releases provided under Article 10.5 do not meet the Second Circuit's standard for releases set forth in Metromedia.[22] The objectors are wrong. Not only are the releases vital to the reorganization of the Debtors, but the failure to uphold the releases would greatly risk a breakdown of the delicate agreement embodied in the Plan. In a unique situation such as the case at bar, in which the Plan represents compromises between

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[22] See In re Metromedia Fiber Network, Inc., 416 F.3d 136, 142 (2d Cir. 2005).

numerous and conflicting parties, a deterioration of that compromise could endanger the Debtors' successful emergence from bankruptcy.[23]

Metromedia held that third party releases are appropriate in unique situations,[24] and this Court routinely confirms plans of reorganization which contain release clauses similar to the ones proposed by the Debtors.[25]

In accordance with Metromedia and its progeny, the Plan's third-party releases should be upheld because (1) the releases are consensual, (2) the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution, and (3) the releases are vital to the successful emergence of the Debtors.

a. The Releases Are Consensual

Under Metromedia and its progeny, consensual third-party releases under a debtor's plan of reorganization are entirely appropriate.[26] Consent is present for those who vote in favor of a

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[23] In addition to the arguments set forth in this Section IV.A.4 of this Memorandum, the Debtors note that they intend to propose certain changes in Articles 10.5 and 10.8 of the Plan to address certain of the concerns raised by the U.S. and several states objecting to those provisions.

[24] In re Metromedia, 416 F.3d, at 136 ("Courts have approved nondebtor releases when: the estate received substantial consideration, e.g., Drexel Burnham, 960 F.2d at 293, the enjoined claims were 'channeled' to a settlement fund rather than extinguished, MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93-94 (2d Cir.1988); Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694, 701 (4th Cir.1989); the enjoined claims would indirectly impact the debtor's reorganization 'by way of indemnity or contribution', id.; and the plan otherwise provided for the full payment of the enjoined claims, id. Nondebtor releases may also be tolerated if the affected creditors consent. See See In re Specialty Equip. Cos., 3 F.3d 1043, 1047 (7th Cir.1993).")

[25] See In re Adelphia Communications Corporation, et al., Case No. 02-41729 (REG) (Bankr. S.D.N.Y.) (Plan of Reorganization Section 16.3(d); In re Calpine Corporation, et al., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y.) (Plan of Reorganization Section VIII.F; In re Dana Corporation, et al., Case No. 06-10354 (BRL) (Bankr. S.D.N.Y.) (Plan of Reorganization Section IV.E.6.b); In re Delphi Corporation, et al., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y.) (Plan of Reorganization Section 11.5).

Plan.[27] In this case, every Class voted in favor of the Plan by a wide margin. Those who did not cast votes in favor of the Plan are only deemed to release the Released Parties to the extent permissible under applicable law.

Holders of Claims who voted in favor of the Plan have undeniably consented to the releases. The parties voting in favor of the Plan were on full notice of the releases. See Adelphia, 368 B.R., at 268 ("Specialty Equipment teaches that if, as here, the proposed release is appropriately disclosed, that consent can be established by a vote in support of a plan.") (emphasis in original). In both the Plan and Disclosure Statement, the releases (as well as the injunction enforcing the releases) were conspicuously set off in **bold** font. Moreover, in soliciting votes on the Plan, the Debtors sent a Solicitation Package to all impaired stakeholders unambiguously presenting the releases in **bold** or all CAPITAL letters.[28]

Furthermore, claimants who voted against the Plan, or who did not vote, are only deemed to release the Released Parties to the extent permissible under applicable law. A release provision expressly subject to applicable law cannot be grounds for an objection to confirmation.

Footnote continued from previous page.

[26] See Metromedia, at 142, ("Nondebtor releases may [] be tolerated if the affected creditors consent."); In re Specialty Equip. Cos., Inc., 3 F.3d 1043, 1047 (7th Cir. 1993) (finding that the Bankruptcy Code does not prohibit the inclusion of consensual third-party releases in chapter 11); see also, In re Adelphia Commc'ns Corp., 368 B.R. 140, 268 (Bankr. S.D.N.Y. 2007) (noting that "[t]he Seventh Circuit held in Specialty Equipment that consensual releases are permissible, and the Metromedia court did not quarrel with that view") (internal citation omitted); In re Spiegel, Inc., No. 03-11540(BRL), 2006 WL 2577825, at *7 (Bankr. S.D.N.Y. Aug. 16, 2006) (Lifland, J.) (citing Metromedia, 416 at 142) (nondebtor releases are tolerated if the creditors consent).

[27] See In re Adelphia Commc'ns Corp., 368 B.R. at 268 (upholding releases with respect to those who voted in favor of plan); see also Specialty Equip., 3 F.3d 1043.

[28] See Notice Of (A) Objection And Voting Deadlines, (B) Solicitation And Voting Procedures, (C) Hearing To Confirm The Plan Of Reorganization, And (D) Certain Other Information Solicitation Package (Exhibit 5 to the Disclosure Statement Order, Docket No. 1666).

In Adelphia, the Court noted that "Since the third-party releases and exculpation in [the Plan of Reorganization] apply only 'to the extent permitted by applicable law,' the Plan is confirmable without change". Adelphia at 358.

For the foregoing reasons, the release provisions of the Plan should be confirmed.

b. The Enjoined Claims Would Indirectly Impact The Debtor's Reorganization By Way Of Indemnity Or Contribution.

The Debtors may be subject to liability for indemnification or contribution if the releases are not approved. A claim against a released party such as a director, officer, employee or party benefitting from a contractual right of indemnity, such as is typical in a syndicated loan agreement, of the Debtors could therefore be, in effect, a claim directly against the estates from which the value of the Debtors is derived. In re XO Communications, Inc., 330 B.R. 394, 441 (Bankr. S.D.N.Y. 2005) (citing In re Master Mortgage Inv. Fund, Inc., 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994) ("There is an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate."). In the present case, the Released Parties' positions entitle them to certain rights for indemnity and contribution with respect to actions taken in their capacities as such. Furthermore, a number of the directors and officers, the lenders under the Syndicate Agreement, the DIP Lenders, and certain Professionals are parties to indemnification agreements, whereby the Debtors are obligated to indemnify them. Under these agreements, any claim asserted against a released party who the Debtors are obligated to indemnify would essentially be a claim against the Debtors. Any such indemnification claims, even if ultimately unsuccessful, would further deplete finite estate resources.

c. The Releases Are Vital To The Successful Emergence Of The Debtors

When determining whether the circumstances of a case warrant non-debtor releases, the Second Circuit has held that such releases must be important to the plan. See SEC v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.), 960 F.2d 285, 293 (2d Cir. 1992), cert. dismissed sub nom, 506 U.S. 1088 (1993) ("In bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan.") (citation omitted). In Drexel, the court specifically recognized that where a debtor's plan requires the settlement of numerous, complex issues, protection of third parties against legal exposure may be a key component of such settlement. Drexel, 960 F.2d at 293 (finding an injunction to be appropriate and valid, when it was a key aspect of a settlement agreement).

Many of the Released Parties have expended considerable time, energy and expense in the process of negotiating the complex issues underlying these cases - a commitment that resulted in a Plan that is based on delicately structured agreements. An aspect of that settlement, and by extension the Plan, is the participating parties' protection from liability in connection with their postpetition efforts. Without such protection, the Plan may never have garnered such widespread support, and would not serve as the foundation for the Debtors' near-term emergence from chapter 11.

Moreover, certain of the non-Debtor releases are important in order to ensure the retention of remaining key personnel during the post-confirmation process. Without protection from liability, the Debtors' remaining key employees might not stay with the Reorganized Debtors to oversee implementation of the Plan. The need to protect and retain such personnel has served, at least in part, as a basis for the approval of releases in similar cases. See, e.g., Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.), 326 B.R. 497, 503 (S.D.N.Y. 2005)

(noting that "[w]ithout such protection from liability, key personnel might abandon efforts to help the reorganized debtor entities follow through on the Plan and wind up its affairs.").

ii. The Plan's Exculpation Provisions are Permissible and Should be Confirmed

At the outset, it is important to underscore the difference between the consensual third-party releases provided for under the Plan and the Plan's exculpation provisions. Unlike the third-party releases, the exculpation provisions do not affect the liability of third parties *per se,* but rather set a standard of care of gross negligence or willful misconduct in future litigation by a non-releasing party against an exculpated party" for acts arising out of the Debtors' restructuring.[29] A bankruptcy court has the power to approve an exculpation clause in a chapter 11 plan because a bankruptcy court cannot confirm the plan unless it finds that the plan has been proposed in good faith.[30] As such, an exculpation provision represents a legal conclusion that flows inevitably from several different findings a bankruptcy court must reach in confirming a plan—an undeniably core matter.[31] Once a good faith finding is made, it then becomes appropriate to set the standard of care of those involved in the formulation of that plan of reorganization for liability arising from the chapter 11 case.[32] Exculpation clauses, therefore, appropriately prevent future collateral attacks against parties that have made substantial contributions to the reorganization by contributing to a debtor's reorganization. Recognizing this

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[29] See In re PWS Holding Corp., 228 F.3d 224, 246 (3d Cir. 2000) (holding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code.").

[30] *See* 11 U.S.C. § 1129(a)(3).

[31] See 11 U.S.C. § 157(b)(2)(L).

[32] See PWS, 228 F.3d at 246 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties . . . .").

difference, courts have approved exculpations customarily in large chapter 11 cases.[33] Here, the exculpation provisions are likewise appropriate and vital because they provide protection to those parties who were essential to the restructuring process.

The Debtors formulated the Plan after negotiating critical components with numerous parties in good faith. Here, negotiation and compromises regarding the terms of the Plan were necessary to the formulation of a feasible Plan and could not have occurred without protection from liability for the constituents involved. In this large and complex case, in which the parties have reached a consensual Plan, it is appropriate to offer protection in the form of exculpation.[34] The Plan's exculpation clause is narrow as it only relates to acts or omissions in connection with, or arising out of the administration of the reorganization and the Chapter 11 Cases. Additionally, no release is provided for gross negligence or willful misconduct. This type of language generally follows the text that has become standard in the Southern District of New York.[35] Therefore, the Court should overrule the objections.

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[33] See, e.g., In re Source Enters., Inc., No. 06-11707(AJG), 2007 WL 2903954, at *13 (Bankr. S.D.N.Y. Oct. 1, 2007) (Lifland, J.) Aff'd 392 B.R. 541 (S.D.N.Y. 2008) (approved exculpation provision because provision in the best interests on the debtors' estates and the creditors); In re Bally Total Fitness of Greater New York, Inc., No. 07-12395 (BRL), 2007 WL 2779438, at *8 (Bankr. S.D.N.Y. Sept. 17, 2007) (Lifland, J.) (finding that the exculpation, release, and injunction provisions appropriate because they were fair and equitable, necessary to successful reorganization, and integral to the plan); In re Oneida Ltd., 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006); In re Enron Corp., 326 B.R. 497, 503 (S.D.N.Y. 2005) (finding exculpation provision necessary to effectuate the plan); In re Worldcom, Inc., No 03-13533 (Bankr. S.D.N.Y. Oct. 21, 2003). See also See In re Adelphia Communications Corporation, et al., Case No. 02-41729 (REG) (Bankr. S.D.N.Y.) (Plan of Reorganization Section 16.3(a); In re Calpine Corporation, et al., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y.) (Plan of Reorganization Section VIII.E; In re Dana Corporation, et al., Case No. 06-10354 (BRL) (Bankr. S.D.N.Y.) (Plan of Reorganization Section IV.E.7); In re Delphi Corporation, et al., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y.) (Plan of Reorganization Section 11.11).

[34] See In re Worldcom, Inc., No. 02-13533 (AJG), 2003 WL 23861928, at *28 (Bankr. S.D.N.Y. Oct. 31, 2003).

[35] See In re Oneida Ltd., 351 B.R. 79, 94 (Bankr. S.D.N.Y. 2006).

5. The Debtors Have Demonstrated that the Plan is Feasible

Four Objections to the Plan are based on feasibility and have been made by taxing authorities -- Arizona, Louisiana, New York and Virginia -- on grounds that the Debtors have not sufficiently quantified the amount of certain Priority Tax Claims, and that the Plan's feasibility cannot be determined until such amounts are liquidated. See Arizona's Objection at pp. 8-9; Louisiana's Objection at ¶ G; New York's Objection at ¶¶4-5; Virginia's Objection at ¶ 8. The Debtors have set forth their analysis of the feasibility of the Plan in Section I.K of this Memorandum, as well as in the Projections and other materials contained in the Disclosure Statement. In addition, the Plan specifically provides for the treatment of priority tax claims in a manner consistent with the Bankruptcy Code.

The Debtors have made substantial efforts during the course of these Chapter 11 Cases to maintain or achieve compliance with their tax obligations in the ordinary course of business, and intend to work diligently with Arizona, Louisiana, New York, Virginia and all other taxing authorities to liquidate the amounts of their prepetition and postpetition tax claims. The Debtors have taken into account all reasonable estimates of their prepetition and postpetition tax liabilities in preparing the Projections and determining the feasibility of the Plan and believe that they will have sufficient assets to satisfy all Allowed Priority Tax Claims in accordance with the Plan. By contrast, Arizona, Louisiana, New York and Virginia have not presented any evidence that the Plan does not offer a reasonable prospect of success, or that the amount of their presently unliquidated tax claims would be so substantial as to make it likely that the Plan will be followed by the liquidation, or the need for further financial reorganization, of the Debtors. The Debtors submit that the Objections to the Plan's feasibility based on such tax claims should be overruled.

6. **The Plan Was Proposed in Good Faith**

The Debtors have set forth in Section I.C of this Memorandum all of the affirmative elements necessary to establish that the Plan was proposed in good faith. Riverside asserts that "there are serious concerns" that the Plan was not proposed in good faith "because it would not be proposed in good faith if the Debtors did not adequately consider the most recent offer received from R.R. Donnelley & Sons Company." Riverside's Objection at p. 15. The Debtors have fully disclosed in Exhibit I.B.75 to the Plan the processes that were undertaken by the Board of Directors of QWI to respond to the unsolicited, non-binding and conditional indication of interest submitted by R.R. Donnelley & Sons Company (the "RRD Indication of Interest").

Subsequent to the receipt of the RRD Indication of Interest, all of the members of the Board of Directors of QWI determined to be independent for such purpose (the "Independent Board"), with the assistance of QWI's financial advisors and U.S. and Canadian counsel, analyzed the terms of the RRD Indication of Interest and discussed the RRD Indication of Interest with representatives of the Syndicate Agreement Agent, the Creditors' Committee and the Ad Hoc Group of Noteholders. The Independent Board, along with management of QWI and its legal and financial advisors, also conducted meetings and discussions with representatives and financial and legal advisors of RRD in order to further address issues relating to the RRD Indication of Interest and proposed transaction contemplated thereby.

The analysis conducted by the Independent Board and the discussions with RRD and its advisors identified a number of issues relating to the RRD Indication of Interest, including relating to tax, pension, labor and anti-trust implications of a business combination involving Quebecor World and RRD and the structure of any proposed transaction.

Thereafter, RRD presented to QWI and the Debtors, and to representatives of the Creditors' Committee, the Ad Hoc Group of Noteholders and the Syndicate Agreement Agent, a

revised RRD Indication of Interest. Upon the receipt of the revised RRD Indication of Interest, the Independent Board analyzed and discussed the revised RRD Indication of Interest with representatives of the Creditors' Committee, the Syndicate Agreement Agent and the Ad Hoc Group of Noteholders, and further deliberated and sought the advice of QWI's and the Debtors' financial and legal advisors. The Independent Board understood that representatives of the Syndicate Committee, the Ad Hoc Group of Noteholders and the Creditors' Committee had certain discussions with representatives of RRD subsequent to receipt of the revised RRD Indication of Interest and that on June 5, 2009 the representatives of the Syndicate Committee, Ad Hoc Group of Noteholders and the Creditors' Committee informed representatives of RRD of their view that the revised RRD Indication of Interest as constituted did not represent a superior proposal to the Plan.

Ultimately, on June 8, 2009, RRD submitted to QWI and to representatives of the Syndicate Committee, the Ad Hoc Group of Noteholders and the Creditors' Committee a further revised proposal. After reviewing such further revised RRD Indication of Interest and deliberating with its financial advisors and legal counsel, the Independent Board concluded that the consideration to be received by holders of Claims under the Plan represented a superior recovery than would be obtained by the consummation of the transactions contemplated by the further revised RRD Indication of Interest and that the consummation of the Plan in accordance with its terms on the schedule contemplated by the Plan presented fewer risks to completion than would the transactions proposed by RRD in such further revised RRD Indication of Interest. Shortly thereafter, on June 10, 2009, RRD withdrew from any further negotiations with QWI and the Debtors.

As evidenced by the concerted effort made by QWI, the Debtors and their advisors over the approximately three week period that the RRD Indication of Interest was outstanding, the

Debtors, QWI and the Independent Board acted in good faith in considering and responding to each version of the RRD Indication of Interest, and in consulting with the representatives of the Syndicate Committee, the Ad Hoc Group of Noteholders and the Creditors' Committee. Notwithstanding the very late timing of the RRD Indication of Interest, the extraordinary demands on the Debtors' resources and tight timeframe required to fully vet the RRD Indication of Interest while simultaneously preserving the Debtors' ability to pursue confirmation of the Plan, the Debtors clearly fulfilled their duty to consider the RRD Indication of Interest as an alternative to the Plan. For these reasons, there is no basis for Riverside's claim that the Plan has not been proposed in good faith.

7. The Plan Adequately Provides for the Occurrence of the Effective Date

The Plan provides that the Effective Date means the Business Day selected by the Debtors in consultation with the Creditors' Committee, the Ad Hoc Group of Noteholders and the Syndicate Agreement Agent on or after which all of the conditions to the consummation of the Plan set forth in Article XI of the Plan have been either satisfied or waived as provided in Article XI of the Plan. Each of the conditions to the consummation of the Plan and occurrence of the Effective Date are clearly spelled out in Article XI of the Plan and include, among other things, entry into the Exit Financing Arrangements, confirmation of the Plan and effectiveness of the Canadian Plan. More importantly, the DIP Facility expires on July 21, 2009, and the Debtors do not anticipate that the Effective Date of the Plan will occur after the expiration of the DIP Facility. Nevertheless, Arizona has objected to the Plan's provisions regarding the determination of the Effective Date on grounds that the Effective Date is "illusory," and suggests that the Effective Date may not occur for "years in the future, if at all." The Debtors submit that on the record of the progress of these cases to date and the facts and evidence before the Court

supporting confirmation of the Plan, it is highly likely that the Effective Date will occur within a reasonable period of time following entry of an order confirming the Plan. By contrast, Arizona has failed to do anything more than speculate as to the possibility that the Effective Date will not occur "for years" because it is "illusory." The Debtors submit that this is not a sufficient basis to object to confirmation of the Plan and respectfully request that Arizona's objection be overruled in this regard.

8. <u>The Plan Will Provide for Payment of Allowed Administrative Claims Upon the Effective Date</u>

The Debtors intend to modify Article 2.1 of the Plan to make clear that Administrative Claims that are Allowed as of the Effective Date will be paid in cash on the Effective Date in accordance with section 1129(a)(9)(A) of the Bankruptcy Code. Accordingly, the objections of Arizona and Louisiana to the Plan's provisions for payment of Administrative Claims have been addressed.

9. <u>The Plan Does Not Impermissibly Require Governmental Units to File Requests for Payment of Administrative Expenses</u>

The Debtors intend to modify Article 9.6 of the Plan to make clear that, where section 503(b)(1)(D)[36] exempts governmental units from the requirement filing a request for allowance and payment of certain administrative expenses, nothing in the Plan contravenes that provision of the Bankruptcy Code. Accordingly, the objections of Louisiana, New Jersey and Virginia have been addressed.

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[36] Section 503(b)(1)(D) of the Bankruptcy Code provides that:

> notwithstanding the requirements of subsection [503](a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense.

10. <u>The Plan Provides for Interest to Accrue and Be Paid on Priority Tax Claims and Otherwise Contains Appropriate Provisions for Payment of Allowed Priority Tax Claims</u>

The Debtors intend to modify Articles 2.3, 8.2 and 8.3 of the Plan to make clear that, to the extent a taxing authority is entitled to interest on a Priority Tax Claim, interest will accrue on such Priority Tax Claim at the applicable rate from the Effective Date of the Plan, in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code and Allowed Priority Tax Claims will be paid on a periodic basis to the extent that the Debtors elect to make distributions on such claims pursuant to the provisions of section 1129(a)(9). Accordingly, the objections of Arizona, Louisiana New Jersey and Virginia have been addressed.

11. <u>The Plan is Not Required to Provide Interest on All Administrative Claims</u>

Louisiana objects to the Plan on grounds that it fails to provide for interest on Administrative Claims in the event such claims become disputed. Section 1129(a)(9)(A) provides that administrative priority claims must receive cash on the effective date of the plan equal to the *allowed* amount of such claim. The requirement that administrative claims be paid cash on the effective date is thus qualified by the condition that they be allowed. Unlike Section 1129(a)(9)(C), which provides for interest to accrue on Priority Tax Claims from the Effective Date, there is no such requirement in section 1129(a)(9)(A) for Administrative Claims that are not allowed as of the Effective Date.

Further, even if Louisiana was entitled, undisputedly, to its Administrative Claims, it would not be entitled to interest on those claims, as it has no statutory right to recover interest on administrative expense tax claims. <u>See</u> 11 U.S.C. § 503(b)(1)(B) (no reference to interest); <u>see also</u> <u>In re American International Airways, Inc.</u>, 77 B.R. 490, 493-95 (Bankr. E.D. Pa. 1987) (reading § 503(b)(1) narrowly and holding that interest on administrative expense claims should

typically be disallowed on the ground that a basic policy of bankruptcy proceedings is "keeping administrative costs to a minimum [which] preserves the debtor's necessarily scarce resources and thus encourages rehabilitation") (citation omitted).[37] Indeed, the Senate version of the bill that became section 503, which was not adopted, did provide for interest on administrative expense claims, and so its omission in the final statute strongly suggests that Congress intended to exclude interest. See S. Rep. No. 989, 95th Cong., 2d Sess. 66 (1978) ("Interest on tax liabilities and certain tax penalties incurred by the trustee are also included in this first priority."). Neither section 511 nor section 1129(a)(9)(C), both relied on by Louisiana, independently require that interest on administrative expense claims pursuant to section 503 be awarded; rather, they specify the interest rate and payment plan once a claimant already has established a right to receive interest. No statutory provision of the Bankruptcy Code requires the Debtors to award interest on administrative expense tax claims, nor does any law render the Plan inadequate for failing to specifically provide for interest. Accordingly, Louisiana's objection should be overruled.

12. The Bankruptcy Code does not Require "Default Language" regarding Payment of Priority Tax Claims

There is no requirement in the Bankruptcy Code that a plan of reorganization include "default language" creating an "Event of Default" and providing remedies in the event that a debtor does not make a payment to a prepetition unsecured creditor in accordance with the terms

[37] Claimants may execute contracts with Debtors which expressly provide for priority interest on administrative expenses interest, *see, e.g.*, In re Becker, 51 B.R. 975, 979 (Bankr. D. Minn. 1985); and *In re Island Aviation, Inc.*, 35 B.R. 20, 21 (Bankr. D. Hawaii 1983), but the existence of such contracts undermines Louisiana's claim that it would be entitled to interest on its Administrative Claims as a matter of right.

of the plan. Arizona, Louisiana, Virginia and New Jersey have each objected to the Plan on grounds that it does not include such language.[38] These objections have no basis in the Bankruptcy Code and should be overruled.

In the first instance, the Bankruptcy Code already provides ample protection to creditors in the event that the Debtors fail to comply with the requirements of the Plan. Pursuant to section 1141(a), a confirmed plan is a legally binding document that binds the debtor, its creditors and certain other parties. If a debtor fails to comply with the terms of a plan, a creditor or other aggrieved party can seek to enforce the terms of the plan in any court of competent jurisdiction. See In re American Preferred Prescription, Inc., 255 F.3d 87, 92 (2d Cir. 2001) ("The confirmation of a plan in a Chapter 11 proceeding is an event comparable to the entry of a final judgment in an ordinary civil litigation.") (citations omitted); In re Victory Mkts., Inc., 221 B.R. 298, 303 (2d Cir. 1998) ("[A] confirmed plan holds the status of a binding contract as between the debtor and its creditors.") (citations omitted), aff'd, Nos. 98-5033, 98-5053, 1999 U.S.App. Lexis 7647 (2d Cir. Apr. 12, 1999); Trulis v. Barton, 107 F.3d 685, 691 (9th Cir. 1995) ("Once a bankruptcy plan is confirmed, it is binding on all parties . . ."); First Union Commercial

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[38] The language proposed by each state varies somewhat but is similar in substance. By way of example, Arizona proposed the following language:

> The Debtors' failure to comply with the Plan provisions concerning the liability owed to the Arizona Department of Revenue, shall constitute a default of the Plan, which includes, but is not limited to, the failure to make the full and timely payment(s), file a tax return(s), or pay post-petition tax(es) liability timely. If the Debtors fail to cure any monetary default with certified funds, together with any outstanding returns, within ten (10) calendar days after written notice of the default from the Arizona Department of Revenue or its agents, to the Debtors' attorney of record, the entire balance due the Arizona Department of Revenue shall be immediately due and owing. Further, in the event of a default, the Arizona Department of Revenue may enforce the entire amount of its claims, exercise any and all rights and remedies under applicable non-bankruptcy law which includes, but is not limited to, state tax collection procedures, and obtain any other such relief deemed appropriate by the Bankruptcy Court.

See State of Arizona's Objection to Confirmation of Debtors' Plan of Reorganization at 11.

Corp. v. Nelson, Mullins, Riley and Scarborough (In re Varat Enterprises, Inc.), 81 F.3d 1310, 1315 (4th Cir. 1996) ("A bankruptcy court's order of confirmation is treated as a final judgment with *res judicata* effect.") (emphasis in original) (citations omitted); Adelphia Recovery Trust v. Bank of America, N.A., 390 B.R. 80, 88 (S.D.N.Y. 2008) ("In a bankruptcy-related proceeding, the terms of a confirmed plan of reorganization are binding on parties to the plan and should be considered by a court when deciding a motion to dismiss."); In re Sunbrite Cleaners Inc., 284 B.R. 336, 342 (N.D.N.Y.2002) ("'Under the Bankruptcy Code, a confirmed plan of reorganization acts like a contract that is binding on all of the parties, debtor and creditors alike.'").

Moreover, there is no independent Bankruptcy Code provision or other authority that requires that the Plan specifically include "default language." To the extent that the States objecting on the basis of "default language" cite any authority for such a request, they rely on section 1123(a)(5)(G) of the Bankruptcy Code, which provides that "[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan shall. . . . (5) provide adequate means for the plan's implementation, such as. . . . (G) curing or waiving any default." Courts and commentators have interpreted section 1123(a)(5)(G) to refer to the cure of prepetition defaults, not post-confirmation defaults. See In re Xofox Indus., Ltd., 241 B.R. 541, 542 (Bankr. E.D. Mich. 1999) ("Section 1123(a)(5)(G) was primarily intended to allow for the cure or waiver of pre-petition defaults."); see also Great Western Bank & Trust v. Entz-White Lumber and Supply, Inc. (In re Entz-White Lumber and Supply, Inc.) 850 F.2d 1338, 1342 (9th Cir. 1988) (interpreting section 1123(a)(5)(G) in connection with cure of prepetition default); Valente v. Savings Bank of Rockville, 34 B.R. 362, 365-66 (D. Conn. 1983) (cure of prepetition default); In re Johnson, 184 B.R. 570, 574 (Bankr. D. Minn. 1995) (same). Likewise, it does not make sense to read section 1123(a)(5)(G), which provides for the cure of defaults in connection with the

implementation of a plan, to require that a plan provide for the cure of any defaults that would occur following confirmation of the plan.

More specifically, courts addressing confirmation objections raising the very same issue raised here have determined that there is no provision in sections 1123(a) or 1129(a), or elsewhere in the Bankruptcy Code, that would require a debtor to provide in its plan for the reinstate a taxing authority's collection powers in the event of a "default" under the plan. In re Friedman's, Inc., 356 B.R. 758, 764-65 (Bankr. S.D. Ga. 2005) (overruling objection of Internal Revenue Service on grounds that the Bankruptcy Code does not require "default language" similar to that proposed by the objecting states); In re Dow Corning Corp., 244 B.R. 721, 752 (Bankr. E.D. Mich. 1999) aff'd, 255 B.R. 445 (E.D Mich. 2000); In re Xofox, 241 B.R. at 542-43. In one case, the Texas Comptroller of Public Accounts argued that a plan did not comply with section 1123(a)(5)(G) because it did not "specify what remedies the Comptroller will have in the event the Reorganized Debtor defaults on its priority tax obligations." Dow Corning, 244 B.R. at 752. The court rejected that argument as "frivolous and nonsensical" in light of the fact that, pursuant to section 1141(a), the confirmation of a plan creates a legally binding agreement that can be enforced in any court of competent jurisdiction. Id.; see also In re Xofox, 241 B.R. at 543 ("It is black-letter law that if a reorganized debtor defaults on plan payments to an unsecured creditor, the creditor can pursue the debtor for the restructured debt under the plan."). In addressing similar concerns, courts have also noted that section 1142(a) of the Bankruptcy Code requires that any entity organized or to be organized for the purpose of carrying out the plan "shall carry out the plan and shall comply with any orders of the court." Id. at 544.

Finally, the Objections of Louisiana and New Jersey suggest, with respect to the inclusion of "default language," that such language should specify the court or tribunal where an action to enforce the plan may be brought. Such language is unnecessary because a creditor may

seek to enforce the terms of the Plan in any court of competent jurisdiction. See Dow Corning, 244 B.R. at 752 ("[P]ursuant to § 1141(a), the confirmation of a plan creates a legally binding agreement. . . . The terms of that agreement can be enforced in any court of competent jurisdiction. As a result, it is unnecessary for a plan to state that a taxing authority has the ability to enforce a debtor's plan obligations in a state court of competent jurisdiction.")

In light of the Debtors' existing obligations under the Bankruptcy Code and the Plan, there is no basis for an objection to the Plan that it does not contain the "default language" urged by Louisiana, Arizona, Virginia and New Jersey, and such objections should be overruled.

13. Objections Based on Classification of Particular Claims are Premature

GCIU, EDC and SITI have objected to the Plan on the grounds that they believe their Claim was improperly classified as a Class 4 Claim as opposed to a Class 3 Claim. These objections are not confirmation issues. Rather, such objections are related to the claims resolution process and such objections should be considered nothing more than a motion for re-classification of claims and deferred to be adjudicated, if necessary, during the claims resolution stage of these Chapter 11 Cases.

The Debtors recognized early on in these Chapter 11 Cases that certain factors, including the fact, among others, that there are 53 Debtors in these Chapter 11 Cases and a cross-border component, could lead to creditor confusion regarding which Debtor entity to file their claims against. In that regard, the Debtors and QWI, in connection with seeking approval to establish procedures for filing claims, sought authority to implement that certain Cross-Border Protocol on the Filing and Determination of Claims (Docket No. 1175, the "Claims Protocol"). On September 29, 2008, this Court, together with the Canadian Court, held a joint hearing and approved the Claims Protocol. The Claims Protocol was specifically implemented, at least in

part, to deal with potential creditor confusion regarding which Debtor entity was liable for its claims. Indeed, the Claims Protocol specifically designated procedures for transferring claims that were filed against the wrong Debtor(s) and provided that: "As the Debtors' collective corporate structure encompasses fifty-four (54) separate Debtor entities, and certain creditors, may, in good faith, be uncertain as to the proper Debtor entity against which a claim should be filed, the notifications provided to Potential Claimants shall encourage them to use their reasonable best efforts to file their claims against the proper Debtor entity and in the proper Insolvency Proceeding(s). In recognition that, despite the best efforts of Potential Claimants, errors may be made, in good faith, in connection with the filing of claims against the proper Debtor entities, and, accordingly, the following procedures may be utilized to the extent a determination is made that a claim is filed against the wrong Debtor entity. . . ." See Paragraph 14.

The Bar Date in these Chapter 11 Cases was December 5, 2008. The Debtors are still in the early stages of reviewing and resolving Claims. However, one thing that is abundantly clear in the review of the Claims is that certain creditors filed Claims against the wrong Debtor entity. Further, certain creditors, perhaps, out of an abundance of caution, also filed duplicate Claims against some or all of the Debtors. Due to the fact that the Debtors recognized that creditors filed Claims against the wrong Debtor entities and/or significant duplicate Claims, the Debtors specifically addressed the issue of duplicate claims and classification issues related thereto in the Disclosure Statement. The Disclosure Statement provides that:

> [f]or voting purposes only, holders of Claims for which proofs of claim have been timely filed (or otherwise allowed as timely by the Bankruptcy Court) will be entitled to vote in accordance with the manner in which their proofs of claim were filed; provided, however, that to the extent any holders of Claims entitled to vote in any given Class have filed duplicate Claims against more than one Debtor (i.e., the Claims are in the same amount, with the same classification and assert the same basis for such

> Claim), such holder will be provided, to the extent possible, with only one Solicitation Package and Ballot, which Ballot will constitute a single vote in such Class in the amount of one (1) of such duplicate Claims. The allowance of any Claim for voting purposes will be applicable for voting purposes only, and will not constitute (a) the allowed amount of any Claim or (b) an admission by the Debtors as to the identity of a particular obligor on, or the appropriate amount of, any Claim for any purpose other than voting on the Plan.

Disclosure Statement at p. 12.

Indeed, each Ballot merely was coded to reflect how such holder of the Claim(s) filed the Claim(s), for voting purposes only, and was not intended to prejudice either the holders' rights or the Debtors' rights regarding classification of such Claims in these Bankruptcy Cases.

After the Effective Date, the Debtors will promptly commence the claims resolution process through which the estimation, evaluation and potential transfer of Claims among Debtor entities, where applicable, will occur. The Debtors have attempted to reassure their creditors that they would work in good faith with such creditors in resolving the claims, both through the Cross-Border Protocol and the Disclosure Statement, as well as through informal communications with certain creditors. Indeed, in the Disclosure Statement, the Debtors provided that "[a]s part of the Claims resolution process, the Debtors intend to review their books and records, with respect to any Claim regarding which there may be a dispute as to the proper Debtor liable for such Claim, and dialogue, where appropriate, with the applicable holder of such Claim to determine the appropriate Debtor, and if applicable, Class related to such Claim." See Discl. St. pg. 12, fn. 1. The Debtors believe, through the Cross-Border Protocol and the Disclosure Statement, most of their creditors were properly reassured that the Debtors do not intend to prejudice creditors if such creditor filed a Claim, in good faith, against the wrong Debtor entity, nor do the Debtors intend to argue that the filing of a Claim against one entity is dispositive of such Claims classification. Accordingly, the Cross-Border Protocol and the

Disclosure Statement, make it clear that creditors reserve their rights with regarding to the classification of their Claims. For the above reasons, the Court should overrule any objections to the Plan regarding classification, and instead, should defer such issues to be dealt with as part of the Claims adjudication process.

14. <u>The Plan Adequately Provides for Workers' Compensation Claims</u>

Certain individuals have objected to the Plan on the grounds that it does not adequately provide for treatment of workers' compensation claims. The Debtors have historically maintained, and continue to maintain, workers' compensation insurance coverage in each of the states in which the Debtors operate, which coverage guarantees that any and all valid workers' compensation claims will be paid in full. As Article 6.22(b) of the Plan provides that the Debtors will assume their Insurance Contracts, which include their workers' compensation insurance programs, the Plan makes adequate provision for the payment of workers' compensation claims, and objections to the Plan on grounds that the Debtors do not maintain adequate workers' compensation insurance should be overruled.

15. <u>The Objections to Cure Amounts Should be Adjourned</u>

On the Exhibit Filing Date, the Debtors filed certain Plan Exhibits, including among others, the schedule of executory contracts and unexpired leases to be assumed and the schedule of executory contracts and unexpired leases to be rejected (collectively, the "Contract Schedules"). Approximately nine formal objections regarding these Contract Schedules have been filed, with the majority of such objections relating to the cure amounts listed on the Contract Schedules in respect of contracts to be assumed as of the Effective Date. The Debtors believe that the vast majority, if not all, of these cure disputes can be resolved consensually with the applicable counterparties. Accordingly, pursuant to the terms of the Solicitation Procedures Order, the Debtors seek, where applicable, to assume the contracts, and defer a hearing on the

cure objections incident to such contracts until a date approximately thirty days from the Confirmation Hearing. In this regard, the Debtors will set aside a reserve in an amount equal to the cure amount alleged as due and owing by each objecting counterparty until the cure dispute is either resolved consensually or by order of the Court. The Debtors intend to work diligently over the next thirty days to resolve each of the objections, and, as to any cure objection that cannot be resolved consensually, to seek a Court hearing to resolve such objection.

B. Responses to Individual Objections

1. <u>The Plan Does Not Discriminate Unfairly against SocGen</u>

Société Générale (Canada), in its capacity as a creditor under the Equipment Financing Agreement ("SocGen"), has filed objections to confirmation of the Plan based on certain arguments regarding its classification and proposed treatment in Class 1 and on its assertion that the Plan fails to satisfy the "best interests" test under section 1129(a)(7) of the Bankruptcy Code. The Debtors submit that that SocGen's argument regarding its classification and treatment as a holder of Class 1 Claim are based on an inaccurate reading of the Plan. The Debtors further submit that SocGen's argument that the Plan fails to meet the "best interests" test is conclusively rebutted by the Liquidation Analysis, as to which SocGen has failed to proffer any reason that the Court should not find the Liquidation Analysis demonstrates that the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

SocGen's argument that the Plan provides it with less than a Pro Rata portion of the Class 1 Recovery is refuted by the express terms of the Plan. Article 4.1 of the Plan provides that "[e]ach Holder of an Allowed. . . . SocGen Claim. . . . shall receive. . . . such holder's Pro Rata share of the Class 1 Recovery . . . ." Notwithstanding the clear and express terms of Article 4.1 of the Plan, SocGen appears to be arguing that because SocGen's entitlement to its Pro Rata

share of the Class 1 Recovery is ultimately dependent upon the determination by the Court in the SocGen Adversary Proceeding that SocGen's liens and guarantees are valid and enforceable in their entirety, SocGen's classification in Class 1 and entitlement to its Pro Rata portion of the Class 1 Recovery in some fashion violates sections 1122(a) and 1123(a)(4) of the Bankruptcy Code. As is made clear by the express terms of the Disclosure Statement and Plan, SocGen's arguments have no merit.

As referred to in SocGen's opposition and as more fully described in section V.C.1-2 of the Disclosure Statement, pursuant to the terms of the Equipment Financing Agreement and the Syndicate Agreement, certain of the Debtors pledged certain assets and extended guarantees to the creditors under the Equipment Financing Agreement and the Syndicate Agreement on a *pari passu* basis as required by those agreements on or about October 26, 2007. Less than three months later, the Debtors commenced the Chapter 11 Cases by filing their voluntary petitions on January 21, 2008. Through the filing of the SocGen Adversary Proceeding and the Syndicate Adversary Proceeding on January 16, 2009, the Creditors' Committee, on behalf of the Debtors' Estates, challenged the validity of such liens and guarantees as fraudulent transfers under section 548 of the Bankruptcy Code and fraudulent conveyances under section 544 of the Bankruptcy Code and sections 273, 275 and 278 of the New York Debtor and Creditor Law.

Notwithstanding the filing of the Syndicate Adversary Proceeding and the SocGen Adversary Proceeding, the Plan assumes solely for the purposes of the classification of Claims and distributions to be made on behalf of Claims that the liens granted to and guarantees executed in connection with the Debtors' obligations under the Syndicate Agreement and Equipment Financing Agreement on or about October 26, 2007 are valid and enforceable. Accordingly, each holder of an Allowed Claim under the Syndicate Agreement and Equipment Financing Agreement is entitled to receive its Pro Rata share of the Class 1 Recovery, which

includes specified amounts of Cash, New Preferred Stock, New Common Stock and Warrant Bundles in an aggregate value reflecting the legal and structural priorities implied by the liens and guarantees granted to those creditors. The Plan could not be clearer, and SocGen does not try to make any argument that the Plan provides otherwise (because any such argument would be belied in total by a review of the terms of the Plan).

Subsequent to the filing of the Syndicate Adversary Proceeding and the SocGen Adversary Proceeding and in connection with the negotiations and discussions between the Debtors and their principal creditor constituencies that ultimately led to the basis for the Plan, the Debtors, the Ad Hoc Group of Noteholders and the Creditors' Committee reached an agreement in principle to settle the Syndicate Adversary Proceeding under terms by which certain amounts of the Class 1 Recovery that would have been received by the holders of Claims under the Syndicate Agreement in accordance with their Pro Rata treatment with the holders of Claims under the Equipment Financing Agreement would be transferred to the holders of Allowed Class 4 Claims under the Senior Notes and other general unsecured claims against the Nonoperating Debtors.[39] As it admits in its objection, an offer to settle was made to SocGen, but SocGen "declined the compromise offer that was made to it." SocGen Objection at ¶ 19.

Contrary to SocGen's assertions in its objection, the Plan provides SocGen with its Pro Rata share of the Class 1 Recovery and in that respect fully satisfies and complies with sections 1122 and 1123(a)(4) of the Bankruptcy Code. However, as it must, the Plan recognizes the existence of the SocGen Adversary Proceeding and provides that SocGen's entitlement to its Pro Rata portion of the Class 1 Recovery is dependent upon SocGen prevailing in the SocGen

[39] The Nonoperating Debtors are those of the Debtors who were the original borrowers or guarantors under the Syndicate Agreement and Equipment Financing Agreement and the issuers of the Senior Notes.

Adversary Proceeding and demonstrating that liens and guarantees granted to it in the three months prior to the Petition Date are not avoidable. If SocGen prevails, it will receive its Pro Rata portion of the Class 1 Recovery and in fact will receive a larger percentage recovery than will holders of Allowed Claims under the Syndicate Agreement who elected to settle the Syndicate Adversary Proceeding under the terms of the Syndicate Compromise, rather than litigate and pursue a potentially higher recovery. If the Bankruptcy Court holds that the liens and guarantees granted to SocGen are avoidable, then SocGen properly should be classified as a general unsecured creditor of the Nonoperating Debtors (the treatment that it held immediately prior to the grant of the Bank Security on October 26, 2007). The Plan does nothing more than acknowledge the status of the SocGen Adversary Proceeding, preserving SocGen's current entitlement to its priority recovery in Class 1 while making clear that if SocGen is ultimately determined to be a general unsecured creditor of the Nonoperating Debtors because its liens are avoided as a result of the SocGen Adversary Proceeding, then its classification and recovery will be adjusted accordingly.

In addition to a general assertion that its treatment in Class 1 is different from that afforded to holders of Allowed Syndicate Claims, SocGen refers to two specific aspects of the Plan and its proposed treatment under the Plan in support of its argument. When analyzed against the actual terms of the Plan, however, both arguments lack any merit.

First, SocGen argues that even if it were to prevail in the SocGen Adversary Proceeding it is not assured that it will receive its Pro Rata portion of the Class 1 Recovery because Article 4.1(b) of the Plan provides that the "Class 1 Reserve shall be allocated and distributed among the holders of the Allowed SocGen Claims and the holders of the Allowed Class 4 Claims as the Bankruptcy Court shall determine . . . ." SocGen seems to be arguing that such language provides the Bankruptcy Court with discretion to allocate a portion of the Class 1 Reserve to

holders of Allowed Class 4 Claims even if SocGen prevails on each and every issue, and on each and every challenged transfer, in the SocGen Adversary Proceeding. This is a contorted and inaccurate reading of Article 4.1(b) of the Plan, the intent of which is to provide that the Class 1 Reserve shall be allocated in accordance with the outcome of the SocGen Adversary Proceeding. The language of Article 4.1(b) simply provides for the possibility that among the possible outcomes of the SocGen Adversary Proceeding are that some, but not all, of the liens or guarantees granted in favor of the Equipment Financing Agreement could be avoided, leaving SocGen with some portion of its Claim in Class 1, based on such liens and guarantees as are determined to be unavoidable, and the remaining portion of its Claim in Class 4. The Debtors acknowledge, and would be willing to make a corresponding change in the Plan for clarification if deemed necessary, that the holders of Allowed SecGen Claims shall be entitled to receive the entire Class 1 Reserve in the event that none of SocGen's liens and guarantees are avoided upon final adjudication of the SocGen Adversary Proceeding.

Second, SocGen asserts that the fact that SocGen is required to continue the defense of the SocGen Adversary Proceeding to obtain its Pro Rata share of the Class 1 Recovery, while the holders of Allowed Syndicate Claims are not, results in SocGen not receiving the same treatment in Class 1 as the holders of Allowed Syndicate Claims. Such an argument conveniently overlooks that any disparity resulting from these facts is entirely of SocGen's making.

In the first instance, SocGen fails to acknowledge that the holders of Claims under the Syndicate Agreement, in order to receive a recovery under the Plan on the Effective Date, chose to agree to the Syndicate Compromise. By so doing, they voluntarily agreed to receive a lower potential recovery than they might have received if they had continued to litigate the Syndicate Adversary Proceeding and had ultimately prevailed. As it admits in paragraph 19 of its objection, SocGen had an opportunity to settle the SocGen Adversary Proceeding but chose not

to do so. Thus, any inconvenience in terms of time, funds expended in defending the SocGen Adversary Proceeding, or otherwise, is due to an election made by SocGen and not attributable to any defect or inequality inherent in the Plan or any action by the Debtors. As the SocGen Adversary Proceeding has been brought by the Creditors' Committee on behalf of the Debtors' Estates and for the benefit of all of the Debtors' creditors, the Debtors cannot simply settle the SocGen Adversary Proceeding or agree to a distribution to SocGen on the Effective Date that would be inconsistent with the SocGen Adversary Proceeding.

Also, while lamenting the potential costs of litigating the SocGen Adversary Proceeding rather than settling its Claims in a similar fashion to the lenders under the Syndicate Agreement, SocGen fails to admit that, having decided not to settle the SocGen Adversary Proceeding, in the event that its prevails in that proceeding its recovery will exceed on a Pro Rata basis the recovery received by the holders of Allowed Syndicate Claims. Having decided to litigate the SocGen Adversary Proceeding and pursue the potential for a greater recovery than that being realized by the holders of Allowed Syndicate Claims, SocGen is estopped from objecting to the Plan on grounds that future costs of such litigation may reduce its net recovery.

For the above reasons, the Court should overrule SocGen's objections that the Plan violates sections 1122 and 1123(a)(4) of the Bankruptcy Code as those sections relate to Class 1.

2. **<u>The Plan Adequately Provides for Secured Claims</u>**

Muller Martini Corp ("MMC") has filed an objection based on its assertion that the Plan improperly provides for the treatment of Secured Claims and therefore the Court should refuse to confirm the Plan. MMC's objection is based on a mistaken reading of the Bankruptcy Code and the Plan and should be denied.

In the first instance, the Claims asserted by MMC have not yet been Allowed or classified as Secured Claims or otherwise by the Debtors. Accordingly, MMC's objection should be

viewed by the Court, and will be considered by the Debtors, in the context of the Claims resolution process called for pursuant to the Plan and under the Bankruptcy Code. Thereafter, if it is determined that MMC has an Allowed Claim which is classified as a Secured Claim, MMC will be entitled to the treatment set forth in Article 4.2 of the Plan. The proposed treatment for Secured Claims in Article 4.2 of the Plan is fully consistent with all applicable provisions of the Bankruptcy Code, in that the Plan provides that Secured Claims shall be deemed unimpaired and that a debtor may satisfy a Secured Claim by providing such creditor, at its election, Cash equal to the value of such Secured Claim, the return of such creditor's collateral securing the Secured Claim or the reinstatement of the holder's security interest. If all or any portion of MMC's Allowed Claim is not secured, then with respect to such unsecured portion of such Claim, MMC will receive the treatment provided for such portion as a Class 3 Claim. As the status of MMC's Secured Claim, including the amount thereof and the value of the security interest upon which it is based, has not yet been determined or Allowed, it is premature for the Debtors to be forced to indicate which optional treatment consistent with the Bankruptcy Code for the treatment of Allowed Secured Claims will be given to MMC. In any event, however, MMC has not provided any reason that the Court should object to the confirmation of the Plan.

3. <u>The Plan Does not Violate the Debtors' Obligations with Respect to Certain Pension Funds or Create New Contract Liabilities</u>

a. As Revised, the Plan Will Not Relieve the Debtors from Withdrawal Liability for Withdrawals Occurring After the Effective Date

The Graphic Communications Conference of the International Brotherhood of Teamsters National Pension Fund (the "GCC Fund") and GCIU (collectively with the GCC Fund, the "Funds") object to the Plan on the grounds that it allows the Debtors to discharge any liability resulting from a withdrawal from either of the Funds following the Effective Date.

Article 10.2 of the Plan will be revised to clarify that the Debtors will not be relieved from any withdrawal liability for any withdrawal from either of the Funds that occurs after the Effective Date.

b. Assumption of Unrelated CBAs Does Not Convert Previously-Incurred Partial Withdrawal Liability Into an Assumed Contract Obligation

The GCC Fund objects to the Plan based on the Debtors' assumption of certain collective bargaining agreements (the "Assumed Teamster CBAs") that cover employees represented by the Teamsters who are actively employed at various actively running Debtor facilities. Under its objection, the GCC Fund looks to bootstrap inapposite language in the Assumed Teamsters CBAs into an obligation to pay partial withdrawal liability incurred under ERISA that is wholly unrelated to the employees and facilities covered by the Assumed Teamsters CBAs. This objection fails for a number of reasons.

In its objection, the GCC Fund first points to language in the Assumed Teamster CBAs providing that "[t]he Employer agrees to be bound by the terms of [the GCC Fund's] Agreement and Declaration of Trust . . ." It then quotes language in Section 6.14 of the "Plan Document" stating that "[w]hen an Employer has a complete or partial withdrawal, the Employer shall be liable to the Plan for the amount of withdrawal liability determined under Title IV [of ERISA]." The GCC Fund fails to point out, however, that the term "Employer," as defined in the Plan Document, does not purport to include members of a contributing employer's controlled group. Thus, while the Debtor entities that are parties to the Assumed Teamster CBAs may, pursuant to the terms of such agreements, be contractually subject to the terms of Section 6.14 if and when they might incur withdrawal liability, the Assumed Teamsters CBAs and Section 6.14 do not cover any prior withdrawal liability incurred by any other employer.

The Assumed Teamster CBAs (to which the GCC Fund is not even a party) cover solely employees at the respective actively operating facilities who are the subject of the CBAs. They do not cover, and have never covered, the former employees who were employed at the shut-down facilities from which the partial withdrawal liability arose. These former employees were covered by CBAs that have previously terminated. Previously incurred partial withdrawal liability under ERISA is not somehow transformed into a current assumed contract obligation by reason of an assumed CBA that covers employees and facilities that are wholly unrelated to the former employees and shut-down facilities from which the withdrawal liability arose.

Finally, the GCC Fund's argument fails because withdrawal liability arises under ERISA's statutory provisions and not under collective bargaining agreements. See Trustees of the Amalgamated Ins. Fund v. McFarlin's, Inc., 789 F.2d 98, 104 n.2 (2d Cir. 1986) ("we do note that withdrawal liability does not derive from the collective bargaining agreement but from [ERISA].")

c. No Non-Debtor Entity Will Merge Into Any Debtor Entity Prior to the Effective Date

The GCC Fund also objects to the Plan on the grounds that the Debtors will merge certain non-debtor entities into Debtor entities prior to the Effective Date, which may lead to the discharge of control group liability as to such non-debtor entities. The Debtors intent to confirm that no non-debtor entity will be merged into any debtor entity prior to the Effective Date, so as to cause the discharge of any control group liability of such non-debtor entities.

d. No GCIU Fund Agreement Is Listed As A Rejected Employee Agreement Under the Plan

GCIU objects to the Plan to the extent that agreements with GCIU constitute "Rejected Employee Agreements" under Article 6.12 of the Plan. No agreement with GCIU is listed as a "Rejected Employee Agreement" on Exhibit 6.12(b) to the Plan. In any event, the Debtors

intend to make a clarifying modification to Article 6.12(b) of the Plan. Accordingly, there is no basis for this objection.

4. The Convenience Class is Reasonable and Necessary

Riverside has objected to confirmation of the Plan on the basis that the Debtors' structuring of the Convenience Class violates section 1122(b) of the Bankruptcy Code. The Debtors submit that the Convenience Class provided for in the Plan complies fully with all applicable provisions of the Bankruptcy Code, including section 1122(b), and fully serves the purpose for which the convenience class concept was developed. Moreover, Riverside has misconstrued the structure of the Convenience Class as provided for in the Plan.

Section 1122(b) of the Bankruptcy Code provides that a plan of reorganization may include as a convenience class one or more separate classes of unsecured claims in "an amount that the court approves as reasonable and necessary for administrative convenience." The use of a convenience class is a common feature of many large Chapter 11 proceedings, such as that being proposed by the Debtors, and provides benefits for both a debtor and the debtor's small creditors. See In re Lesser, 939 F.2d 669, 671 n.4 (8th Cir. 1991) ("It has always been assumed that the purposes of § 1122(b) was to allow special treatment for small claims, so that they could be eliminated early and reduce the number of claims that would have to be paid over time.") (citation omitted).

As Riverside notes, the primary purpose of a convenience class is to reduce the number of claims a debtor must address so as to avoid needless administrative costs. There is no requirement under the Bankruptcy Code that a debtor must provide for a convenience class; it is simply a convention provided for under the Bankruptcy Code as a tool to allow debtors to streamline their reorganization process and benefit creditors, all at a measured cost. It was

precisely with these objectives in mind that the Debtors provided for the Convenience Class under the Plan.

Specifically, the Debtors determined that by providing for a full recovery for small creditors with one or more unsecured Claims aggregating $2,500 or less, and by permitting creditors with unsecured Claims aggregating in excess of $2,500 to elect into the Convenience Class, they could reduce the number of unsecured Claims that had to be administered by one-third, at a reasonable cost to their bankruptcy estates. Indeed, with balloting on the Plan now complete, the aggregate unsecured Claims of approximately 1,300 creditors are being resolved by means of the Convenience Class -- out of 3,500 Ballots delivered to creditors in all voting class -- at a aggregate estimated cost of approximately $3 million.

Quite frankly, Riverside's objections are difficult to comprehend. Riverside states that it is being compelled to accept to $2,500 in the aggregate for all of its Convenience Claims -- that is simply not the case. Riverside received 26 Ballots which represented a single Claim each, ranging in amount from a low of $550 to a high of $135,605, with seven of such Claims being less than $2,500, and another five being less than $5,000. With respect to those Claims under $2,500, Riverside will receive full recovery, and it is difficult to understand its concern that it is not able to "opt out" of full recovery. As to the five Claims that are over $2,500 but less than $5,000, Riverside had the option to elect into the Convenience Class for each of such Claims, thereby receiving a cash recovery of at least 50%, or receiving a note for 50% of the amount of each such Claim as a Class 3 holder, which Riverside apparently chose, as it failed to make any Convenience Class elections. With respect to the remaining 14 Ballots representing single Claims, as well as the one additional Ballot that represented 16 aggregated Claims, Riverside will also receive Class 3, or in some instances Class 4, treatment. Once again, the treatment of

Riverside's Claims appears perfectly consistent with the purposes for which the convenience class concept was incorporated in the Bankruptcy Code.

It is equally difficult to understand Riverside's objection that it is being penalized for having acquired its Claims from third party assignors. Once again, this is not the case. Without responding to Riverside's assertion that it has suffered an injury from the structure of the Convenience Class, the Debtors note that Riverside's objection makes it clear that Riverside has failed to recognize that its Claims are only being aggregated by assignor as of the date on which the relevant proof of claim was filed. Riverside alleges that the Convenience Class "if approved by this Court, would violate the fundamental principle of law that an assignee, such as Riverside, 'steps into the shoes' of its assignor and obtains the same rights and privileges as assignor." See Riverside Objection ¶14. Notwithstanding Riverside's argument, the Debtors did in fact provide for Ballots to be circulated on that basis, and as a result Riverside received 27 Ballots.

Moreover, the purpose of the Convenience Class was to both reduce administrative burden to the Debtors and benefit the Debtors' considerable small trade creditors, all at a measured cost. In this regard, the Convenience Class in the Plan achieved all of those goals, to the benefit of the Debtors' Estates and to the holders of Claims who were classified as, or otherwise elected, the Convenience Class. The Debtors were fair and reasonable in the creation of the Convenience Class, and Riverside's objection to the Convenience Class should be overruled.

5. The Debtors Intend to Comply with their Obligations to File Tax Returns

New Jersey has objected to the Plan on grounds that it does not contain a provision that would require the Debtors to file all tax returns. See New Jersey's Objection at ¶¶ 25-27. The Debtors fully intend to comply with all of their obligations to file tax returns and remit taxes. To

the extent that New Jersey alleges that the Debtors have not complied with their obligations to file certain tax returns, New Jersey had the opportunity to file a timely proof of claim or exercise other remedies available to taxing authorities under the Bankruptcy Code or applicable non-bankruptcy law. The alleged failure to file tax returns, without more, is not a sufficient basis to object to the confirmation of the Plan and the Debtors respectfully request that New Jersey's objection be overruled.

6. The Plan's Retained Jurisdiction Provisions are Consistent with the Bankruptcy Code

The United States has objected that the provisions of Article XII of the Plan, relating to the Bankruptcy Court's retention of exclusive jurisdiction of matters relating to or arising out of the Chapter 11 Cases after the Effective Date, conflict with the inherent concurrent jurisdiction of other federal courts to hear cases involving the Debtors or Reorganized Debtors and matters related to aspects of the Plan, including the scope of the Debtor's discharge under the Plan and the releases granted to relevant parties under the Plan.

The Debtors submit that the provisions of Article XII are fully consistent with the Bankruptcy Code and other applicable federal law and note that the provisions of Article XII granting exclusive jurisdiction to the Bankruptcy Court for the matters enumerated therein are standard for Plans confirmed in the Second Circuit. See, e.g., In re Calpine Corporation, et al., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y.) (Plan of Reorganization, at §12.1); In re Delphi Corporation, et al., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y.) (Plan of Reorganization, at Article 13); In re Worldcom, Inc., et al., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y.) (Plan of Reorganization, at Article 12.01); In re Enron Corp., *et al.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y.) (Plan of Reorganization, at Article 38). The Debtors believe that the practice of permitting parties to commence legal actions in other courts to challenge the orders of the

Bankruptcy Court or to address issues within the knowledge and expertise of the Bankruptcy Court gained in the Chapter 11 Cases could threaten the efficient and appropriate handling of matters relevant to the emergence of the Debtors in the period prior to the time that the Chapter 11 Cases are closed in accordance with the Bankruptcy Code.

Nonetheless, in an effort to resolve any concerns that the DOJ may have, the Debtors intend to modify Article XII of the Plan to provide that Article XII shall not be construed to expand the Bankruptcy Court's jurisdiction beyond that allowed by applicable law or to prohibit a party from invoking the jurisdiction of other courts or tribunals in connection with matters relating to a governmental unit's police or regulatory powers. The Debtors believe that the inclusion of such a provision, which the Debtors note have been included in plans of reorganization confirmed in the Second Circuit[40], should address any reservations raised by the DOJ in their objection.

7. The Plan Does Not Purport to Impose an Interest Allocation Method on Tax Payments Received by Virginia

Virginia objects to Article 8.12 of the Plan, which provides that

> To the extent that any Allowed Claim to which a distribution under this Plan relates is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for United States and Canadian federal income tax purposes to the principal amount of the Claim (including the secured and unsecured portion of the principal amount of such Claim) first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest (including interest in respect of any secured portion of such Claim).

This provision applies to distributions on account of indebtedness and is not intended in any way to apply to payments or Plan distributions on account of taxes. Moreover, Article 8.12

[40] See In re The New York Racing Association Inc., Case No. 06-12618 (JMP) (Bankr. S.D.N.Y.) (Plan of Reorganization at Article 25).

does not impose any requirements on Virginia with respect to the manner in which Virginia must process and apply tax payments from the Debtors. Nevertheless, for the avoidance of doubt, the Debtors will provide in the order confirming the Plan that Article 8.12 does not apply to distributions on account of tax obligations.

V. CONCLUSION

For all of the foregoing reasons, the Debtors submit that the Plan (including the request for consolidation contained therein) fully satisfies all applicable requirements of the Bankruptcy Code and should be approved and confirmed by the Court.

Dated: June 26, 2009

Respectfully submitted,

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