

ARNOLD & PORTER LLP  
399 Park Avenue  
New York, New York 10022-4690  
Telephone: (212) 715-1000  
Facsimile: (212) 715-1399  
Michael J. Canning (MC 8060)

Proposed Counsel for the Debtors  
and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
Quebecor World (USA) Inc., <u>et al.</u> ,	Case No. 08-10152 (JMP)
Debtors.	Jointly Administered
	Honorable James M. Peck

**MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(A), 363, 1107 AND 1108  
AUTHORIZING PAYMENT OF CERTAIN ESSENTIAL PREPETITION  
SHIPPING AND WAREHOUSING CHARGES INCLUDING FOR GOODS IN TRANSIT**

The above-captioned debtors (collectively, the “Debtors”)<sup>1</sup> hereby move the Court (the “Motion”) for the entry of an order, substantially in the form attached hereto as Exhibit A,

<sup>1</sup> Contemporaneously, herewith, the Debtors have filed a motion to have their Chapter 11 cases consolidated for procedural purposes and jointly administered. The Debtors are the following entities: Quebecor World (USA) Inc., Quebecor Printing Holding Company, Quebecor World Capital Corporation, Quebecor World Capital II GP, Quebecor World Capital II LLC, WCZ, LLC, Quebecor World Lease GP, Quebecor World Lease LLC, QW Memphis Corp., The Webb Company, Quebecor World Printing (USA) Corp., Quebecor World Loveland Inc., Quebecor World Systems Inc., Quebecor World San Jose Inc., Quebecor World Buffalo Inc., Quebecor World Johnson & Hardin Co., Quebecor World Northeast Graphics Inc., Quebecor World UP / Graphics Inc., Quebecor World Great Western Publishing Inc., Quebecor World DB Acquisition Corp., WCP-D, INC., Quebecor World Taconic Holdings Inc., Quebecor World Retail Printing Corporation, Quebecor World Arcata Corp., Quebecor World Nevada Inc., Quebecor World Atglen Inc., Quebecor World Krueger Acquisition Corp., Quebecor World Book Services LLC, Quebecor World Dubuque Inc., Quebecor World Pendell Inc., Quebecor World Fairfield Inc., QW New York Corp., Quebecor World Dallas II Inc., Quebecor World Nevada II LLC, Quebecor World Dallas, L.P., Quebecor World Mt. Morris II LLC, Quebecor World Petty Printing Inc., Quebecor World Hazleton Inc., Quebecor World Olive Branch Inc., Quebecor World Dittler Brothers Inc., Quebecor World Atlanta II LLC,

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granting the Debtors authorization to pay certain essential prepetition shipping and delivery charges including for goods in transit. In support of this Motion, the Debtors rely on the Declaration of Jeremy Roberts in Support of Chapter 11 Petitions and First Day Orders (the “Declaration”). In further support of this Motion, the Debtors respectfully represent as follows:

### **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 1107 and 1109 of the Bankruptcy Code.

### **Background**

4. On January 21, 2008 (the “Petition Date”), the 53 Debtors filed their voluntary petitions for relief (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).
5. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in this case.

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Footnote continued from previous page

Quebecor World RAI Inc., Quebecor World KRI Inc., Quebecor World Century Graphics Corporation, Quebecor World Waukeg Inc., Quebecor World Logistics Inc., Quebecor World Mid-South Press Corporation, Quebecor Printing Aviation Inc., Quebecor World Eusey Press Inc., Quebecor World Infiniti Graphics Inc., Quebecor World Magna Graphic Inc., Quebecor World Lincoln Inc, and Quebecor World Memphis LLC.

6. On January 20, 2008, the Debtors' corporate parent, Quebecor World, Inc. ("QWI") together with each of the Debtors commenced a proceeding before the Superior Court, Commercial Division, for the Judicial District of Montreal (the "Canadian Court") for a plan of compromise or arrangement (the "Canadian Proceeding") under the Canadian Companies' Creditors Arrangement Act ("CCAA").<sup>2</sup> Each of the Debtors was joined in the Canadian Proceeding, in order that each Debtor may obtain the protection of a stay under the CCAA as well as under the Bankruptcy Code.

### **I. The Debtors' Business**

7. The Debtors collectively operate the second largest commercial printing business in the United States, maintaining approximately 78 facilities in 29 states. QWI is a Canadian corporation and the corporate parent of the Debtors, having been incorporated on February 23, 1989 pursuant to the Canada Business Corporations Act to combine the assets constituting what was then the printing division of Quebecor Inc. (QWI, together with the Debtors and all of QWI's debtor and non-debtor subsidiaries and affiliates are referred to herein as "QW World"). QWI is a public company with shares listed on the Toronto Stock Exchange and the New York Stock Exchange, and its registered and principal office is located in the City of Montreal in the Province of Quebec, Canada.

8. QW World's United States assets and operations are organized under QWI's principal United States subsidiary, Quebecor World (USA) Inc. ("QWUSA"). QWUSA, one of the Debtors, is a wholly-owned subsidiary of Quebecor Printing Holding Company ("QPCH"), also a Debtor, and a direct, wholly-owned subsidiary of QWI. As the corporate parent of QW

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<sup>2</sup> The Canadian Court appointed Ernst & Young, Inc. to serve as Monitor for the Canadian Proceeding, and UBS Investment Bank is serving as a financial advisor to the Canadian Affiliates.

World's United States subsidiaries, QWUSA oversees the Debtors' cash management, operations, employee matters and other areas. In addition, QWUSA is a party to certain of the Debtors' prepetition financing agreements.

9. In addition to the Debtors' operations and assets in the United States, and QWI's operations and assets in Canada, QW World has operations and assets in Latin America, Europe and Asia, which are not the subject of any bankruptcy or insolvency proceeding. In Canada, QW World is the second largest commercial printer with 16 facilities in 5 provinces through which QW World offers a diversified mix of printed products and related value-added services, both to the Canadian market and internationally. QW World is also the largest independent commercial printer in Europe with 17 facilities operating in Austria, Belgium, Finland, France, Spain, Sweden, Switzerland and the United Kingdom, and is the largest commercial printer in Latin America with eight facilities, and has one facility in India.

10. For the year ending December 31, 2006, approximately 79% of QW World's revenue was derived from North American operations, 17% from European operations and 4% from Latin American operations. QW World's operations in the United States account for approximately 62% of overall revenue.

11. QW World's key customers include the largest publishers, retailers and catalogers in the geographic areas in which QW World operates. In the magazine group, QW World prints magazines for publishers, including, for example, 15 magazine titles for Time, Inc.,<sup>3</sup> Cosmopolitan for Hearst Corp., *Elle* for Hachette-Filippachi Magazines US, *ESPN the Magazine* for Walt Disney Corp., *Forbes* for Forbes Inc. and *In Touch Weekly* for Bauer Publishing USA, while QW World's retail insert group includes customers such as CVS, Sears, JC Penney,

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<sup>3</sup> These include *Time*, *Fortune*, *Money*, *Sports Illustrated*, *People*, *Entertainment Weekly*, *Southern Living*, *Cooking Light* and *Coastal Living*.

Kohl's, and Walgreens. QW World's operations also encompass (a) catalogues for customers such as Williams-Sonoma, Oriental Trading Company, Victoria's Secret, IKEA, Cabelas and Bass Pro, (b) books for McGraw-Hill, Scholastic, Simon & Schuster, Thomas Nelson, Time-Warner and Pearson Education, (c) directories for Yellow Book USA, RH Donnelly, Windstream and Frontier in the United States, the Yellow Pages Group in Canada, as well as Telmex and Telefonica in Latin America and (d) direct mail services.

12. QW World's sales and marketing activities are highly integrated and reflect an increasingly global approach to customers' needs, complemented by product specific sales efforts. Sales representatives are located in plants or in regional offices throughout North America, Europe and Latin America, and customers are able to coordinate simultaneous printing throughout QW World's network through a single sales representative.

13. Not surprisingly, the principal raw materials used in QW World's businesses are paper and ink. The Debtors, together with their non-debtor affiliates, utilize centralized raw material purchases in order to avoid administrative complications and realize cost benefits from efficiencies of scale. For most purchases, QW World negotiates with a limited number of suppliers to maximize purchasing power, although QW World does not rely on any single supplier.

14. Much of the Debtors' business is seasonal, with the majority of historical operating income occurring during the second half of the financial year. This is primarily due to seasonal advertising patterns and the related higher number of magazine pages, new product launches and back-to-school, retail and holiday catalogue promotions. Because the Debtors depend on advertising for a significant portion of their revenue, operating results are also sensitive to prevailing economic conditions.

## **II. The Debtors' Industry**

15. Commercial printing is a highly fragmented, capital intensive industry. The North American, European and Latin American printing industries are very competitive in most product categories and geographic regions. The Debtors estimate that in 2006, in the United States alone, there were approximately 30,700 commercial printers, with industry analysts considering most of the industry's markets to be currently oversupplied – and competition is significant. Competition is largely based on price, quality, range of services offered, distribution capabilities, customer service, availability of printing time on appropriate equipment and state-of-the-art technology.

16. In addition to competition from other commercial printers, technological changes continue to erode the Debtors' businesses, as increased accessibility and quality of electronic alternatives to the traditional delivery of printed documents, through the increased use of the internet and the electronic distribution of media content, documents and data, which provide consumers with virtually instant access to information. Nevertheless, while such trends put pressure on the Debtors' operations, the Debtors believe printed media will continue to play a strong role in marketing, advertising and publishing.

## **III. Prepetition Credit Obligations and Receivables Facility**

17. The principal debt obligations and receivables facility of the Debtors currently outstanding consist of:

- (a) A \$750 million revolving credit facility with a bank syndicate under which the Royal Bank of Canada is administrative agent, secured up to a maximum of \$135 million by (i) unlimited guaranties, dated on or about October 26, 2007 from certain of the Debtors; (ii) a pledge of the shares of Debtor QW Memphis Corp. ("QW Memphis") by Debtors QWUSA, the Webb Company and Quebecor World Memphis LLC, dated October 26, 2007; (iii) a pledge of the shares of QWUSA by QPHC, dated October 26, 2007; (iv) security on all personal and real property of QW Memphis, dated October 26, 2007, excluding accounts receivable subject to

the North American receivable sale program and certain real estate located in Covington, Tennessee; and (v) security on all inventory of QWI located in Canada, dated October 26, 2007. As of January 11, 2008, the aggregate amount of indebtedness outstanding under the Bank Syndicate Agreement was approximately \$735 million.

- (b) An equipment financing agreement dated as of January 13, 2006 (as amended) among QWI, as borrower, QWUSA, as guarantor, and Société Générale (Canada) (“Soc Gen”), as lender, providing for an equipment financing credit facility in the aggregate amount of the Canadian dollar equivalent of €136,165,415 expiring on July 1, 2015.<sup>4</sup> The equipment financing facility is guaranteed and secured on a pari passu basis up to \$35 million by the same collateral as the credit facilities under the bank syndicate agreement. As of January 11, 2008, the aggregate amount outstanding under the Equipment Financing Agreement was approximately \$155 million.
- (c) Certain of the Debtors and QWI are obligors under note issuances consisting of (i) an indenture dated as of November 3, 2003 among Quebecor World Capital Corporation (“QWCC”), as issuer, QWI, as guarantor, and Wilmington Trust Company, as trustee, providing for the issuance of 4.875% senior notes due in 2008 and 6.125% senior notes due in 2013. The aggregate amounts outstanding under such notes as of September 30, 2007 were \$199.9 million and \$398.2 million, respectively; (ii) an indenture dated as of December 18, 2006 among QWI, as issuer, QWUSA, Quebecor World Capital LLC (“QWLLC”) as predecessor in interest to Quebecor World Capital II LLC (“QWLLC II”) and Quebecor World Capital ULC (“QWULC”) as predecessor in interest to Quebecor World Capital II GP (“QWCGP”), as guarantors, and Wilmington Trust Company, as trustee, providing for the issuance of 9.75% senior notes due in 2015. The aggregate amount outstanding under such notes as of September 30, 2007 was \$400 million; (iii) an indenture dated as of March 6, 2006 among QWULC as predecessor in interest to QWCGP, as issuer, QWI, QWUSA and QWLLC as predecessor in interest to QWLLC II, as guarantors, and Wilmington Trust Company, as trustee, providing for the issuance of 8.75% senior notes due in 2016. The aggregate amount outstanding under such notes as of September 30, 2007 was \$450 million; and (iv) an indenture dated as of January 22, 1997 among QWCC, as issuer, QWI (then known as Quebecor Printing Inc.), as guarantor, and The Bank of New York, as trustee, providing for the issuance of 6.50% senior notes due in 2027. The aggregate amount outstanding under such notes as of September 30, 2007 was \$3.2 million. The terms and conditions of the Note Issuances limit the aggregate amount of secured indebtedness that may be incurred under the Bank Syndicate Agreement and the Equipment Finance Agreement to approximately \$170 million.

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<sup>4</sup> As of January 15, 2008, this is equivalent to approximately U.S. \$202,571,926.

- (d) QWI and certain of the Debtors are parties to an accounts receivable facility pursuant to: (i) a Canadian receivables purchase agreement dated as of October 24, 2007 between QWI, as seller, and Quebecor World Finance Inc. (“QWF”), as purchaser, whereby QWI sells, with limited recourse, its Canadian trade receivables on a revolving basis in an amount not to exceed \$135 million Canadian; (ii) a U.S. receivables purchase agreement dated as of September 24, 1999 (as amended) among certain Debtors, as sellers, and QWF, as purchaser, whereby the sellers sold, with limited recourse, all of their U.S. trade receivables on a revolving basis in an amount not to exceed \$408 million (\$459 million during peak season); and (iii) an amended and restated receivables sale agreement dated as of September 24, 1999, as amended and restated as of December 22, 1999 (as further amended the “RSA”) among, inter alia, QWF, as seller, the purchasers party thereto and ABN Amro Bank N.V., as agent (“ABN”). Pursuant to the RSA, ABN holds a first priority lien on all of the Debtors’ and QWI’s accounts receivable purchased by QWF under the respective Canadian and U.S. receivables purchase agreements. The Canadian receivables program was rolled into the U.S. receivable program on or about October 24, 2007, and as of December 31, 2007 the aggregate amount outstanding on account of the Debtors’ accounts receivable subject to the RSA was approximately \$428 million.

#### **IV. Developments Necessitating Restructuring**

18. QWI’s financial performance has suffered in the past few years, especially with respect to its European operations, as a result of a combination of factors, including declining prices and sales volume, and a temporary disturbance caused by a major retooling of its printing operations initiated in 2002. While it has substantially completed its retooling program in North America, and achieved, and even surpassed, its cost reduction objectives, QWI has not yet met its forecasted earnings projections. Rather, the combination of significant capital investments and continued operating losses, principally as a result of its European operations, together with the write down of its European assets, including goodwill, has resulted in increased financing needs. During this period, it was also necessary for QWI to repurchase certain private notes in order to avoid breaching certain debt to equity ratios, while also facing reduction in amounts available under the Bank Syndicate Agreement. These factors have had a significant impact on all of the members of QW World’s corporate family, and, accordingly, have adversely impacted the Debtors’ operations and financial position.

19. More recent events have further complicated the Debtors' efforts to improve their balance sheets and financial position. First, on November 13, 2007, QWI announced a refinancing plan consisting of a \$250 million equity offering and a \$500 million debt offering. On November 20, 2007, however, QWI announced the withdrawal of such refinancing plan due to adverse financial market conditions. Second, on December 13, 2007, QWI announced that it would not be able to consummate a previously announced transaction to sell its European operations, which would have resulted in proceeds to QWI of approximately \$341 million, to be paid in cash, shares and through the assumption of indebtedness.

20. In 2006, restructuring initiatives related to the closure or downsizing of various facilities were undertaken, mainly in connection with the North American and European operations, including the closure of printing and binding facilities in Illinois in the catalogue group, the closure of the Kingsport, Tennessee facility in the book group, and the closure of the Red Bank, Ohio, and the Brookfield, Wisconsin facilities in the magazine group, which further affected the Debtors' liquidity.

21. Although the Debtors have to date aggressively sought to raise additional funds, they have not been successful, and the lenders under the Bank Syndicate Agreement have recently indicated that they will not provide any further advances under the bank facility beyond those currently permitted. Facing year end covenant defaults under the Bank Syndicate Agreement, the Debtors and QWI obtained a waiver from the bank syndicate lenders and from the sponsors of its North American securitization program, subject to the satisfaction of certain conditions and refinancing milestones, including obtaining \$125 million in new financing by January 15, 2008. The Debtors and QWI were not successful in satisfying the conditions and refinancing milestones set by the bank syndicate lenders.

22. Moreover, the Debtors are currently facing a severe liquidity crisis. Even if operations were conducted in the normal course of business, the Debtors' cash flow projections indicate that they will require approximately \$225 million to satisfy their obligations through the end of January 2008, with virtually no availability under the Bank Syndicate Agreement. In this regard, as of November 30, 2007 QWI had aggregate outstanding trade payables of approximately \$526.7 million, of which approximately \$120 million are attributable to the Debtors, \$135 million are attributable to QWI's other North American operations, \$211 million are attributable to the European operations and \$60.6 million are attributable to Latin American operations. In addition to ordinary course payments, QWI was also contractually obligated to make debt payments of approximately \$19.5 million by January 15, 2008, which were not paid and to make payments related to pension obligations of approximately \$10 million which were only partially made.

23. Quite simply, QWI and the Debtors do not have sufficient liquid resources to pay obligations that either are now due or are expected to become due in January, 2008. The lenders under the Bank Syndicate Agreement have indicated that they will not provide any advances under the bank facility beyond those currently permitted under the Bank Syndicate Agreement, suppliers are demanding cash terms and customers are threatening to cease doing business with QWI and the Debtors altogether unless letters of credit or similar accommodations are provided to such customers.

24. Although the Debtors represent a significant portion of the operations of QWI – a global leader in the printing field – and enjoy significant competitive advantages and a strong customer base, the fact remains that their current financial situation cannot continue. The Debtors' overall businesses remain viable and stable, but restructuring changes must be made,

including the discontinuance of business segments that cannot be made profitable and the streamlining of other business segments to increase profitability, in order to return the Debtors to financial health.

### **Relief Requested**

25. By this Motion, the Debtors seek entry of an order authorizing them to make certain payments to Shippers and Warehousemen (as defined below) that the Debtors determine, in the exercise of their business judgment, to be necessary and appropriate in order to obtain the release of raw materials, inventory, finished goods, tooling, machinery and equipment (collectively, the “Goods”) held by such Shippers and Warehousemen and such other prepetition expenses that the Debtors determine, in the exercise of their business judgment, to be necessary and appropriate (i) to obtain Goods in transit and satisfy the liens, if any, in respect thereof, (ii) to satisfy valid liens on Goods which were shipped or stored by Shippers and Warehousemen, (iii) to prevent Shippers and Warehousemen from pursuing collection against the Debtors’ customers.

### **Basis for Relief**

26. The Debtors’ businesses rely on the timely shipment and delivery of Goods and depends upon the time-sensitive receipt of raw materials and other components essential to the printing, binding, transportation, logistics and distribution businesses.. Magazines, catalogues, newspapers and books must be printed, shipped and delivered on timetables set by the Debtors’ customers. In addition, the Debtors’ business is capital intensive and they often require shipments of new parts, equipment and machinery to run their printing business. In this regard, the Debtors rely on domestic and foreign carriers, movers, shippers and other third-party service providers (collectively, the “Shippers”) to ship, transport, store and deliver Goods, as well as a network of third-party warehouses to store Goods in transit (collectively, the “Warehousemen”).

As used in this Motion, the terms Shippers and Warehousemen are intended to include, without limitation, shippers, warehousemen, assembly and distribution agents, fulfillment centers, mailing services, consolidation facilities, freight agents, distribution centers, railroads, logistics companies and motor carriers.

27. The services provided by the Shippers and Warehousemen are critical to the day-to-day operations of the Debtors' businesses. At any given time, there are dozens of shipments en route to and from the Debtors' various plants and facilities. Accordingly, certain Shippers and Warehousemen are currently in possession of Goods that are vital to the Debtors' businesses. The Debtors estimate that, as of Petition Date, outstanding charges owing to Shippers and Warehousemen (the "Shipping and Warehousing Charges") equaled approximately \$15 to 20 million. The Debtors are not proposing to pay all of these charges, but only certain limited categories as described below.

28. The first category represents Goods in transit or otherwise in the possession of a Shipper or Warehouseman. Due to the commencement of the Chapter 11 Cases, Shippers and Warehousemen who hold Goods for delivery to or from the Debtors may refuse to release those Goods pending payment for their prepetition services, thereby disrupting the Debtors' operations. Indeed, under some state laws, a Shipper or Warehouseman may have a lien on Goods in its possession, which secures the charges or expenses incurred in connection with the transportation or storage of such Goods. Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Shippers or Warehousemen, as bailees, may be entitled to adequate protection in the form of a possessory lien.

29. Following the commencement of the Chapter 11 Cases, the Debtors will be intensely focused upon continuing to provide the level of responsiveness and service required by

the Debtors' customers. The Debtors rely on timely shipment and delivery of raw materials and finished, printed materials, such that even a temporary delay could cause severe disruptions to the Debtors' business operations resulting in potential liquidated damages, contractual breaches and even the possibility of termination of agreements. Accordingly, it is essential to the Debtors' businesses that the Shippers and Warehousemen continue to perform and that they not retain or hold raw materials or finished goods because of concerns caused by the pendency of the Chapter 11 Cases.

30. The Debtors request authorization to make those payments to the Shippers and Warehousemen that they determine, in the exercise of their business judgment, to be necessary and appropriate for the continued operation of their businesses. If Shipping and Warehousing Charges are not paid, many of the independent Shippers and Warehousemen may refuse to perform additional services for the Debtors. In such event, the Debtors will incur additional expenses (such as premium shipping and storage costs) to replace the Shippers and Warehousemen, the amounts of which will likely exceed the amount of unpaid prepetition Shipping and Warehousing Charges that the Debtors seek authorization to pay.

31. Moreover, if Goods in transit to the Debtors' customers are not delivered, or are delayed, the expectations of the Debtors' customers may be frustrated, resulting in a loss of goodwill and hampering the Debtors' ability to continue to operate their businesses and reorganize.

32. Shippers and Warehouseman may also seek to assert liens with respect to Goods that they had shipped or stored, but which are no longer in their possession, but instead are in the possession of the Debtors or the Debtors' customers. The Debtors request authorization to make such payments as they determine in the exercise of their business judgment to be necessary and

appropriate to avoid interference with their business operations caused by the assertion of such liens.

33. There may also be situations in which Shippers or Warehouseman may assert that they are entitled to seek payment from the Debtors' customers directly for Goods shipped to such customers or stored prior to delivery to such customers to the extent the Debtors fail to pay for such shipping or storage. Were Shippers or Warehousemen able to obtain collection directly from the Debtors' customers for such charges, it could have a terrible effect on the Debtors relationships with its customers' relationships that are essential for the Debtors' businesses and possible reorganization.<sup>5</sup>

34. In return for payment of the Shipping and Warehousing Charges on account of prepetition obligations made in the ordinary course of business, (unless waived by the Debtors in their sole discretion), the Shippers and Warehousemen will be required to (i) continue to provide services to the Debtors during the pendency of the Chapter 11 Cases on the most favorable terms that existed prior to the Petition Date and (ii) agree that they will not cancel on less than 90 days notice any contract or agreement pursuant to which they provide services to the Debtors. If any Shipper or Warehouseman then accepts payment on account of a prepetition obligation of the Debtors, and thereafter does not continue to provide services to the Debtors on the most favorable prepetition terms, any payments made shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, any such claim held by such Shipper and Warehouseman shall be reinstated as a prepetition claim in the amount so

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<sup>5</sup> This authorization is not intended to provide Shippers and Warehousemen a blanket right to obtain payment on all prepetition claims, but rather to provide the Debtors with the flexibility to deal with those situations where Shippers and Warehousemen have legal rights respect to prepetition obligations the exercise of which could adversely affect Debtors' operations.

recovered. The Debtors also seek authorization but not direction to obtain written verification, before issuing payment to a Shipper or Warehouseman, that such Shipper and Warehouseman will (a) continue to provide services to the Debtors during the pendency of these Chapter 11 Cases on the most favorable terms that existed prior to the Petition Date and (b) agree that they will not be permitted to cancel on less than 90 days notice any contract or agreement pursuant to which they provide services to the Debtors; provided, however, that the absence of such written verification shall not limit the Debtors' rights sought hereunder. Nothing in this paragraph shall preclude a Shipper or Warehouseman from contesting such treatment by making a written request to the Debtors to schedule a hearing before this Court, which hearing the Debtors shall set at the next regularly scheduled omnibus hearing date occurring more than ten days after the date of such Shipper's or Warehouseman's request.

#### **Basis for Relief Requested**

35. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor-in-possession to continue to operate its business. Section 363(c) of the Bankruptcy Code authorizes a debtor-in-possession operating its business pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or hearing. The Debtors submit that the payment of Shipping and Warehousing Charges, in the ordinary course of business, is permitted by sections 363(c), 1107(a), and 1108 of the Bankruptcy Code, without further application to the Court.

36. Notwithstanding the foregoing, out of an abundance of caution, the Debtors are seeking the Court's authorization to continue to pay the Shipping and Warehousing Charges. With respect to the Debtors' prepetition obligations to Shippers and Warehousemen, section 105(a) of the Bankruptcy Code authorizes the Court to issue "any order, process, or judgment

that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The purpose of section 105(a) is to ensure a bankruptcy courts [sic] power to take whatever action “is appropriate or necessary in aid of the exercise of [its] jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01 (15th ed. rev. 2004). The Debtors submit that the relief requested in this Motion is critical to the Debtors and is justified under section 105(a) of the Bankruptcy Code.

37. Moreover, the relief requested is supported by the “doctrine of necessity.” The doctrine recognizes that satisfaction or prepetition obligations may be necessary to maintain the continuity of a debtor’s business. See In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors’ claims authorized under “necessity of payment” doctrine); In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (necessity of payment rule applies to chapter 11 debtors) (citing Dudley v. Mealey, 147 F.2d 268 (2d Cir. 1945)); In re Gulf Air, Inc., 112 B.R. 152, 153-54 (Bankr. W.D. La. 1989) (allowing payment of prepetition claims under the “doctrine of necessity”).

38. The bankruptcy court’s exercise of its authority under section 105(a) under the “doctrine of necessity” is appropriate to carry out specific statutory provisions of chapter 11, specifically, sections 1107(a), 1108 and 363(b)(1), which authorize a debtor-in-possession to maintain and operate the debtor’s business and use estate property outside of the ordinary course of business. Indeed, a debtor-in-possession operating a business under section 1108 has a fiduciary duty to protect and preserve the estate, including the going concern value of an operating business. See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”).

39. A bankruptcy court's exercise of its authority under section 105(a) is also necessary to carry out two central policies underlying chapter 11: (i) to permit the successful rehabilitation of the debtor, NLRB v. Bildisco & Bildisco, 465 U.S. 513, 527 (1984), and (ii) to preserve going concern value and maximize property available to satisfy all creditors. Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. La Salle St. P'ship, 526 U.S. 434, 453 (1999). Granting the relief requested in this Motion will enhance the likelihood of a successful reorganization.

40. The Debtors' creditors also will benefit from the relief sought herein. If the Debtors are prohibited from paying the Shipping and Warehousing Charges consistent with their past business practices, then the Shippers and Warehousemen may refuse to deliver or release Goods, thereby damaging the Debtors' businesses. They may also alter the terms of their business with the Debtors, resulting in disruptions to the Debtors' businesses and, ultimately, a loss in confidence by the Debtors' customers. The Order requested hereunder will protect the Debtors' goodwill and going concern value during this restructuring process and enhance the Debtors' ability to generate revenue.

41. Moreover, to the extent that Shippers and Warehousemen have enforceable liens, then paying all amounts owing prepetition is a necessary step in order to obtain a release of those liens and the underlying Goods.

42. Relief similar to that requested here has been routinely granted in other large chapter 11 cases in this and other jurisdictions. See, e.g., In re Tower Auto., Inc., Case No.05-10578 (ALG) (Bankr. S.D.N.Y. Feb. 3, 2005); In re Spiegel, Inc., Case No. 03-11540 (CB) (Bankr. S.D.N.Y. Mar. 18, 2003); In re Teligent, Inc., Case No. 01-12974 (SMB) (Bankr. S.D.N.Y. June 13, 2001); In re the Warnaco Group, Inc., Case No. 01-41643 (Bankr. S.D.N.Y. June 11, 2001); In re Kmart Corp., Case No. 02-B02474 (Bankr. N.D. Ill. Jan. 25, 2002).

43. New Rule 6003 of the Bankruptcy Rules, which became effective just last month, generally precludes the Court from authorizing the payment of prepetition obligations until 20 days after the petition is filed, but there is an exception for cases of “immediate and irreparable harm.” The Debtors believe that such harm will occur if they are not able at the outset of these cases to pay amounts owing to Shippers and Warehousemen.

44. Accordingly, the Debtors respectfully request that they be authorized, in the exercise of their reasoned business judgment, to pay the Shipping and Warehousing Charges as they determine to be beneficial, in the ordinary course of their businesses and without further application to this Court.<sup>6</sup>

#### **Memorandum of Law**

45. This Motion sets forth citations to the applicable authority and a discussion of their application to the requests set forth in this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement under Local Bankruptcy Rule 9013-1(b) that the Debtors submit a separate memorandum of law in support of the Motion, and request that the Court waive such requirement with respect to this Motion.

#### **Notice**

46. No trustee, examiner or creditors’ committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to (a) the 60 largest unsecured creditors of the Debtors, (b) the Royal Bank of Canada as administrative agent under the Bank Syndicate

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<sup>6</sup> Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

Agreement, (c) Société Générale (Canada), (d) Wilmington Trust Company, as trustee for the 4.875% senior notes due in 2008 and 6.125% senior notes due in 2013, (e) Wilmington Trust Company, as trustee for the 9.75% senior notes due in 2015, (f) Wilmington Trust Company, as trustee for the 8.75% senior notes due in 2016, (g) the Bank of New York as trustee for the 6.50% senior notes due in 2027, (h) the Debtors' proposed post-petition lender, (i) the United States Trustee for the Southern District of New York, (j) the Securities and Exchange Commission, (k) the Internal Revenue Service, (l) the United States Department of Justice, and (m) Ken Coleman, Esq., Allen & Overy, as counsel for the Monitor. The Debtors submit that no other or further notice of this Motion is required. A copy of the Motion is also freely available on the website of the Debtors' proposed claim and noticing agent, Donlin, Recano & Company, Inc. ("Donlin, Recano"), at [www.donlinrecano.com](http://www.donlinrecano.com).

**No Prior Request**

47. No prior application for the relief requested in this Motion has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form of Exhibit A, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: January 22, 2008

Respectfully submitted,

/s/Michael J. Canning  
ARNOLD & PORTER LLP  
399 Park Avenue  
New York, New York 10022-4690  
Telephone: (212) 715-1000  
Facsimile: (212) 715-1399  
Michael J. Canning (MC 8060)

*Proposed Counsel for the Debtors  
and Debtors-in-Possession*

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

Quebecor World (USA) Inc., et al.,

Debtors.

Chapter 11

Case No. 08-10152 (JMP)  
Jointly Administered

Honorable James M. Peck

**ORDER UNDER 11 U.S.C. §§ 105(A), 363, 1107 AND 1108 AUTHORIZING PAYMENT  
OF CERTAIN ESSENTIAL PREPETITION  
SHIPPING AND WAREHOUSING CHARGES INCLUDING FOR GOODS IN TRANSIT**

This matter coming before the Court on the motion (the “Motion”) by the above-captioned Debtors seeking authorization pursuant to sections 105(a), 363, 1107 and 1108 of the Bankruptcy Code granting the Debtors authorization to pay certain prepetition shipping and delivery charges including for goods in transit; the Court having reviewed the Motion and having heard the statements of counsel in support thereof at a hearing (the “Hearing”) before the Court; the Court finding that (i) it has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334, (ii) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), (iii) venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iv) notice of the Motion and the Hearing was sufficient under the circumstances, and (v) good cause exists for the relief requested in the Motion;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a), 363, 1107 and 1108 of the Bankruptcy Code, to the extent deemed necessary and appropriate by the Debtors, the Debtors are authorized on the terms

set forth in this Order to pay (a) certain prepetition shipping and delivery charges to Shippers and Warehousemen (as defined in the Motion) for goods in transit that the Debtors determine, in the exercise of their business judgment, to be necessary and appropriate in order to obtain the release of raw materials, inventory, finished goods, tooling, machinery and equipment (collectively, the “Goods”) held by such Shippers and Warehousemen and (b) such other prepetition expenses that the Debtors determine, in the exercise of their business judgment, to be necessary and appropriate (i) to obtain Goods in transit and satisfy the liens, if any, in respect thereof, (ii) to satisfy valid liens on Goods which were shipped or stored by Shippers and Warehousemen, or (iii) to prevent Shippers and Warehousemen from pursuing collection against the Debtors’ customers.

3. With respect to any payments that are made on account of prepetition obligations, in return for payment of the Shipping and Warehousing Charges (as defined in the Motion) in the ordinary course of business, unless otherwise waived by the Debtors in their sole discretion, the Shippers and Warehousemen shall (i) continue to provide services to the Debtors during the pendency of the Chapter 11 Cases on the most favorable terms that existed prior to the Petition Date and (ii) agree that they shall not be able to cancel on less than 90 days notice any contract or agreement pursuant to which they provide services to the Debtors.

4. If any Shipper or Warehouseman accepts payment on account of a prepetition obligation of the Debtors and thereafter does not continue to provide services to the Debtors on the most favorable prepetition terms, any payments made to such Shipper or Warehouseman shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, such claim shall be reinstated as a prepetition claim in the amount so recovered.

5. The Debtors are authorized, but not directed, to obtain written verification, before issuing payment to a Shipper or Warehouseman, that such Shipper and Warehouseman will (a) continue to provide services to the Debtors during the pendency of these Chapter 11 Cases on the most favorable terms that existed prior to the Petition Date and (b) agree that they will not be permitted to cancel on less than 90 days notice any contract or agreement pursuant to which they provide services to the Debtors; provided, however, that the absence of such written verification shall not limit the Debtors' rights under this Order.

6. Nothing in this Order shall preclude a Shipper or Warehouseman from contesting such treatment by making a written request to the Debtors to schedule a hearing before this Court, which hearing the Debtors shall set at the next regularly scheduled omnibus hearing date occurring more than ten days after receipt of such Shipper's or Warehouseman's request.

7. This Order shall be effective and enforceable upon entry.

8. To the extent that any affiliate of the Debtors subsequently commences a chapter 11 case that is jointly administered with these Chapter 11 Cases, the relief granted pursuant to this Order shall apply to such debtor and its bankruptcy estate.

9. Pursuant to Rule 9013-1 of the Local Bankruptcy Rules, because there are no novel issues of law presented, the requirement that the Debtors file a separate memorandum of law is waived.

Dated: January \_\_, 2008

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UNITED STATES BANKRUPTCY JUDGE