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**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 OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE
ASSUMPTION OF EXECUTORY CONTRACTS WITH CERTAIN FREIGHT
SHIPMENT STATIONS AND FOR AN INTERIM EMERGENCY ORDER
AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION AMOUNTS DUE TO
THE FREIGHT STATIONS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move this Court (the “Motion”) for the entry of an order (the “Order”) substantially in the form attached hereto as Exhibit A, authorizing the assumption of executory contracts with certain freight shipment stations and for an interim emergency order (the “Interim Order”) substantially in the form attached hereto as Exhibit B, authorizing the payment of certain prepetition amounts due to the freight stations. The factual basis for this motion is set forth in the declaration of Brad Nathan attached hereto, and in the Declaration of Jeremy Roberts in Support of First Day Motion previously submitted.

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) and 365 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

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.
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”).¹ Each of the Debtors was joined in the Canadian

¹ 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.

Proceeding, in order that each Debtor may obtain the protection of a stay under the CCAA as well as under the Bankruptcy Code.

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").

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 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 (the UK operations filed for Bankruptcy protection on January 28, 2008) and Asia, which are not, except for the UK, 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.,² *Cosmopolitan* for Hearst Corp., *Elle* for Hachette-Filipacchi 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, 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 Telemex 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

² These include *Time*, *Fortune*, *Money*, *Sports Illustrated*, *People*, *Entertainment Weekly*, *Southern Living*, *Cooking Light* and *Coastal Living*.

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.

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.

Quebecor World Logistics Inc. and QW Express

17. Quebecor World Logistics Inc ("QWLI"), which is one of the Debtors, is the Quebecor World entity responsible for distribution of the products which Quebecor World prints in the United States, and as such it operates a vast distribution network. It is one of the world's largest distributor of catalogs, publications and newspaper inserts; handling over 6.6 billion pieces that are mailed per year; handling 4.7 billion pounds of material that are shipped per year; utilizing over 7,000 carriers; making 10,000 appointments per week to postal destinations; and delivering 25 billion newspaper inserts per year.

18. Although the QWLI distribution network was created to handle the distribution of printed products created by Quebecor World, QWLI has also developed and maintained a profitable business as a freight forwarder, whereby it makes its distribution expertise and services available to customers throughout the United States in need of shipping services. This service operates through a division of QWLI called Quebecor Express or QW Express. QW Express is a global freight forwarder with capabilities that span air, land and sea, and which can handle freight services including ground expediting, domestic air freight, international air freight, ocean freight, truckload, less-than-truckload and international mail services.

19. A central and essential component of the operation of QW Express are the 23 QW Express stations (the “Stations”) throughout the United States. The Stations are each independent contractors of QWLI who operate exclusively for QW Express, and who provide the marketing, sales and customer interface services that are essential to the operations of QW Express. They are each responsible for marketing QW Express services in their region, and are not permitted to sell services outside the QW Express network. As a result, the Stations are 100% dependant upon the commissions from QWLI to pay all their expenses, including payroll, benefits, rent, utilities, supplies, etc.

20. Each of the Stations is a small business. Most employ between seven and 10 people with the smallest Station having only 2 employees and the largest having approximately 15.

21. The Stations receive commissions based on the profits generated to QW Express by their efforts. Pursuant to applicable contracts, QWLI is required to pay the Stations within ten days after the customers are invoiced for the shipping services that have been rendered.

22. The Stations are usually paid on Thursday or Friday of each week, and the total payments to the stations per week typically run around \$148,000. As a result of the filing of these Cases on January 21, 2008, the Stations have not been paid since that time, as the amounts presently due relate wholly or in substantial part to prepetition services. The Debtors failure to pay these overdue amounts has caused the Stations acute hardship, as the weekly payments from QWLI represents the Stations’ sole source of income. Indeed, many of the Stations will not be able to stay in business if they are required to go several weeks without receiving any payments from the Debtors..

23. Pursuant to the provisions of the applicable contracts with the Stations, the Stations will be entitled to an additional payment on February 15, 2008 (the “Annual Payment”),

based on their performance in 2007. The aggregate payments due under such contracts for the Annual Payment will be approximately \$500,000.

24. The applicable contracts with the Stations allow either party to terminate the contract on 45 days notice. The Debtors are concerned that if they are not able to promptly pay the Stations, the amounts currently owing and about to become due on one or more of them will seek to terminate their contracts.³ Most of the Stations have other business options should they terminate the agreement with the Debtors, and many have informed Debtors that they have already been contacted by one or more companies interested in retaining them as a new contractor.

Relief Requested

25. The Debtors, in the exercise of their business judgment, have determined that it is necessary and appropriate to assume the contracts between QWLI and the 23 Stations, and hereby seek authority under Section 365 of the Bankruptcy Code for such assumption, and authority to cure all prepetition arrearages in connection therewith. The assumption of these contracts would be predicated upon the agreement of each Station that their contracts could be terminated by the Debtors during the subsequent course of these Cases as determined to be appropriate for Debtors restructuring, and that such termination would not give rise to any damage claims by the Stations (although Debtors would be liable to pay as administrative expenses any unpaid commissions).

26. Pursuant to Rule 6003 of the Bankruptcy Rules, motion to assume executory contracts should not generally be granted within the first 20 days after the petitions are filed. In light of that, Debtors seek to have their request to assume the executory contracts heard at the

³ Although such termination would require relief from the automatic stay, Debtors are concerned that the Stations would seek such relief, necessitating litigation with Debtors' business partners.

hearing already scheduled for February 13, 2008, which will be beyond the 20 day period. The Annual Payments would not be due until after that time, and deferring the consideration of the assumption motion until then will allow for the full participation of the Creditors Committee in that process.

27. The Debtors do, however, seek emergency interim relief allowing for immediate payment of amounts currently due and owing, and amounts that will come due in the ordinary course through the week of February 20, 2008, because if the Stations receive no payments until after February 13th, many of them will not be able to survive, which will cause the Debtors to suffer immediate and irreparable harm. Those Stations that are financially strong enough to survive may - respond to the overtures being made by the other companies in response to their uncertainty regarding the Debtors future. Accordingly, the Debtors seek immediate authority to make payments in the ordinary course to the Stations during the weeks of January 28, 2008 and February 4, 2008, and to make the payments that would have been made, but for the filing if these cases, during the week of January 21, 2008. These payments would be made without regard to whether the services of the Stations giving rise to the payments are deemed to be prepetition or post-petition. The total payments to be made during this three week period would not exceed \$500,000.

Basis for Relief

28. Under section 365(a) of the Bankruptcy Code, a debtor “subject to the court’s approval, may assume or reject an executory contract or unexpired lease.” See Borman’s Inc. v. Allied Supermarkets, Inc., 706 F.2d 187, 189 (6th Cir.), cert. denied, 464 U.S. 908 (1984). An executory contract is a “contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance

would constitute a material breach excusing performance.” Sharon Steel Corp. v. Nat’l Fuel Gas Distribution, 872 F.2d 36, 39-40 (3rd Cir. 1989) (quotations omitted).

29. With regard to the Debtors’ contracts with the Stations, there are unperformed continuing obligations for both the Debtors and the Stations; i.e., the Stations are under a continuing obligation to provide services to the Debtors, while the Debtors are required to provide related distribution services and to make specified payments. As such, the Station Contract constitutes an executory contract assumable under section 365 of the Bankruptcy Code. In re Thomas B. Hamilton Co. Inc., 969 F.2d 1013, 1020-22 (11th Cir. 1992).

30. The assumption or rejection of an executory contract by a debtor-in-possession is subject to review under the business judgment standard. If such business judgment has been reasonably exercised, the Court should approve the proposed assumption or rejection. See, e.g., NLRB v. Bildisco and Bildisco, 465 U.S. 513, 523 (1984); In re Taylor, 913 F.2d 102 (3d Cir.1990) (the decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor); Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp., 872 F.2d 36 (3d Cir. 1989); In re Minges, 602 R2d 38, 42 (2nd Cir. 1979).

31. In the Debtors’ business judgment, it is in the best interest of the Debtors and their estates for the Debtors to assume the contracts with the Stations. The Stations are essential to the operations of QW Express, which generates \$40 million in annual revenues for the Debtors. Moreover, as the Stations compensation is tied to the profits they generate, they only receive payments when they generate profits. Further, because the Stations are generally small businesses, and they all exclusively deal with QW Express, early assumption of the contracts is, in Debtors’ business judgment, critical for maintaining a strong Station network. On the other hand, the early assumption will not tie Debtors hands in any way, because they will be free to

terminate the contracts if circumstances, such as their restructuring plans, change, without giving rise to administrative claims, other than for the unpaid commissions for work performed.

32. The interim emergency relief the Debtors seek--paying the Stations for the three week period prior to the February 13th hearing--is similar to other relief granted by the Court at the January 23rd "First Day" hearing, and is appropriate under section 105(a) of the Bankruptcy Code which 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 interim relief requested in this Motion is critical to the Debtors and to maintaining the QW Express business, and is justified under section 105(a) of the Bankruptcy Code.

33. 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").

34. 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.”).

35. 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.

36. The interim relief requested will also avoid any dispute with the Stations over what payments due them are prepetition and which are post-petition. The Stations engage in a range of services with customers, and for any particular shipment there could be a range of possible triggers as to when their claim to compensation arises. In fact, the contracts provide that they are not entitled to compensation until the customer is invoiced by QWLI, and that typically occurs right before they are paid, meaning relatively few unpaid charges would, in fact, be prepetition. The relief sought in this Motion obviates any need to delve into this issue, and is similar to relief granted in other cases to provide “rescue” payment programs for contractors and vendors who would be financially stressed without such payments. *See Order Under 11 U.S.C. §§ 105(A), 363, 364, 1107, And 1108 And Fed. R. Bankr. P. 6004 And 9019 Authorizing Continuation Of Vendor Rescue Program And Payment Of Prepetition Claims Of Financially Distressed Sole Source Suppliers And Vendors Without Contracts, In re Delphi Corp.* No. 05-44481 (RDD) (S.D.N.Y. Oct. 13, 2005).

37. 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 to pay in the ordinary course the amounts owing to the Stations for the initial three weeks of these Cases.

Notice

38. No trustee, examiner or creditors’ committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to (a) all parties on the Notice List as set forth in the Case Management Order; (b) the 23 stations. 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.

No Prior Request

39. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request an entry of an substantially in the form attached hereto as Exhibit A, authorizing the assumption of executory contracts with the Stations and an interim emergency order (the “Interim Order”) substantially in the form attached hereto as Exhibit B, authorizing the payment to the Stations of such amounts as would have been paid to the Stations during the weeks of January 21, 2008, January 28, 2008, and February 4, 2008, without regard to whether those payments are for prepetition or post-petition services.

Dated: January 29, 2008
New York, New York

Respectfully submitted,

/s/ Michael J. Canning
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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 AUTHORIZING THE ASSUMPTION OF EXECUTORY
CONTRACTS WITH CERTAIN FREIGHT FORWARDING STATIONS**

Upon the motion (the “Motion”)⁴ of the above-captioned debtors (collectively, the “Debtors”) for entry of an Order authorizing the Debtors to assume certain executory contracts with certain freight forwarding contractors (the “Stations”); it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; notice of this Motion and the opportunity for a hearing on this Motion was appropriate under the particular circumstances and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized pursuant to 11 U.S.C. § 365 to assume their executory contracts with the Stations and to cure any arrearages under such contracts. .

⁴ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

4. The requirement set forth in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Application or otherwise waived.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: January _____, 2008

United States Bankruptcy Judge

EXHIBIT B

**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

**INTERIM EMERGENCY ORDER AUTHORIZING THE PAYMENT OF
PREPETITION OBLIGATIONS TO CERTAIN FREIGHT
FORWARDING STATIONS AND SCHEDULING A FINAL HEARING**

Upon the motion (the “Motion”)¹ of the above-captioned debtors (collectively, the “Debtors”) for entry of an Order authorizing the Debtors to assume certain executory contracts with certain freight forwarding contractors (the “Stations”) and for entry of an Interim Emergency Order authorizing the payment of certain prepetition obligations to the Stations; it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; it appearing that immediate and irreparable harm will occur if this Interim Emergency Order is not entered: notice of this Motion and the opportunity for a hearing on this Motion was appropriate under the particular circumstances and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized to make payments to the Stations for the weeks of January 21, 2008, January 28, 2008, and February 4, 2008, in such amounts as would have been paid but for the filing of these Cases, and without regard as to whether the service being compensated took place prepetition or post-petition.

3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

4. A final hearing on this Motion shall take place on February 13, 2008 at 2 pm.

5. The requirement set forth in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Application or otherwise waived.

6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: January _____, 2008

United States Bankruptcy Judge