

Hearing Date: February 21, 2008 at 10:00 a.m
Objection Deadline: February 14, 2008 at 4:00 p.m.

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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
	Hon. James M. Peck

**OBJECTION BY PACKAGING CORPORATION OF AMERICA TO
MOTION FOR AN ORDER TO AUTHORIZE THE
ESTABLISHMENT AND IMPLEMENTATION OF EXCLUSIVE, GLOBAL
PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS**

Packaging Corporation of America (“PCA”), through its undersigned counsel, hereby objects to the Motion for an Order To Authorize the Establishment and Implementation of Exclusive, Global Procedures For Treatment of Reclamation Claims (the “Motion”) filed by the Debtors, and hereby respectfully represents as follows:

BACKGROUND

1. On January 21, 2008 (the “Petition Date”) Quebecor World (USA), Inc. and fifty-two of its affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101 et seq.). No trustee

has been appointed in these cases, and the Debtors continue to operate their businesses and manage their affairs pursuant to 11 U.S.C. §§ 1107 and 1108. Pursuant to an order entered on January 24, 2008, the Debtors' Chapter 11 cases were consolidated for procedural purposes and are being jointly administered.

2. At various times prior to the Petition Date, PCA sold goods to one or more of the Debtors in the ordinary course of its business. On January 24, 2008 PCA sent counsel for the Debtors a written demand (the "Reclamation Demand") for the return of goods received by the Debtors within 45 days prior to the Reclamation Demand, the value of which goods (the "Reclaimed Goods") totals in the aggregate \$1,454,998.37.

3. As set forth in Motion, in order to avoid an interruption in normal business operations and avoid costly litigation relating to sellers' reclamation claims, the Debtors are seeking entry of an order establishing exclusive procedures for the reconciliation and allowance of all asserted reclamation claims (the "Reclamation Procedures").

4. The proposed Reclamation Procedures provide, *inter alia*, that "not later than 120 days" after the Petition Date, the Debtor will file Notice listing the Reclamation Claims and amounts and that if the Debtors fail to file the Reclamation Notice by the deadline, holders of reclamation claims may seek relief from stay with respect to their claims. Until the 120-day deadline has expired, all actions by holders of reclamation claims to enforce their rights to reclaim their goods are stayed, *including even the right to seek relief from the automatic stay*. Motion at ¶ 31(d).

5. Furthermore, under the proposed Reclamation Procedures, the issue of the treatment of any allowed reclamation claim is reserved indefinitely. The issue of treatment of an allowed reclamation claim *may* be resolved by way of a negotiated

settlement with the Debtors, however the Debtors have no obligation to under the Reclamation Procedures to negotiate regarding any issue related to anyone's reclamation claim. See, Motion, ¶ 31(g). To the extent any agreement between a reclamation claimant and the Debtors is reached regarding treatment of its allowed reclamation claim, such settlement is still subject to objection by the DIP Lenders, the Committee, or the U.S. Trustee. Motion, ¶¶ 31(f)-(h).

6. According to the Motion, there do not appear to be any significant security interests in the Debtors' inventory other than that of the Royal Bank of Canada, which as administrative agent under the Bank Syndicate Agreement, who is secured to the extent of \$135 million by, among other collateral, all personal and real property of QW Memphis and all inventory of QWI located in Canada, and that of Société Générale (Canada) which is secured on a pari passu basis to the extent of \$35 million in the same collateral covered by the Bank Syndicate Agreement.

OBJECTION

7. PCA strenuously objects to the proposed Reclamation Procedures because they effectively deny PCA's statutory right of reclamation without giving PCA's allowed reclamation claim administrative priority as a satisfactory substitute for the denial of its right of reclamation. In addition, unless the Debtors are required to provide PCA a inventory report identifying PCA's goods on hand as of the date of its Reclamation Demand, PCA may be unable to prove the amount of its reclamation claim. Finally, absolute denial of PCA's right to seek relief from stay related to its reclamation rights for any reason during the 120-day period unnecessarily restrictive. The Bankruptcy Code

simply does not authorize such an impairment of PCA's substantive rights under the circumstances, and the Reclamation Procedures should be modified with respect to PCA to ensure that PCA's substantive rights are not unduly prejudiced.

8. Section 546(c) of the Bankruptcy Code provides in pertinent part as follows:

- (1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such a seller may not reclaim such unless such seller demands in writing reclamation of such goods –
 - (A) not later than 45 days after the date of receipt of such goods by the debtor; or
 - (B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.
- (2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

11 U.S.C. § 546(c).

9. Prior to the 2005 amendments to the Bankruptcy Code, § 546(c)(2) read as follows:

[T]he court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if the court –

- (A) grants the claim of such a seller priority as a claim of a kind specified in section 503(b) of this title; or
- (B) secured such claim by a lien.

10. Thus, under old § 546(c)(2), a court had the power to deny a seller's right of reclamation, but only if it provided the seller an adequate substitute for its right of reclamation – either an administrative priority claim or a lien. The 2005 amendments to the Bankruptcy Code removed the language from § 546(c) that authorized a court to deny a seller's valid right of reclamation. If the court approves the proposed Reclamation Procedures as requested by the Debtors, it will effectively be denying PCA's right of reclamation because after the 120-day stay has expired, PCA's goods will have almost certainly been entirely consumed by the Debtors leaving PCA with nothing to reclaim. In addition, without the benefit of an inventory report dated at or near the time of the Reclamation Demand identifying the goods on hand as of the date of the Reclamation Demand, PCA will likely be unable even to prove the amount of its reclamation claim. As was the policy under former § 546(c), PCA's right of reclamation should not be effectively denied without giving PCA an adequate substitute for that right, namely an administrative priority claim under § 503(b) to the extent its reclamation claim is allowed.¹ In other words, if the Court is use its equitable powers under § 105 to limit PCA's reclamation rights, then equity dictates (using former § 546(c)(2) as a guide) that PCA be given a satisfactory substitute in place of its reclamation rights, namely administrative priority treatment of its allowed reclamation claim. In addition, the Debtor should be required to provide PCA with an inventory report identifying the goods on hand as of the date of PCA's Reclamation Demand so that PCA's ability to prove the amounts of its reclamation claim is not prejudiced.

¹ PCA reserves its right to seek administrative priority pursuant to § 503(b)(9) for the portion of goods received by any of the Debtors within 20 days before the Petition Date.

11. While a court has the power under Bankruptcy Code § 105 to “issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code], that power is not without limits, and PCA is not aware of any case that would authorize the invocation of § 105 to deny a creditor substantive rights or to alter the priority of its claim absent some form of inequitable conduct on the part of such creditor. In addition, while § 105 has been relied on to enter injunctive relief in favor of Chapter 11 debtors, PCA is unaware of any case that would authorize the absolute denial of a creditor’s right to seek relief from stay under § 362 for any period of time. “[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.” Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988).

12. The Bankruptcy Code expressly recognizes a seller’s right of reclamation, and, at the same time, no longer expressly authorizes the denial of a seller’s right of reclamation. Furthermore, the Bankruptcy Code expressly authorizes a creditor to seek relief from stay for cause, and nothing in the Bankruptcy Code suggests that that right may be absolutely cut off, even temporarily. Even assuming the court has the power under § 105 to effectively deny PCA these substantive and procedural rights expressly provided by the Bankruptcy Code, such drastic relief is not warranted under the facts and circumstances of these cases given that the requested protections to the reorganization process can be provided by less restrictive means. To the extent the Court uses its equitable powers under § 105 to aide the reorganization process, it should also apply those powers to the extent possible to preserve creditors substantive and procedural rights.

13. Accordingly, the proposed Reclamation Procedures should be modified with respect to PCA as follows:

- A. The Debtors should be required to provide PCA a report of the inventory on hand that identifies which of the goods subject to PCA's Reclamation Demand were on hand as of the date of the Reclamation Demand;
- B. PCA's reclamation claim should be granted administrative priority status pursuant to § 503(b) of the Bankruptcy Code;
- C. PCA should have the right to seek relief from stay with respect to its reclamation claim in the event the Debtors fail to promptly supply PCA the inventory report identifying the goods on hand as of the date of PCA's Reclamation Demand or in the event PCA reasonably believes that the Debtors' are, or are likely to become, administratively insolvent and unable to pay its allowed reclamation claim in full as an administrative priority claim.

WHEREFORE, PCA respectfully requests the Court enter its Order denying the Motion or, in the alternative, granting the Motion on the condition that the Reclamation Procedures are modified with respect to PCA as requested herein.

Dated: February 14, 2008
Charlotte, NC

Respectfully submitted,

s/ David A. Matthews
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CERTIFICATE OF SERVICE

This is to certify that on the 14th day of February 2008, I caused to be served a copy of the foregoing **OBJECTION BY PACKAGING CORPORATION OF AMERICA TO MOTION FOR AN ORDER TO AUTHORIZE THE ESTABLISHMENT AND IMPLEMENTATION OF EXCLUSIVE, GLOBAL PROCEDURES FOR TREATMENT OF RECLAMATION CLAIMS** by electronic mail to those shown on the Notice of Electronic Filing receipt issued by the Clerk of the Court, as set forth below:

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Dated: February 14, 2008
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