

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)

*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 OF THE DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 362 AND 365 (A) AUTHORIZING THE REJECTION OF A LEASE AGREEMENT FOR ONE (1) BOMBARDIER CL-601-3A AIRCRAFT AND RELATED ENGINES AND (B) TERMINATING THE AUTOMATIC STAY WITH RESPECT THERETO**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move this Court (the “Motion”) pursuant to sections 362 and 365 of the Bankruptcy Code for the entry of an order substantially in the form of Exhibit A hereto, authorizing the rejection of a lease agreement pursuant to which Debtor Quebecor Printing Aviation Inc. (“QPA”) leases one (1) Bombardier CL-601-3A aircraft and related engines and equipment, to the extent of any interest of the Debtors therein, and granting relief from the automatic stay to permit the Lessor (defined below) to take possession of the Aircraft (defined below). In support of the Motion, the Debtors state 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 362 and 365 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **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 in this case.
6. On January 31, 2008, an Official Committee of Unsecured Creditors was appointed.
7. 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>1</sup> Each of the Debtors was joined in the Canadian

---

<sup>1</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.

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**

8. 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").

9. 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>2</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, Kohl's, and Walgreens. QW World's operations also encompass (a) catalogs 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.

---

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

## **The Aircraft Lease**

10. Pursuant to a Lease Intended as Security dated as of January 1, 2001 (as amended, the “Aircraft Lease”) among QPA, as Lessee; Wells Fargo Bank, Northwest, N.A. (as successor to First Security Bank, N.A.), as Agent; and Banc of America Leasing & Capital, LLC, as Lessor (the “Lessor”), QPA leased one (1) Bombardier CL-601-3A aircraft (the “Airframe”), two General Electric CF34-3A engines (the “Engines”) and certain appliances, parts, instruments, appurtenances, accessories, furnishings, seats and other equipment incorporated, installed in or attached to the Airframe (together with the Airframe and the Engines, the “Aircraft”). A copy of the Aircraft Lease is attached hereto as Exhibit B. QWI is a guarantor of QPA’s obligations under the Aircraft Lease pursuant to a Guaranty Agreement dated as of January 1, 2001 (the “Guaranty”).

11. The initial term of the Aircraft Lease was five years. The term of the Aircraft Lease was subsequently extended to six years pursuant to Amendment No. 1 to the Aircraft Lease dated as of March 21, 2006, and was further extended to seven years pursuant to Amendment No. 2 to the Aircraft Lease dated as of January 18, 2007. The term of the Aircraft Lease expired on January 18, 2008.

12. Section 11.1 of the Aircraft Lease provides that at least 270 days, but no more than 360 days, prior to the expiration of the Aircraft Lease, QPA shall exercise one of three options: (a) an option to purchase the Aircraft (the “Purchase Option”) for cash equal to the balance due under the Aircraft Lease (the “Lease Balance,” as defined in the Aircraft Lease) and certain other sums due and owing under the Aircraft Lease, (b) an option to sell the Aircraft to a third party (the “Sale Option”) and remit the proceeds of such sale to the Lessor up to the amount of the Lease Balance, with QPA responsible to the Lessor for any deficiency or (c) request an

extension of the term of the Aircraft Lease. Although QPA notified the Lessor of its intent to exercise the Sale Option on or about April 20, 2007, QPA was unable to locate a purchaser in accordance with the terms of the Sale Option. Pursuant to a January 7, 2008 invoice from the Agent, the aggregate amount of QPA's obligation under the Aircraft Lease was \$12,218,351.18 (the "Payment Amount").

13. The Aircraft is not operational and is currently stored in Montreal, Canada. Although the Aircraft Lease terminated by its own terms prior to the Petition Date, because the Aircraft remains in the Debtors' possession and the Debtors previously notified the Lessor of their intent to exercise the Sale Option, the Debtors seek an order authorizing the rejection of the Aircraft Lease effective as of the Petition Date out of an abundance of caution, and to confirm that their bankruptcy estates do not retain any legal or equitable interest in the Aircraft or the Aircraft Lease. In addition, the Debtors request clarification that the Lessor's exercise of remedies under the Aircraft Lease and actions to take possession of the Aircraft will not be construed as a violation of the automatic stay under section 362 of the Bankruptcy Code.

14. In addition to the Aircraft Lease, the Debtors and QWI are also parties to certain leases and agreements related to the Aircraft. Specifically, QPA leases the Aircraft to QWI under an Aircraft Sublease Agreement dated as of January 1, 2001 (the "Aircraft Sublease"), and QWI leases the Aircraft to ACASS Canada Ltd. ("ACASS") pursuant to a Sub-Sublease Agreement dated as of June 28, 2004 (the "Aircraft Sub-Sublease"). QWI and ACASS are also parties to a Management and Charter Agreement dated as of June 2004 (the "Management and Charter Agreement," together with the Aircraft Sublease, the Aircraft Sub-Sublease and the Guaranty, the "Related Agreements"), pursuant to which ACASS provided services necessary to manage, operate, maintain and hanger the Aircraft, including holding all necessary licenses,

certificates and other authorizations required to perform charter and other flights for QWI and others under the Management and Charter Agreement. Each of the Related Agreements, other than the Guaranty, also terminated on January 18, 2008, by its respective terms.

### **Relief Requested**

15. The Aircraft currently is not operational and is hangered in Montreal, Canada. The Debtors do not use the Aircraft in connection with their businesses or otherwise, and the Aircraft currently provides no benefit to the Debtors or their bankruptcy estates. Further, the Debtors have determined that the fair market value of the Aircraft is significantly less than the Payment Amount of \$12,218,351.18. Specifically, the Aircraft's fair market value is estimated by the Debtors to be \$9,663,000 based upon an Aircraft Appraisal Report prepared by Aeronautical Systems, Joseph T. Zulueta, ASA, and dated as of January 28, 2008, such that there is no value to be realized by the Debtors from a purchase and subsequent sale of the Aircraft. Moreover, the Debtors continue to incur costs associated with storage and insurance for the Aircraft.

16. As noted above, the Debtors did not consummate the transactions contemplated by the Sale Option, and the Lessor has communicated to the Debtors its desire to retake possession of the Aircraft as soon as possible, and has agreed to waive any and all postpetition claims, whether for rent under the Aircraft Lease or otherwise, as well as any rejection damages arising from the Debtors' rejection of the Aircraft Lease. Accordingly, the Debtors have entered into discussions with the Lessor regarding rejection of the Aircraft Lease and relief from the automatic stay in order to permit the Lessor to retake possession of the Aircraft and exercise its remedies.

17. In connection with those discussions, and the Lessor's agreement to retake possession of the Aircraft, the Lessor and the Debtors have agreed that the Debtors will move under section 365 of the Bankruptcy Code to reject the Aircraft Lease to ensure that any remaining legal or equitable interests of the Debtors in the Aircraft or the Aircraft Lease, to the extent any such interests exist, are extinguished. The Debtors and the Lessor have further agreed that the Lessor will not assert any claim for damages arising from the rejection of the Aircraft Lease, or for any administrative claims related to the Aircraft or the Aircraft Lease, or otherwise under the Related Agreements; provided, however, that the Lessor reserves its right to assert a prepetition claim for any deficiency between the Payment Amount and the amount that the Lessor ultimately realizes upon a sale or other disposition of the Aircraft (the "Deficiency Claim"), and the Debtors reserve any and all rights to object to or otherwise contest any such claims made by the Lessor or any other party under the Aircraft Lease, any of the Related Agreements or otherwise related to the Aircraft.

18. Ordinarily the Debtors would have sought a hearing on this Motion at the next omnibus hearing date, on March 20, 2008. However, the Debtors' insurance policy on the Aircraft expires on March 6, 2008, and in order to avoid having to obtain additional insurance to cover any gap between the termination of the current insurance policy and the next omnibus hearing date, and to allow the Lessor to instead procure any such insurance, the Debtors have filed this Motion so that it may be considered at the hearing scheduled for March 6, 2008.

19. For the reasons set forth below, the Debtors respectfully request that this Court enter an Order pursuant to sections 362 and 365 of the Bankruptcy Code authorizing the Debtors to reject the Aircraft Lease effective as of the Petition Date, terminating the automatic stay in

order to permit the Lessor to assume immediate possession and control of the Aircraft and granting such other and further relief as this Court may deem just and proper.

### **Basis for Relief Requested**

20. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts approve motions to assume, assume and assign or reject executory contracts or unexpired leases where the debtor shows that its decision to take such action will benefit the debtor’s estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993) (section 365 of the Bankruptcy Code “permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject”); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts under section 365 is that of “business judgment”); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) (“A bankruptcy court reviewing a trustee’s decision to assume or reject an executory contract should apply its ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume it.”).

21. Courts generally will defer to a debtor’s business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See In re Dana Corp., 358 B.R. 567, 581 n.20 (Bankr. S.D.N.Y. 2007) (“A court may approve motions to assume, assume and assign or reject executory contracts upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is an exercise of sound business judgment.”); In re Helm, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (“The decision to assume or reject an

executory contract is within the sound business judgment of the debtor-in-possession . . . and in reviewing such a decision the bankruptcy court merely ‘reviews the trustee’s or debtor’s decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.’”) (citing In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993)); In re Footstar, Inc., 323 B.R. 566, 568 (Bankr. S.D.N.Y. 2005) (“The standard to be applied by a court in determining whether an executory contract or unexpired lease should be assumed is the ‘business judgment’ test, which is premised upon the debtor’s business judgment that assumption would be beneficial to the estate.”); In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (“[A] court will ordinarily defer to the business judgment of the debtor’s management”).

22. The “business judgment” test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. See, e.g., Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) (“In reviewing a debtor’s decision to assume or reject an executory contract, the court must examine the contract and circumstances and apply its best ‘business judgment’ to determine if the assumption or rejection would be beneficial or burdensome to the estate.”).

23. Rejection of the Aircraft Lease to the extent of any remaining interest of the Debtors therein is clearly in the best interests of the Debtors’ estates under the present circumstances. The Aircraft is not currently operational and provides no benefit to the Debtors’ bankruptcy estates, and has no inherent value that could be realized upon the Debtors’ purchase of the Aircraft and subsequent sale thereof. Indeed, the Lessor has agreed that it will take immediate possession of the Aircraft, and that it will not assert any administrative claims or claims for damages arising from the rejection of the Aircraft Lease (other than the Deficiency

Claim described above) under the Aircraft Lease or any of the Related Agreements.

Accordingly, the Debtors submit that the rejection of the Aircraft Lease represents a sound exercise of their business judgment and is in the best interests of the Debtors and their bankruptcy estates.

### **Termination of the Automatic Stay**

24. Section 365(p) of the Bankruptcy Code provides that “[i]f a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.”

25. To the extent that the Debtors retain any interest in the Aircraft under the Aircraft Lease, upon rejection of the Aircraft Lease pursuant to section 365(p), the Aircraft and the Aircraft Lease will no longer be property of the Debtors’ bankruptcy estates and the automatic stay under section 362(a) will automatically terminate with respect to the Aircraft and the Aircraft Lease. Accordingly, upon entry of an order authorizing the rejection of the Aircraft Lease, the Lessor may take possession of the Aircraft without the need to seek relief from the automatic stay or any further order of this Court.

26. In addition to the specific provisions of section 365(p), out of an abundance of caution and to make clear that the Lessor’s right to take possession of the Aircraft is in no way impaired or restricted, the Debtors also request an order providing that the automatic stay be terminated pursuant to section 362(d) with respect to the Aircraft and the Aircraft Lease, so that the Lessor is authorized to exercise its remedies under the Aircraft Lease, including but not limited to retaking possession of the Aircraft.

### **Effective Date of Rejection**

27. The Debtors request that the rejection of the Aircraft Lease be effective as of the Petition Date. The Debtors no longer use the Aircraft and have reached agreement with the Lessor with respect to the conditions under which the Lessor will take possession of the Aircraft and the Lessor's resulting claims under the Aircraft Lease. Indeed, the term of the Aircraft Lease expired prior to the Petition Date. As such, the Debtors respectfully request that this Court enter an order authorizing the Debtors to reject the Aircraft Lease, effective as of the Petition Date, so as not to expose any of the Debtors' estates to unwarranted postpetition administrative expenses. See Thinking Machines Corp. v. Mellon Fin. Servs. (In re Thinking Machines Corp.), 67 F.3d 1021, 1028 (1st Cir. 1995) (holding that although court approval is a condition precedent to effective rejection of a lease, "bankruptcy courts may enter retroactive orders of approval, and should do so when the balance of equities preponderates in favor of such remediation"); Constant, L.P. v. Jamesway Corp. (In re Jamesway Corp.), 179 B.R. 33, 37-38 (S.D.N.Y. 1995) (affirming bankruptcy court's retroactive approval of lease rejection); In re Federated Dep't Stores, Inc., 131 B.R. 808, 814 (S.D. Ohio 1991) (affirming bankruptcy court's approval of department store debtor's rejection of real property lease where debtor had closed failing department store and no longer needed the leased premises).

### **Memorandum Of Law**

28. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

**Notice**

29. Notice of this Motion has been provided to all parties on the Notice List as set forth in the Case Management Order. A copy of the Motion is also freely available on the website of the Debtors' proposed claim and noticing agent, Donlin, Recano & Company, Inc. at [www.donlinrecano.com](http://www.donlinrecano.com).

**No Prior Request**

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

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors to reject the Aircraft Lease pursuant to section 365 of the Bankruptcy Code effective as of the Petition Date, to the extent of any interest of the Debtors therein, (b) providing that the automatic stay under section 362(a) of the Bankruptcy Code is terminated with respect to the Debtors' rights in the Aircraft and the Aircraft Lease and (c) granting such other further relief as is just and proper.

Dated: February 25, 2008  
New York, New York

Respectfully submitted,

/s/ Michael J. Canning  
Michael J. Canning (MC 8060)

ARNOLD & PORTER LLP  
399 Park Avenue  
New York, New York 10022-4690  
Telephone: (212) 715-1000  
Facsimile: (212) 715-1399

*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 PURSUANT TO 11 U.S.C. §§ 362 AND 365 (A) AUTHORIZING THE  
REJECTION OF A LEASE AGREEMENT FOR ONE (1) BOMBARDIER CL-601-  
3A AIRCRAFT AND RELATED ENGINES AND (B) TERMINATING THE  
AUTOMATIC STAY WITH RESPECT THERETO**

Upon the motion (the “Motion”)<sup>1</sup> of the above-captioned debtors (collectively, the “Debtors”), for entry of an order pursuant to sections 362 and 365 of the Bankruptcy Code authorizing the Debtors to reject a lease agreement for one (1) Bombardier CL-601-3A Aircraft and related engines and the Declaration of Jeremy Roberts in support of the Motion; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; it appearing that this 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 in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; it appearing that notice of the Motion and the opportunity for a hearing on the Motion was appropriate and that no other or further notice need be given; and after due deliberation and sufficient

---

<sup>1</sup>Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. To the extent that the Debtors retain any interest therein, the Aircraft Lease is hereby rejected effective as of the Petition Date.

3. Pursuant to sections 362(d) and 362(p) of the Bankruptcy Code, the automatic stay is terminated with respect to the Debtors' rights in the Aircraft and the Aircraft Lease and the right of the Lessor to exercise its remedies under the Aircraft Lease and take possession of the Aircraft shall be effective without need for a further order of this Court.

4. The Lessor has agreed to waive, and is hereby barred from asserting against the Debtors, any (i) administrative expense claim related to the Aircraft or the Aircraft Lease or otherwise under the Related Agreements (ii) claim for rejection damages arising from the rejection of the Aircraft Lease; provided, however, that nothing in this Order or the Motion shall restrict or limit the right of the Lessor to assert the Deficiency Claim, defined in the Motion as a claim for any deficiency between the Payment Amount and the amount that the Lessor ultimately obtains upon a sale of the Aircraft; provided further that the Debtors reserve any and all rights to object to or otherwise contest any such claims made by the Lessor or any other party under the Aircraft Lease, any of the Related Agreements or otherwise related to the Aircraft.

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

6. 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.

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

Dated: New York, New York  
\_\_\_\_\_, 2008

---

United States Bankruptcy Judge