

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Return Date: March 20, 2008
Return Time: 10:00 a.m.

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In re:

Chapter 11
Case No. 08-10152-jmp
(Jointly Administered)

QUEBECOR WORLDWIDE (USA), INC., *et al.*,

Debtors.

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**APPLICATION BY ECOLOGICAL FIBERS, INC. FOR ALLOWANCE
AND IMMEDIATE PAYMENT OF ADMINISTRATIVE
CLAIMS PURSUANT TO 11 U.S.C. § 503(b)(9)**

NOW COMES Ecological Fibers, Inc. (~~%EFI+~~), through its undersigned counsel, and hereby moves this Court for an Order allowing it an administrative priority claim in an amount not less than \$159,337.33 pursuant to 11 U.S.C. § 503(b)(9) for the value of goods sold by EFI and received by the Debtors within 20 days prior to the commencement of these cases. To the extent any of such goods were actually received by the Debtors post-petition, EFI seeks an allowed administrative claim for the value of those goods pursuant to 11 U.S.C. § 503(b)(1). In support of this Motion, EFI respectfully represents as follows:

BACKGROUND

1. On January 21, 2008 (the ~~%Petition Date+~~), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*).

2. This Court has jurisdiction to hear this motion pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O).

3. EFI is a world leader in manufacturing environmentally sound covering materials for the book, decorative packaging, photo mount, and cd/multi-media packaging industries.

4. On various dates between January 2, 2008, and the Petition Date, EFI sold certain covering materials (collectively, the %Goods+) to the Debtors in the ordinary course of the Debtorsqbusiness. A summary of the transactions, along with copies of the invoices and shipping information for each transaction, is attached hereto as Exhibit %A+. Each transaction remains unpaid.

5. The Debtors received all of the Goods within 20 days prior to the Petition Date.

6. The aggregate value of the Goods is not less than \$159,337.33.

BASIS FOR REQUESTED RELIEF

7. Section 503(b)(9) of the Bankruptcy Code provides:

After notice and a hearing, there shall be allowed, administrative expensesō including the value of any goods received by the debtor within 20 days before the date of commencement of a case under [the Bankruptcy Code] in which the goods have been sold to the debtor in the ordinary course of such debtorq business.

11 U.S.C. § 503(b)(9).

8. Because the Goods were received by the Debtors within 20 days before the Petition Date, EFI is entitled to an administrative expense claim for the value of the Goods.

9. To the extent any portion of the Goods were received by the Debtors post-petition, EFI is entitled to an administrative claim for the value of such Goods pursuant to Bankruptcy Code § 503(b)(1) because EFI performed under an executory contract for

the sale of goods, providing consideration to the Debtors-in-possession. See, e.g., ARS Brook, LLC v. Jalbert (In re ServiSence.com, Inc.), 382 F. 3d 68, 72-73 (1st Cir. 2004); citing In re Mammoth Mart, Inc., 536 F. 2d 950, 954 (1st Cir. 1976); In re Patient Education Media, Inc., 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998). ¶ The debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject to assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services. ¶ NLBR v. Bildisco & Bildisco, 465 U.S. 513, 531 (1984); see also, In re Coast Trading Co., Inc., 744 F.2d 686, 693 (9th Cir. 1984); citing In re National Sugar Refining Co., 27 B.R. 565, 573-74 (S.D.N.Y. 1983) [contract for sale of goods is executory until goods received by debtor due to seller's remedy of stoppage in transit]. ¶ The contract should be no less executory because the seller chooses not to suspend performance but tenders performance subsequent to the filing of the bankruptcy petition. ¶ Coast Trading, 744 F.2d at 693.

10. The invoice price of the Goods, which is not less than \$159,337.33, is presumed to be the value of the Goods under § 503(b) unless the Debtors submit convincing evidence to the contrary. See, Bethlehem Steel Corp. v. BP Energy Co. (In re Bethlehem Steel Corp.), 291 B.R. 260, 264 (Bankr. S.D.N.Y. 2003); In re Washington-St. Tammany Electric Coop., Inc., 111 B.R. 555, 559 (Bankr. E.D. La. 1989); see also, In re PYXSYS Corp., 288 B.R. 309, 318 (Bankr. D. Mass. 2003) (terms of lease used to value benefit conferred under § 503(b)).

11. The Bankruptcy Code does not set forth any requirements regarding the timing of payment of allowed administrative expense claims other than that they must

be paid in full on the effective date of any confirmed Chapter 11 Plan. See, 11 U.S.C. § 1129(a)(9); see also, In re Global Home Products, LLC, 2006 Bankr. LEXIS 3608, *9-10 (Bankr. D. Del. 2006). Courts have generally held, therefore, that the timing of payment of an administrative claim is left to the discretion of the court. See, Global Home Products at *10. Among the factors considered by courts in making that determination are:

- (1) whether the bankruptcy estate is administratively solvent;
- (2) the needs of the administrative claimant; and
- (3) the length and expense of the case's administration.

Global Home Products at *11.

12. In Global Home Products, the Bankruptcy Court for the District of Delaware weighed three factors in determining whether to grant an administrative claimant's request for immediate payment of its administrative claim. Those three factors were:

- (1) the prejudice to the debtors;
- (2) the hardship to the claimant;
- (3) the potential detriment to other creditors.

Global Home Products at *12.

13. The circumstances of these cases warrant an order directing the immediate payment of EFL's administrative expense claim.

14. The Debtors' Chapter 11 cases appear to be proceeding smoothly. The Debtors have obtained debtor in possession financing and, upon information and belief, are paying their post-petition administrative expenses as they come due. EFL's administrative claim is relatively small given the size of the Debtors' bankruptcies.

15. Based on the foregoing, it appears there will be little or no prejudice to the Debtors if EFI's administrative claim is allowed and paid at this time.

16. Conversely, EFI will be prejudiced if it is forced to wait until plan confirmation for payment of its administrative claim. EFI asserts that there are no reasonable grounds to object to its administrative claim. That claim is entitled to be treated similarly to other administrative claims. As stated above, it appears that the Debtors are paying post-petition administrative claims as they come due, and has established interim procedures for payment of post-petition professional fees and expenses.

17. Where, as here, funds exists to pay both pre and post-petition administrative claims, forcing EFI to wait until the confirmation of an as-yet-unfiled plan is unduly prejudicial.

18. Finally, there appears to be no detriment to other creditors in ordering the Debtors to pay EFI's administrative claim at this time. As stated above, the Debtors appear to be meeting their post-petition obligations, and have sufficient funding to continue to do so. Accordingly, payment of EFI's administrative claim will have no effect on other creditors.

19. Because the legal points and authorities upon which this application is made are incorporated herein, it is respectfully requested that the requirement of the contemporaneous service of a Memorandum of Law as required by local Bankruptcy Rule 9013-1(b) be deemed satisfied.

WHEREFORE, EFI prays the Court enter its Order as follows:

- A. Granting this Motion;
- B. Allowing EFI an administrative expense claim in the amount of not less than \$159,337.33 pursuant to 11 U.S.C. § 503(b)(9);
- C. To the extent any of the Goods were received by the Debtors postpetition, allowing EFI an administrative claim for the invoice price of such goods pursuant to 11 U.S.C. § 503(b)(1);
- D. Directing the Debtors to immediately pay EFI a sum of not less than \$159,337.33 in satisfaction of the administrative claim(s) allowed in connection with this Motion; and
- E. Granting EFI such other and further relief as the Court deems just and proper.

Dated: New City, New York
February 28, 2008

Respectfully submitted,

ECOLOGICAL FIBERS, INC.

By its counsel:

/S/

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