Hearing Date and Time: March 6, 2008 at 10:00 a.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11 Case Nos.**
	:	
QUEBECOR WORLD (USA) INC., *et al.*,	:	**08-10152 (JMP)**
	:	
Debtors.	:	**(Jointly Administered)**
	:	

RESPONSE TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE MOTION OF THE DEBTORS (A) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362 364(C) AND 364(E); (B) AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS; AND (C) USING POSTPETITION FINANCING TO PURCHASE RECEIVABLES PORTFOLIO

Credit Suisse, as Administrative Agent for the lenders party to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of January 21, 2008 (as amended or otherwise modified as of the date hereof, the "**Credit Agreement**"), among Quebecor World Inc. and Quebecor World (USA) Inc. (collectively, together with the Debtors, "**Quebecor**"), as Borrowers, the Guarantors party thereto, the lender parties party thereto (the **"DIP Lenders"**), Credit Suisse as Administrative Agent (the "**Administrative Agent**"), General Electric Capital

Corporation and GE Canada Finance Holding as Collateral Agent (the "**Collateral Agent**"), Morgan Stanley Senior Funding Inc. and Wells Fargo Foothill, LLC, as Co-Syndication Agents and Wachovia Bank, N.A., as Documentation Agent, hereby submits this response (this "**Response**") to the objection (the "**Objection**") of the Creditors' Committee to the Debtors' motion (the "**Motion**") for the entry of an order (the "**Order**") (A) authorizing the Debtors to obtain postpetition secured financing pursuant to sections 105, 361, 362 364(c) And 364(e) of title 11 of the United States Code (the "**Bankruptcy Code**"); (B) authorizing use of cash collateral and granting adequate protection to Prepetition Secured Lenders and (C) using postpetition financing to purchase the Receivables Portfolio.[1]

In support of this Response, Credit Suisse respectfully represents as follows:

Introduction

1. The credit crisis that has been facing corporate borrowers in the United States throughout 2008 is a matter of notoriety. In these difficult circumstances, the DIP Credit Facility the Agents and the Lenders negotiated in good faith with Quebecor was the best deal available and is essential for the continued operation of Quebecor's business. The Objection is an attempt to renegotiate a deal which was carefully considered by the Debtors. If the Objection is upheld, an essential condition to the availability of an additional $250 million of revolving credit will not be met and the DIP Lenders will have the right to terminate their existing commitments and seek repayment of the entire DIP Credit Facility. The likely result is that Quebecor will no longer have access to the credit provided for in the DIP Credit Facility. The potential detriment to Quebecor from this circumstance is clear.

[1] Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in the Order.

2. Two objections to the Order are (i) the grant of liens and superpriority claims to the Secured DIP Creditors on the proceeds of avoidance actions and (ii) the provision for the waiver by the Debtors of their rights under section 506(c) of the Bankruptcy Code. Both of these provisions of the Order are supported by applicable bankruptcy law and routinely approved in DIP financing orders in major chapter 11 cases in the Southern District of New York. This Response primarily addresses these two issues.

3. The Objection fails to properly distinguish between avoidance actions (over which the Secured DIP Creditors are not granted liens) and the proceeds of avoidance actions, which are properly the subject of a lien in favor of the Secured DIP Creditors. The Objection proceeds on the mistaken premise that the proceeds of avoidance actions are exclusively for the benefit of general unsecured creditors in any circumstance rather than recovered for the whole "estate" as set forth in section 551 of the Bankruptcy Code. The estate includes unsecured creditors with superpriority or administrative claims. Even without a lien on proceeds of avoidance actions, the DIP Lenders would have the right to be paid from such proceeds ahead of general unsecured creditors as a consequence of the Superpriority Claim. Accordingly, the DIP Lenders would have priority, to which they are expressly entitled under section 364(c)(1) of the Bankruptcy Code, on the proceeds of avoidance actions over general unsecured creditors even if the Objection were correct. The DIP Lenders are unwilling to rely solely on a superpriority claim when the better protection of a lien is available but, in any event, the Bankruptcy Code authorizes the DIP Lenders to be repaid ahead of general unsecured creditors. Even if the Creditors' Committee prevails, it cannot obtain the benefit it seeks.

4. Any concern that a court might have when granting liens on the proceeds of avoidance actions does not arise in this case. The DIP Credit Facility is not a "rollup". The

DIP Lenders are not prepetition lenders nor the target of any potential avoidance action. The DIP Lenders are new lenders who simply seek their entitlement to first priority claims against the Debtors and first priority liens on all unencumbered assets. This is not a case where there is a risk that liens on the proceeds of avoidance actions will insulate prepetition lenders from the consequences of the avoidance of their liens and security interests.

5. The inaccuracy of the legal analysis in the Creditors' Committee Objection is evident from a consideration of certain consequences which flow from their interpretation of the law. If the proceeds of avoidance actions were preserved for the exclusive benefit of unsecured creditors, it is easy to envision circumstances in which an administratively solvent debtor could not confirm a plan because such proceeds would not be available to pay administrative expenses in full as required by section 1129(a)(9) of the Bankruptcy Code.

6. Additionally, a debtor in possession's waiver of its right to surcharge collateral under section 506(c) is a common and reasonable feature of debtor in possession financings. As an initial matter, the Creditors' Committee is seeking to preserve a right it cannot assert because the Bankruptcy Code and Supreme Court precedent are clear that section 506(c) rights belong exclusively to the trustee. See Hartford Underwriters Insurance Company v. Union Planters Banks, N.A., 530 U.S. 1, 14 (2000) (holding that "11 U.S.C. 506(c) does not provide an administrative claimant an independent right to use the section to seek payment of its claim"). Without a section 506(c) waiver, debtor in possession lenders would routinely face the prospect that an unlimited charge could rank ahead of their liens and claims. This generally would be an unacceptable outcome for lenders whether in or outside of a bankruptcy proceeding. Moreover, the DIP Credit Agreement and proposed Order provide for a substantial "Carve Out" after the

occurrence of an Event of Default for estate professionals and for a chapter 7 trustee's expenses, obviating the primary need for any section 506(c) surcharge.

7. The Objection includes several further objections to provisions of the Order and the DIP Credit Agreement which were agreed to by the Debtors and which are common provisions of DIP loan documents and DIP financing orders. In certain instances, such as the concerns over the definition of "Borrowing Base Availability," or the Debtors' rights to enter into Hedge Agreements, the Objection misreads the DIP Credit Agreement. In other instances, such as the concern over ERISA defaults or defaults arising from the lifting of the automatic stay, the Creditors' Committee is attempting to substitute its business judgment for that of the Debtors.

8. Credit Suisse is continuing to work with counsel for each of the major creditor constituencies to resolve any issues with the wording of the Order and the DIP Credit Agreement. Credit Suisse notes, however, that unfavorable resolution of such issues renders the Debtors unable to access liquidity under the DIP Credit Agreement. Credit Suisse submits that in today's volatile credit markets, such a result would be catastrophic for the Debtors.

Argument

A. If The Creditors' Committee Objection Is Upheld The DIP Credit Facility Will Cease To Be Available To The Debtors On The Current Terms.

9. The Creditors' Committee has objected to certain critical provisions of the Order. Pursuant to section 3.03(b) of the DIP Credit Agreement, it is a condition precedent to the increase of the revolving credit commitment under the DIP Credit Agreement from $150 million to $400 million that the Order include the provisions to which the Creditors' Committee objects. In addition, it is an Event of Default under the DIP Credit Agreement if an Order satisfactory to the Lead Arrangers is not entered by March 8, 2008.

10. If the Objection is upheld, not only will the DIP Lenders be under no obligation to advance additional credit but they will also have the right to terminate the DIP Credit Facility and seek repayment of the outstanding loans. Accordingly, if the Objection is upheld, further borrowings under the DIP Credit Facility will not be available to the Debtors.

B. The DIP Lenders May Be Granted A Lien On The Proceeds Of Avoidance Actions.

11. The Objection fails to properly distinguish between avoidance actions (over which the Order does not grant a lien to the Secured DIP Creditors) and the proceeds of avoidance actions (over which the Order does grant a lien to the Secured DIP Creditors). The Creditors' Committee cites a number of authorities detailing the nature and importance of avoidance actions. The significance of avoidance actions to unsecured creditors is not in dispute. However, in paragraph 22 of the Objection the Creditors' Committee mistakenly equates the approving of liens on avoidance actions with the approving of liens on the proceeds of avoidance actions. The problem with this analysis is that while the Creditors' Committee correctly states that avoidance actions are not property of a debtor's estate, the proceeds of avoidance actions are property of a debtor's estate. 11 U.S.C. §541(a)(3) (any interest in property that a trustee recovers in an avoidance action under section 550 is property of the estate). The Objection relies primarily on Section 551 of the Bankruptcy Code. That section states that avoided liens are preserved for the benefit of "the estate," not specifically for the benefit of pre-petition general unsecured creditors or any other constituency. 11 U.S.C. §551. The DIP Lenders are entitled to superpriority claims against and liens on property of the estate pursuant to section 364(c) of the Bankruptcy Code.

12. Granting a debtor in possession lender liens on the proceeds of avoidance actions is routinely approved in major chapter 11 cases in the Southern District of New York.

See In the Matter of the Adoption of Guidelines for Financing Requests, General Order No. M-274 (Bankr. S.D.N.Y. Sept 9, 2002) (providing guidance for granting a DIP Lender a lien on proceeds of avoidance actions in an order and permitting liens to be granted on the proceeds of avoidance actions, so long as such granting provision is stated to be an "Extraordinary Provisions); see, e.g., In re Loral Space & Communications Ltd. et. al., Case No. 03-41710 (RDD) (Bankr. S.D.N.Y. July 15, 2003) (citing General Order M-274 and permitting DIP lender's lien on proceeds of avoidance actions); In re Bally Total Fitness of New York Inc., et. al, Case No. 07-12395 (BRL) (Bankr. S.D.N.Y. Aug. 21, 2007) (granting DIP lenders a lien on proceeds from avoidance actions); In re WorldCom, Inc., et. al., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Oct. 15, 2002) (allowing the DIP Lender to take a lien on proceeds of any successful avoidance actions). The proceeds of avoidance actions may be used to repay DIP obligations, see In re Delta Air Lines Inc., et. al. Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Oct. 6, 2005) ("any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions shall be available to repay the DIP obligations"), and may even be ordered to be held in a segregated account for the benefit of a DIP lender, see In re WorldCom, Inc., et. al., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Oct. 15, 2002) ("the Avoidance Proceeds shall be held in a segregated account and shall not be distributed to other creditors of the Debtors until all [obligations provided for in a DIP loan agreement] have been paid in full"); see also Unsecured Creditors' Committee v. Jones Truck Lines Inc., 156 B.R. 608, 614 (W.D.Ark. 1992) (stating that postpetition liens may be extended to avoidance actions); In re Ellingsen MacLean Oil Co. Inc., 98 B.R. 284, 291 (Bankr.W.D.Mich. 1989) (stating that preference proceeds recovered by the trustee can be subject to postpetition liens).

13. An essential element of Chapter 11 of the Bankruptcy Code is the rights and protections afforded to the DIP lenders pursuant to section 364. The right of DIP lenders to receive liens on the proceeds of avoidance actions is an important component of the rights afforded to DIP lenders. See In re Silver Cinemas International Inc., Case No. 00-1978 (Bankr. D. Del. August 11, 2000) (finding that granting DIP lenders liens on avoidance actions is appropriate because "limiting the protections offered by section 364 undercuts the goals of bankruptcy and would cause a chilling effect on DIP Lending"); In re Florida West Gateway, Inc., 147 B.R. 817, 820 (Bankr. S.D. Fla. 1992) (limiting 364 protections "undercuts the goal of providing incentives to lenders to extend post-petition credit").

14. Additionally, any concerns that might arise from the granting of liens on avoidance actions in certain circumstances are not applicable here. The Secured DIP Creditors are neither pre-petition lenders at whom avoidance actions will be targeted, nor junior pre-petition lienors who would be recipients of an inequitable windfall, absent Bankruptcy Code section 551, should a senior lien be avoided. The Secured DIP Creditors are post-petition lenders who simply seek a first priority lien on unencumbered property of the estate and first priority claims against the Debtors. Permitting the Secured DIP Creditors liens on avoidance actions would not remedy any pre-bankruptcy "bad" behavior by them, nor would it provide a windfall of the type the Bankruptcy Code or General Order M-274 of this Court aims to prevent.

C. Even If The Lenders Did Not Have A Lien On Proceeds Of Avoidance Actions, They Are Entitled To A Superpriority Claim On The Proceeds.

15. The Objection asserts that the Order "emasculates" section 551 of the Bankruptcy Code. The Creditors' Committee appears to base its argument on the flawed premise that section 551 of the Bankruptcy Code preserves avoided transfers for the exclusive benefit of general unsecured creditors. However, the proceeds of avoidance actions are

preserved for the benefit of the estate, not for the benefit of any particular creditor. See 11 U.S.C. §551 ("Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate"); Official Committee of Unsecured Creditors of Cybergenics Corp v. Chinery, 330 F.3d. 548, 558 (3d Cir. 2003) ("any recovery would go not to the Committee, but to the estate itself").

16. No case law provides that unsecured creditors are the sole or direct recipient of such proceeds or that a creditors' committee prosecuting an avoidance action would receive such proceeds over a DIP lender or any other creditor. The "estate" includes creditors with administrative claims, including superpriority claims granted pursuant to section 364(c)(1) of the Bankruptcy Code. Any other result would have the absurd consequence that general unsecured creditors jump ahead of administrative claims if there are any proceeds of avoidance actions.

17. The Objection cites numerous authorities for the proposition that general unsecured creditors benefit from the proceeds of a successful avoidance action. Credit Suisse does not challenge this point. The benefit, though, arises from an overall increase in the assets of the estate available for distribution and from the repayment of senior claims. There need not be direct financial benefit to any general unsecured creditor. In re Blanks, 64 B.R. 467, 469 (Bankr. E.D.N.C. 1986) ("Preservation of an avoided lien is not conditioned on nonpriority unsecured creditors receiving the proceeds. Preservation is automatic 'for the benefit of the estate.' Clearly, the estate benefits if the proceeds will be used to pay costs of administration and priority claimants."); see also American Jurisprudence, 9A Am. Jur. 2d Bankruptcy §1562 ("It is not required that nonpriority unsecured creditors receive the proceeds of a preserved lien as a

condition for preservation of the lien since preservation is automatic for the benefit of the estate; the estate will benefit even if the proceeds are used to pay costs of administration and priority claimants." (citing In re Blanks, 64 B.R. at 469)).

18. If avoidance action proceeds were preserved solely for pre-petition unsecured creditors, it is easy to envision circumstances in which an administratively solvent debtor would not be able to confirm a plan. With such proceeds set aside for pre-petition unsecured creditors, certain debtors might not be able to pay professional or other administrative expenses in full in cash as required by section 1129(a)(9) of the Bankruptcy Code.

19. The Secured DIP Creditors also have conditioned their loans on obtaining a superpriority claim against the Debtors pursuant to section 364(c)(1) of the Bankruptcy Code. This superpriority status requires that the Secured DIP Creditors would be paid out of the proceeds preserved to the estate before any other creditor. 11 U.S.C. §364(c) ("If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt – (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title"); 11 U.S.C. §507 (providing for distribution priorities).

20. The DIP Lenders are unwilling to lend solely on the basis of a superpriority claim, but this demonstrates the futility of the Creditors' Committee's argument in relation to liens on avoidance actions. Even if the Secured DIP Creditors do not have a lien on avoidance action proceeds, as a consequence of their superpriority claim they would recover from avoidance action proceeds before unsecured creditors. See In the Matter of: FBN Food Services, Inc., 82 F.3d 1387, 1396 (7th Cir. 1996) (stating that once a trustee recovers property

pursuant to an avoided transfer under section 550(a), "the money is distributed according to the priorities established by the Code and the debtor's own commitments). The DIP Lenders require a lien on such proceeds to protect against, *inter alia*, any post-petition statutory liens that may arise against the Debtors' estates and to ensure that they are repaid if exit financing is unavailable in the credit markets to the Debtors. Even if the Objection correctly stated the law, there would be no basis for paying any general unsecured creditor out of the estate prior to payment in full of a superpriority debtor in possession lender.

D. The Lenders May Obtain A Waiver Of Section 506 Surcharges And This Waiver Is Essential To The Funding Of The DIP Credit Facility.

21. It is well-settled in the Southern District of New York that a DIP lender may obtain a waiver of surcharges under section 506(c) of the Bankruptcy Code. See In the Matter of the Adoption of Guidelines for Financing Requests, General Order No. M-274 (Bankr. S.D.N.Y. Sept 9, 2002) (providing guidance for the inclusion of a 506(c) waiver in an order); see, e.g., In re Urban Communicators PC Limited Partnership, 379 B.R. 232, 241 n.12 (Bankr. S.D.N.Y. 2007) (noting that the Debtors waived their right to seek a surcharge under section 506(c)); In re Bally Total Fitness of New York Inc., et. al, Case No. 07-12395 (BRL) (Bankr. S.D.N.Y. Aug. 21, 2007) (providing for a waiver of 506(c) and similar claims); In re Delta Air Lines Inc., et. al., Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Oct. 6, 2005) (providing for waiver of 506(c) claims); In re Loral Space & Communications Ltd. et. al., Case No. 03-41710 (RDD) (Bankr. S.D.N.Y. July 15, 2003) (providing for waiver of 506(c) claims); In re Delphi Corporation, et. al., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y Oct. 28, 2005) (providing for waiver of 506(c) claims); In re WorldCom, Inc., et. al., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Oct. 15, 2002) (providing for a waiver of 506(c) claims).

22. Such waivers are acceptable and common conditions precedent to the making of a DIP loan. See, e.g., Fred S. Hodara & Robert J. Stark[2], Fencing Off the Foxes from the Hen House: Towards A More Secured Understanding of Bankruptcy Code §506(c), Vol. 16:2, Real Estate Fin. J., 69, 70 (Fall 2000) (explaining that lenders routinely require, and debtors usually grant "as a condition precedent for the loan, a waiver of the debtor's right to seek administrative surcharge against the collateral securing either the prepetition loan or the postposition loan").

23. The reason why waivers are necessary is that under section 506(c), there is no limit as to the amount that could be surcharged against the DIP lenders' collateral. See 11 U.S.C. §506(c) ("The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property").

24. The DIP Lenders are unwilling to lend in circumstances where they cannot know the limit to the charges that could be made against their collateral. To rule that a DIP lender may not require a 506(c) waiver to provide financing would cause a chilling effect on DIP lending. See In re Silver Cinemas International Inc., Case No. 00-1978 (Bankr. D. Del. August 11, 2000) (reasoning that Chapter 11 envisions the continuation of a debtor's business and actions that limit protections afforded to DIP lenders will cause a chilling effect on DIP lending); In re Florida West Gateway, Inc., 147 B.R. at 820 (limiting 364 protections "undercuts the goal of providing incentives to lenders to extent post-petition credit"); see also Fred S. Hodara & Robert J. Stark, at 70 ("the need for post-petition financing may result in a waiver of [the

[2] The authors practice at the law firm that represents the Creditors' Committee.

Debtors'] rights under Section 506(c)"). In this case, a 506(c) waiver was negotiated together with a generous Carve-Out for administrative expenses and in the case of a conversion to a Chapter 7 proceeding, as set forth in Paragraph 16 of the Order.

WHEREFORE, Credit Suisse respectfully requests that this Court overrule the Objection and approve the Motion.

Dated: New York, New York
March 5, 2008

By: /s/ Andrew V. Tenzer
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