

Hearing Date: **March 20, 2008 at 10:00 a.m.**
Objection Deadline: **March 18, 2008 at 4:00 p.m.**

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 PURSUANT TO 11 U.S.C. § 365 TO ASSUME AN
EXECUTORY CONTRACT WITH SIM PRODUCTS, INC. FOR PURCHASE OF CO-
MAILING EQUIPMENT**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move this Court (the “Motion”) for the entry of an order substantially in the form of Exhibit A hereto, authorizing the assumption of an executory contract pursuant to which Debtor Quebecor World Logistics, Inc. (“QWL”) and SIM Products Inc. (“SIM”) agreed upon terms under which QWL would purchase six (6) 30-Pocket Co-Mailing Systems from SIM. In support of this Motion, the Debtors rely on the Declaration of Roswell Dennison submitted herewith. In further 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 predicate for the relief requested herein is section 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”).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 QWI’s financial advisor.

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.,² 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.

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

The Agreement to Purchase Co-Mailing Systems

10. The contract that is the subject of this motion pertains to an agreement between QWL and SIM for the purchase of six 30-Pocket SF505 Co-Mailer Systems (each, a “Co-Mailer”). Co-Mailers are used by the Debtors in connection with their direct mail business. A 30-Pocket Co-Mailer system consists of software and equipment capable of integrating subscriber lists from up to 30 different publishers and then bundling the related publications (such as magazines and catalogs) according to mail carrier routes and/or postal ZIP codes established by the U.S. Postal Service, so that magazines, catalogs and other materials published by multiple customers that are destined for the same geographic area are grouped together prior to delivery to the Postal Service. By bundling and pre-sorting publications in this manner, the Debtors are able to obtain postage rates for their customers that are much lower than those that would be available if the same publications were mailed individually. This service is particularly useful to publishers that, on their own, do not produce materials in sufficient volume to obtain the lowest rates available from the U.S. Postal Service. By combining publications from multiple customers, the Debtors are able to obtain lower rates and provide cost savings to their customers.

11. The Debtors have a substantial presence in the direct mail industry and provide these services to both their printing customers and, more recently, to publishers who do not use the Debtors for printing services. The ability to offer customers co-mailing services is critical to being a competitive participant in the direct mail industry because customers actively seek out businesses that offer co-mailing and the associated cost savings. Accordingly, in order to remain a leader in the direct mail industry, the Debtors have a strong business interest in being able to provide state-of-the-art co-mailing services to their customers.

12. The Co-Mailers that the Debtors have agreed to purchase from SIM under the Agreement represent the state-of-the-art in terms of co-mailing equipment. Prior to entering into the Agreement, the Debtors interviewed and negotiated with all of the limited number of prospective vendors for co-mailing equipment. At the end of that process, the Debtors determined that SIM offered the best equipment available at a very competitive price. In addition, due to the large size and complex nature of the machinery that comprises co-mailing systems, SIM has limited production capacity and it was necessary for the Debtors to reserve capacity in order to obtain delivery of the Co-Mailers in a timely manner.

13. The contract pursuant to which QWL and SIM agreed on the terms of QWL's purchase of six Co-Mailers consists of (i) a quotation of price and terms and a description of the Equipment provided by SIM and dated May 1, 2007 (the "Quotation"), (ii) two purchase orders submitted on behalf of QWL, (a) the first, Purchase Order No. 668 (the "First Purchase Order"), dated May 7, 2007 and (b) the second, Purchase Order No. 707 (the "Second Purchase Order," together with the First Purchase Order, the "Purchase Orders"), dated May 29, 2007, pursuant to which QWL ordered four Co-Mailers and (iii) a series of invoices from SIM to QWL on account of the Purchase Orders, setting forth the payment schedule and amounts due for each Co-Mailer (the "Invoices," together with the Quotation and Purchase Orders, the "Agreement").

14. Under the Agreement, QWL is obligated to make monthly installment payments on account of each Co-Mailer. For the first two Co-Mailers ("Co-Mailer #1" and "Co-Mailer #2"), ordered pursuant to the First Purchase Order, QWL made a down payment on May 10, 2007, and commenced making monthly installment payments on July 15, 2007 through February 15, 2008. Manufacture of Co-Mailer #1 was completed in December 2007, and it is currently

being held in storage by SIM pending the Debtors' decision on relocating to a new facility. Co-Mailer #2 is nearing completion, with a delivery date scheduled for March 2008.

15. With respect to the Second Purchase Order, QWL made a down payment on the four additional Co-Mailers ("Co-Mailer #3," "Co-Mailer #4," "Co-Mailer #5" and "Co-Mailer #6") on June 14, 2007. Installment payments on Co-Mailer #3, Co-Mailer #4 and Co-Mailer #5 were scheduled to commence on January 15, 2008. The Debtors have not made this initial, prepetition installment payment. The Debtors did, however, make the subsequent postpetition payment that was due on February 15, 2008. Installment payments on Co-Mailer #4 will commence with an initial payment due on May 15, 2008. Delivery dates for the remaining four Co-Mailers are anticipated to occur in July 2008, November 2008, March 2009 and July 2009.

16. As of the date of this Motion, the Debtors have made down payments and installment payments totaling 39% of the total purchase price. The unpaid prepetition amount currently due and owing on account of the Co-Mailers is \$541,965 (the installment payments that were due on Co-Mailers #3 through #5 on January 15, 2008), which is the amount that would be required to cure the Debtors' defaults under the Agreement pursuant to section 365(b) of the Bankruptcy Code (the "Cure Amount").

Relief Requested

17. The Debtors request authorization to assume the Agreement, pay the Cure Amount to cure existing defaults and provide SIM with adequate assurance of future performance. At the present time, the Debtors' only cure obligation under the Agreement is the Cure Amount, as set forth above. Because the Co-Mailers are necessary to the Debtors' business, and the favorable terms of the Agreement make it a valuable asset of the Debtors' bankruptcy estates, the Debtors seek authorization to cure defaults and assume the Agreement.

Basis for Relief Requested

18. Section 365 of the Bankruptcy Code authorizes a debtor to assume, assume and assign or reject its executory contracts and unexpired leases subject to the approval of the Court.

The relevant provisions of section 365 provide as follows:

(a) Except as provided in . . . subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) if there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee:

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease

See 11 U.S.C. §§ 365(a) and (b)(1). Accordingly, section 365 of the Bankruptcy Code authorizes assumption of the Agreement provided that defaults are cured and the debtor provides adequate assurance of future performance.

19. 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.”).

20. 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”).

21. 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.").

22. Whether a debtor has provided a counterparty with "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given a "practical, pragmatic construction." See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); see also In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance."). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when a prospective assignee of a lease from a debtor has financial resources to perform and has expressed a willingness to devote sufficient funding to its business to do so; chief determinant of adequate assurance under a lease is whether it appears that the rent will be paid).

23. The Debtors have met the requirements for assumption of the Agreement. First, assumption of the Agreement is a sound exercise of the Debtors' business judgment. The Debtors have secured the best available equipment from a vendor with an excellent reputation at a competitive price. In addition, the Co-Mailers are integral to the Debtors' ability to be a viable competitor in the direct mail business, and represent a key element of the Debtors' efforts to

retool and modernize their facilities and provide state-of-the-art service to their customers.

Finally, the Debtors have already paid 39% of the total purchase price under the Agreement.

24. The Debtors will satisfy their obligations under section 365(b) of the Bankruptcy Code to cure defaults under the Agreement by paying SIM the Cure Amount promptly upon the Court's approval of this Motion. The Debtors prepetition and postpetition performance under the Agreement demonstrates adequate assurance of their future ability to perform under the Agreement. Prior to the payments due on January 15, 2008, the Debtors made substantial down payments and timely paid each installment due over the term of the Agreement, including all installments due since the Petition Date. The only installment not paid by the Debtors is a single prepetition invoice, for which the Debtors were unable to process a payment prior to the Petition Date.

25. The Debtors' representatives have held discussions with SIM to inform SIM of the Debtors' intent to assume the contract, and have provided the SIM with assurance of their ability to perform under the Agreement in the future. SIM has informed the Debtors that it consents to the assumption of the Agreement.

26. Accordingly, assumption of the Agreement is a sound business decision that ensures that the Debtors will receive the equipment necessary for the ongoing operation of their businesses and on account of which they have already advanced substantial sums. In addition, the Debtors will cure existing defaults under the Agreement, have generally performed in accordance with the Agreement's terms and have access to sufficient funds to support their future performance. Accordingly, the Debtors request that the Court enter an order authorizing their assumption of the Agreement.

Memorandum Of Law

27. 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

28. 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.

No Prior Request

29. 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 order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to assume the Agreement and cure existing defaults thereunder.

[Signature page follows]

Dated: March 10, 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. § 365 AUTHORIZING THE
ASSUMPTION OF AN EXECUTORY CONTRACT WITH SIM
PRODUCTS, INC. FOR PURCHASE OF CO-MAILING EQUIPMENT**

Upon the motion (the “Motion”) of the above-captioned debtors (collectively, the “Debtors”) for entry of an Order authorizing the Debtors to assume an executory contract with SIM Products, Inc. (“SIM”) for the purchase of co-mailing equipment; the Court having reviewed the Motion and considered the statements of counsel at a hearing before the Court (the “Hearing”); and the Court having found that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion was appropriate under the circumstances, (e) the conditions for assumption of the Agreement (as defined in the Motion) under section 365 of the Bankruptcy Code, including the cure of any existing defaults thereunder, have been or will promptly be satisfied by the Debtors and (f) the Debtors have provided SIM with adequate assurance of their future performance under the Agreement; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish grounds for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized pursuant to 11 U.S.C. § 365 to assume the Agreement pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006. The Agreement shall be deemed assumed and effective as of the date of the entry of this Order.
3. Upon the entry of this Order, the Debtors are authorized to cure existing defaults under the Agreement, including making the payment of past due installments under the Agreement.
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 Motion or otherwise waived.
5. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.
6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: March _____, 2008

United States Bankruptcy Judge