

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

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| 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
EXECUTORY CONTRACTS WITH HELL GRAVURE SYSTEMS, GMBH & CO. KG
FOR THE PURCHASE OF ENGRAVING 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 four executory contracts pursuant to which Debtors Quebecor World Atglen Inc., Quebecor World Mt. Morris II LLC and QW Memphis Corp. and Hell Gravure Systems, GMBH & Co. KG (“HGS”) agreed upon terms under which the Debtors would purchase certain rotogravure printing equipment and related software from HGS. 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 Agreements to Purchase Engravers

10. This Motion pertains to the following agreements between Debtors and HGS (i) an agreement between Quebecor World Atglen Inc. (“QW Atglen”) and HGS for the purchase of two K6 Engravers for the Debtors’ Atglen, Pennsylvania facility (the “Atglen Agreement”), (ii) an agreement between Quebecor World Mt. Morris II LLC (“QW Mt. Morris”) and HGS for the purchase of two K6 Engravers for the Debtors’ Mt. Morris, Illinois facility (the “Mt. Morris Agreement”), (iii) an agreement between QW Atglen and HGS for the purchase of two K6 Engravers for the Franklin, Kentucky facility (the “Franklin Agreement”), and (iv) a purchase order submitted by QW Memphis Corp. to HGS for K6 upgrades to existing K406 Engravers (the “K6 Upgrades”) for the Dickson, Tennessee facility (the “Dickson Agreement,” together with the Atglen Agreement, the Mt. Morris Agreement and the Franklin Agreement, the “Agreements”). Engravers are used in the rotogravure printing process to engrave images onto large cylinders. Ink is applied to the cylinders and the image is then “rolled” onto the paper. Rotogravure printing is used in a number of the Debtors’ businesses, including to the production of retail inserts, weekly news magazines and catalogs.

11. The Debtors’ Atglen facility produces a number of retail inserts and weekly news magazines. More than 75% of the facility’s work is rotogravure printing. The Debtors’ Franklin facility, at which 100% of the work is rotogravure printing, produces primarily retail inserts and high-end catalogs. The Debtors’ Mt. Morris facility, at which 100% of the work is rotogravure printing, produces primarily high end catalogs and Sunday magazines. Finally, the Debtors’ Dickson facility, at which 100% of the work is rotogravure printing, produces primarily retail inserts and Sunday magazines.

12. The new K6 Engravers are to replace the Debtors' existing engravers that have outlasted their useful life and are quickly becoming obsolete. The computer technology in the existing engravers is incompatible with current generation of data files used by the Debtors' customers. In addition, the new engravers are more efficient, providing increased throughput and requiring less labor to operate. They produce a product of a substantially higher quality, as is increasingly demanded by Debtors' customers. Accordingly, in order to remain a leader in the production of rotogravure products, it is critical that the Debtors upgrade this equipment.

13. The K6 Upgrades for the Dickson facility would be used to upgrade Dickson's existing HGS model K406 Engravers to have certain K6 capabilities, including increased automation and accuracy and reduction in staffing requirements. The K406 Engravers are less sophisticated than the K6 Engravers, but substantially more sophisticated than the engravers the Debtors are seeking to replace at Atglen, Franklin and Mt. Morris.

14. It is critically important for the Debtors' business operations to promptly assume these contracts. The K6 Engravers for Atglen have both been delivered and installed. However, the electronic software that controls the machines is due to be shut off if cure payments are not promptly received. With respect to the Franklin contract, one of the K6 Engravers has been shipped and is being held at the port in New York pending payment of past-due pre-petition amounts owing. The second K6 Engraver has been built and is ready to ship. Once received at Franklin, the new equipment will take approximately two months to become fully operational, including training operators for the equipment and calibrating the machines to the unique specifications of each customer. The K6 Engravers for the Mt. Morris facility are still being manufactured. The Debtors must make pre-petition cure payments by late March in order to retain their manufacturing priority and to secure a July shipment of the equipment. The K6

Upgrades for the Dickson facility are ready to ship but will require two months to install due to the substantial modifications necessary to adjust the upgrades to the existing equipment.

15. The K6 Engravers that the Debtors have agreed to purchase from HGS under the Agreements represent the state-of-the-art in terms of rotogravure engraving equipment. The Debtors have negotiated a substantial corporate discount with HGS. In addition, due to the purchase of multiple engravers, the Debtors negotiated an additional discount and received the engravers at a very competitive price.

16. QW Mt. Morris and HGS entered into the Mt. Morris Agreement on or about October 15, 2007. QW Mt. Morris is obligated to make payments pursuant to the payment schedule under the Mt. Morris Agreement, and failed to make a prepetition payment of €784,136 due on January 15, 2008. One of the engravers is in final testing and will be ready to ship in late March 2008. The other engraver will be built and ready to ship in early June, if the payments under the Mt. Morris Agreement are brought current by March 25, 2008. The unpaid prepetition amount currently due and owing on account of the Mr. Morris Agreement is €784,136 Euros (the payment that was due on January 15, 2008), which is the amount that would be required to cure the Debtors' defaults under the Mt. Morris Agreement pursuant to section 365(b) of the Bankruptcy Code (the "Mt. Morris Cure Amount").

17. QW Atglen and HGS entered into the Franklin Agreement on or about April 12, 2007. Atglen is obligated to make payments pursuant to the payment schedule under the Franklin Agreement, and failed to make a prepetition payment of €790,653 due January 15, 2008. The engravers have been shipped to New York but will not be delivered until the late payments under the Franklin Agreement are made. The unpaid prepetition amount currently due and owing on account of the Franklin Agreement is €790,653 (the payment that was due on

January 15, 2008), which is the amount that would be required to cure the Debtors' defaults under the Franklin Agreement pursuant to section 365(b) of the Bankruptcy Code (the "Franklin Cure Amount").

18. QW Memphis Corp. and HGS entered into the Dickson Agreement on or about August 21, 2007. Pursuant to the Dickson Agreement, HGS upgraded the hardware and software on the Debtors' existing engravers. The unpaid prepetition amount currently due and owing on account of the Mr. Morris Agreement is €298,149, which was due on or about January 10, 2008 and is the amount that would be required to cure the Debtors' defaults under the Mt. Morris Agreement pursuant to section 365(b) of the Bankruptcy Code (the "Franklin Cure Amount").

19. QW Atglen and HGS entered into the Atglen Agreement on or about October 15, 2007. There are no prepetition amounts outstanding under the Atglen Agreement and the Debtors intend to make all remaining postpetition installment payments due thereunder. Both engravers subject to the Atglen Agreement have been delivered and installed.

Relief Requested

20. The Debtors request authorization to assume the Agreements, pay the Mt. Morris Cure Amount, the Franklin Cure Amount and the Dickson Cure Amount (collectively, the "Cure Amounts") to cure existing defaults and provide HGS with adequate assurance of future performance. At the present time, the Debtors' only cure obligations under the Agreements are the Cure Amounts, in the aggregate amount of €1,872,938 as set forth above. Because the engravers are necessary to the Debtors' business, and the favorable terms of the Agreements make them valuable assets of the Debtors' bankruptcy estates, the Debtors seek authorization to cure defaults and assume each of the Agreements.

Basis for Relief Requested

21. 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.

22. 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.”).

23. 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”).

24. 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.”).

25. 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).

26. The Debtors have met the requirements for assumption of the Agreements. First, assumption of the Agreements is a sound exercise of the Debtors’ business judgment. New rotogravure printing equipment is integral to a major sector of the Debtors’ business, the printing of catalogs and retail mailings. The Debtors’ ability to be a viable competitor in the this business is particularly important to their overall operations. Moreover, the equipment that is the subject

of the Agreements represents a key element of the Debtors' efforts to retool and modernize their facilities and provide state-of-the-art service to their customers.

27. The Debtors will satisfy their obligations under section 365(b) of the Bankruptcy Code to cure defaults under the Agreements by paying HGS the Cure Amounts promptly upon the Court's approval of this Motion. The Debtors' prepetition and postpetition performance under the Agreements demonstrates adequate assurance of their future ability to perform under the Agreement. Apart from the unpaid prepetition payments, the Debtors have otherwise made substantial payments and have paid postpetition installments due under the Agreements.

28. The Debtors' representatives have held discussions with HGS to inform HGS of the Debtors' intent to assume the Agreements, and have provided the HGS with assurance of their ability to perform under the Agreements in the future.

29. Accordingly, assumption of the Agreements 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 Agreements, have generally performed in accordance with the Agreements' 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 Agreements.

Memorandum Of Law

30. 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

31. 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

32. 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 Agreements and cure existing defaults thereunder.

Dated: March 10, 2008
New York, New York

Respectfully submitted,

/s/ Michael J. Canning
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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 EXECUTORY CONTRACTS WITH HELL GRAVURE
SYSTEMS, GMBH & CO. KG FOR THE PURCHASE OF ENGRAVING
EQUIPMENT**

Upon the motion (the “Motion”) of the above-captioned debtors (collectively, the “Debtors”) for entry of an Order authorizing the Debtors to assume four executory contracts (the “Agreements”) with Hell Gravure Systems, GMBH & Co. KG (“HGS”) under which the Debtors agreed to purchase certain rotogravure printing equipment and related software from HGS; 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 Agreements (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 HGS 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 Agreements pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006. The Agreements 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 Agreements, including making the payment of past due installments under the Agreements.
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