

Hearing Date: March 20, 2008 at 10:00 a.m.

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**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

**OBJECTION OF THE DEBTORS TO THE APPLICATION BY ECOLOGICAL
FIBERS, INC. AND MOTION OF WCJ PILGRIM WIRE, LLC FOR ALLOWANCE
AND IMMEDIATE PAYMENT ADMINISTRATIVE CLAIMS PURSUANT TO
SECTION 503(b)(9)**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby file their objection (the “Objection”) to the application by Ecological Fibers, Inc. (“Ecological”) and the motion by WCJ Pilgrim Wire, LLC (“Pilgrim”) (collectively, the Motions) for allowance and immediate payment of administrative expense claims pursuant to

section 503(b)(9) of the Bankruptcy Code.¹ The Debtors do not dispute that each of the movants is entitled to administrative expense treatment under section 503(b)(9) to the extent of the costs of goods received by the Debtors in the ordinary course of business within twenty days prior to the filing of these cases. The Debtors do contest, however, the determination and payment of any such claim at this time, rather than in connection with the implementation of a confirmed plan of reorganization, as permitted under section 1129 of the Bankruptcy Code. As set forth below, neither section 503(b)(9) nor any other section of the Bankruptcy Code requires the immediate payment of administrative expense claims this early in a bankruptcy case, and the determination and payment of such claims now would not only be unduly burdensome on the Debtors, but could result in unequal treatment among similarly situated creditors in these cases. In support of this Objection, the Debtors respectfully state as follows:

Background

1. 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”).
2. 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.
3. On January 31, 2008, an Official Committee of Unsecured Creditors was appointed.
4. 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,

¹ To the extent that Ecological also alleges the right to immediate payment under section 503(b)(1), the Debtors object to such a claim for the same reasons as will be set forth in this Objection to the request for payment of a claim under section 503(b)(9).

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”).² Each of the Debtors was joined in the Canadian 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

5. 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”).

6. 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.,³ 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) catalogues 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

² 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.

³ These include *Time*, *Fortune*, *Money*, *Sports Illustrated*, *People*, *Entertainment Weekly*, *Southern Living*, *Cooking Light* and *Coastal Living*.

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.

The Motions by Ecological and WCJ

7. Ecological alleges that “on various dates between January 2, 2008, and the Petition Date, EFI sold certain covering materials . . . to the Debtors in the ordinary course of the Debtors’ business.” See Application, at ¶ 4. Furthermore, Ecological alleges that the value of said goods is not less than \$159,337.33. Id. at ¶ 6.

8. Nevertheless, while seeking immediate payment, Ecological acknowledges in its motion that “[t]he 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 Id. at ¶ 11.

9. Pilgrim similarly requests that the Court “enter an order allowing Pilgrim’s administrative expense priority claim in the amount of \$84,113.37 and directing payment of the same as soon as funds are available to pay allowed administrative expense claims in this proceeding.” See Motion, at ¶ 8.

10. Neither Ecological nor Pilgrim sought reclamation of their goods under Section 546 of the Bankruptcy Code.

The Debtors’ Objection

11. The Debtors do not dispute that the movants will be entitled to administrative priority claims to the extent that their pre-petition claims satisfy the requirements of section

503(b)(9) of the Bankruptcy Code.⁴ However, as discussed below, there is no reason to require that any such claims be paid now, rather than at the end of the case upon confirmation of a plan of reorganization. Further, as payment of any such claims are not required to be made until later in these cases, the Debtors should not be required to litigate the extent and amount of any priority claim the movants might have at this early stage. Any such litigation should occur when all other pre-petition claims against the Debtors are resolved -- that is, after such creditor files a proof of claim and the Debtors have had the opportunity to object to such claim, if they so desire.

Payment of Section 503(b)(9) Claims is Premature

12. Bankruptcy Code section 503(b)(9) makes no mention of the timing by which any claim allowed thereunder must be paid. Indeed, there is nothing in the text of section 503(b)(9) that even suggests that a claimant has a right to immediate payment. See In re Bookbinders' Restaurant, Inc., No. 06-12302, 2006 WL 3858020, at *4 (Bankr. E.D. Pa. Dec. 28, 2006) (finding that “[t]he text of § 503(b)(9) neither states nor even implies that allowance of the expense encompasses an unqualified right to immediate payment ...[n]or does the text of the provision suggest that an administrative expense allowed under § 503(b)(9) is to be treated in a more favorable manner than any other allowed § 503(b) administrative expense”).

13. A number of courts have therefore held that section 503(b)(9) claims need not be paid until the effective date of a confirmed plan of reorganization.⁵ For example, in In re

⁴ Although the Debtors do not dispute that each of the movants is entitled to administrative expense treatment under section 503(b)(9) to the extent of the costs of goods received by the Debtors in the ordinary course of business within twenty days prior to the filing of these cases, the Debtors do dispute that the movants are entitled to the full amount sought. For example, the documentation filed by Pilgrim in support of its motion indicates on its face that certain of the alleged deliveries may have occurred outside of the twenty day period and/or may have been made to non-Debtor affiliates.

⁵ In fact, neither of the Motions filed identifies a single case that supports the relief requested of immediate payment of a claim under section 503(b)(9) of the Bankruptcy Code. The main case cited by Ecological, Global Home Products, reached the opposite result to the relief requested in the Motions.

Bookbinders' Restaurant, Inc., the court rejected the argument that a § 503(b)(9) administrative expense is entitled to immediate payment as a matter of law. It held that “[s]ection 503(b)(9) does nothing more than define a type of liability, previously treated as a prepetition claim, which is now accorded administrative expense status.” See 2006 WL 3858020, at *4.

14. Similarly, in In re Global Home Products, LLC, the court rejected the motion for immediate payment of the 503(b)(9) claim. In so doing, the court noted that “Section 503 does not specify a time for payment of [administrative] expenses but administrative expenses must be paid in full on the effective date of the plan[.]” See In re Global Home Products, LLC, No. 06-10340, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006). The court went on to provide that, therefore, “[t]o qualify for exceptional immediate payment, a creditor must show that ‘there is a necessity to pay and not merely that the Debtor has the ability to pay.’” Id. (internal citations omitted); see also Sweet Traditions, LLC, Case No. 07-45787, Docket Entry No. 190 (Bankr. E.D. Mo. Dec. 10, 2007) (denying the application for immediate payment of the 503(b)(9) claim and holding such claim would be payable upon the confirmation of a plan in the case or subsequent order of the court).

15. Exercising their discretion with regards to the timing of payment of an administrative claim, courts have looked to three factors: (1) prejudice to the debtor, (2) hardship to the claimant, and (3) potential detriment to other creditors. See In re Garden Ridge Corp., 323 B.R. 136, 143 (Bankr. Del.2005); see also In re Global Home Products, LLC, 2006 WL 3791955, at *5 (holding that the proper exercise of its discretion required it to deny the motion for immediate payment under 503(b)(9) because “prejudice to Debtors of requiring immediate payment far outweigh[ed] the prejudice, if any, to [the creditor] and Debtors’ other creditors are benefited by the ruling to the extent that by denying immediate payment, the Court preserves a later equitable distribution to other administrative claimants”). Here, these factors weigh heavily in favor of

denial of these Motions, as payment of these claims at this time would needlessly consume the Debtors cash resources from operations and their post-petition financing at time when liquidity is of paramount importance to the Debtors. Indeed, such loss of liquidity could possibly jeopardize the Debtors' reorganization prospects, which would clearly not be in the best interest of the Debtors or its creditors generally.

16. Another key factor courts consider in determining whether it is appropriate to require immediate payment of an administrative claim is bankruptcy's goal of creating an orderly and equal distribution of recovery among creditors. Orderly distribution is necessary in order to prevent a race to a debtor's assets, and to allow such debtor a necessary breathing spell from its creditors. For this reason, among others, courts frequently deny any request for payment of claims such as these until confirmation of a plan. See In re Continental Airlines, Inc., 146 B.R. 520, 531 (Bankr D. Del. 2002) ("Most courts postpone actual payment until confirmation of a plan."); see also In re Austin, No. 85-40639, 1994 WL 245224, at *1 (Bankr. S.D. Ga. 1994) ("In making this determination, one of the chief factors courts consider is bankruptcy's goal of an orderly and equal distribution among creditors and the need to prevent a race to a debtor's assets.").

17. The Motions fail to present a compelling justification as to why the prepetition claims must be satisfied at this early stage in these cases, rather than incident to a confirmed plan of reorganization under section 1129, when allowed claims of other similarly situated creditors are properly payable. Accordingly, consistent with the Bankruptcy Code and other recent cases addressing section 503(b)(9), the movants' claims for payment, to the extent allowable, should only be paid pursuant to a confirmed plan of reorganization.

18. Moreover, to allow each claimant to have its claim paid after "notice and a hearing," would create an administrative nightmare for the Debtors -- whereas payment at the end of

these cases will not only ensure that the Debtors receive the breathing spell intended by the Bankruptcy Code, but will also ensure that creditors will receive equality of treatment with respect to their recovery. For the foregoing reasons, the Debtors believe that denying the relief requested in the Motions is appropriate and in the best interests of the Debtors and all creditors.

Litigating and Adjudicating Section 503(b)(9) Claim Now is Also Premature

19. As there is no reason to require payment of 503(b)(9) claims at this time, there is also no reason to have those claims litigated now.

20. Although they seek priority status, movants are nevertheless “creditors” in that they meet the definition in Section 101(10) of an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.”

21. As creditors, movants will have the opportunity and requirement to file proofs of claim under section 501 prior to the bar date to be set by the Court. Rule 3003 requires creditors in Chapter 11 cases to file a claim, unless the claim has been scheduled, and is not disputed, contingent or unliquidated. “Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.” Thus, the proper order of events is for the Debtors to file their schedules, and for the movants to then file their claims, if necessary.

22. A proof of claim under Rule 3001 must “conform substantially to the appropriate Official Form.” Official Form 10 significantly provides that “This form should not be used to make a claim for an administrative expense arising after the commencement of the case.” The clear implication is that the form can and must be used to file a claim for an administrative

expense arising before the commencement of the case, and that is precisely the nature of the claims at issue here.⁶

23. If movants do file proofs of claim, their claim will be deemed allowed under section 502 unless objected to by the Debtors or other parties in interest, and if objections are filed, the matter can then be set for hearing.

24. This usual process of deferring claims litigation to later in a chapter 11 case avoids burdening debtors with claims litigation during the early stages of a case, when there are a host of pressing financial, operational and restructuring issues to address. Moreover, the usual process will let the Debtors structure any claims review process to maximize efficiency. For example, if the claims litigation process is allowed to run its usual course, the Debtors can analyze all claims of various categories in one coordinated process. And if contested litigation is necessary, that can be structured so that multiple claims can be addressed at the same hearing, such that witnesses do not need to come to Court time and time again. Indeed, Ecological appears to have claims that predated the twenty day period for priority under section 503(b)(9). If its proof of claim includes those as well, all of its claims can then be addressed in a single proceeding, rather than in multiple actions.

25. Although it might be suggested that litigating the entitlement to 503(b)(9) status should be straightforward, and, that there should be no reason to put it off, the issues can, in fact, be far from straightforward. To take one issue that will arise in this context, Ecological's

⁶ The issue of whether bar dates and proofs of claims applies to 503(b)(9) claims was raised recently in In re Dana Corp. In that case, the creditor failed to file its 503(b)(9) claim before the expiration of the bar date for proofs of claims. The creditor argued, in part, it should be excused for failing to timely file its claim because 503(b)(9) claims were a new breed of claims. The court found this argument "meritless" and stated that section "503(b)(9) claims are prepetition claims and were clearly provided for in the Bar Date Notice." The court went on to discuss how the proof of claim forms even had a checkbox section for 503(b)(9) claims. See In re Dana Corp., Memorandum Denying Request to File Late 503(b)(9) Claim, Case No. 06-10354, Docket Entry No. 5398 (Bankr. S.D.N.Y. May 30, 2007).

documents reveal that it shipped much of its product to Debtor locations under a consignment arrangement where Ecological may have maintained title to the products. These products were shipped to Debtor locations long before the twenty day period, although title to such products may have been transferred to the Debtors within the twenty day pre-filing period. The effect of this two step process -- delivery with subsequent transfer of title -- presents factual and legal issues that must be addressed before a final resolution of these claims can be reached.

26. This issue, and any others that will arise in connection with these types of claims, will be far better addressed in an orderly claims resolution process that allows for sharing of information, discovery to the extent necessary, and the orderly presentation of any required proof to the Court. To that end, the Debtors will propose such procedures at an appropriate time in these cases, with all parties having an opportunity to weigh in on such procedures before the Court. There is simply no reason to short circuit that process and start piecemeal claims litigation now.

Memorandum Of Law

27. This Objection includes citations to the applicable authorities and a discussion of their application to this Objection. 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 Objection pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

28. Notice of this Objection has been provided to all parties on the Notice List as set forth in the Case Management Order. A copy of the Objection is also freely available on the

website of the Debtors' proposed claim and noticing agent, Donlin, Recano & Company, Inc. ("Donlin, Recano") 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 requests that this Court deny the relief set forth in the Motions and the Debtors respectfully request an entry of an order, substantially in the form attached hereto as Exhibit A, providing that payment of 503(b)(9) claims are only required to be paid as part of a confirmed plan of reorganization.

Dated: March 13, 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 DENYING THE REQUEST FOR ALLOWANCE AND
IMMEDIATE PAYMENT OF ADMINISTRATIVE CLAIMS
PURSUANT TO SECTION 503(b)(9)**

Upon the Motions of Ecological Fibers, Inc. and WCJ Pilgrim Wire, LLC for allowance and payment of administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code and the objections thereto filed by the Debtors and by other parties in interest; it appearing that the relief requested is not in the best interest of the Debtors' estates, their creditors and other parties in interest; it appearing that the 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; and notice of the Objection and opportunity for a hearing was appropriate under the particular circumstances and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motions are DENIED in all respects.
2. Payment of claims under Section 503(b)(9), to the extent such claims are valid, are not required to be made prior to the effective date of any confirmed plan of reorganization in these cases.

3. 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 motions and objections or otherwise waived.

4. 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