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Hearing Date and Time:
March 27, 2008 @ 10:00 a.m.

Attorneys for The Economist Newspaper, N.A., Inc.

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

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In re : **Chapter 11**
Quebecor World (USA) Inc., et al., : **Case No. 08-10152 (JMP)**
: **Jointly Administered**
Debtors. :
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**MOTION FOR RELIEF FROM AUTOMATIC STAY
TO PERMIT ISSUANCE OF NOTICE TERMINATING
AGREEMENT AT END OF TERM**

TO: THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE:

The Economist Newspaper, N.A., Inc. (“The Economist”), by its attorneys, Farrell Fritz, P.C., hereby move, pursuant to Section 362(d)(1) of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure, for entry of an order modifying the bankruptcy automatic stay to permit The Economist to serve a notice of termination of its Printing Agreement with Debtor Quebecor World (USA) Inc. (“Quebecor World”) effective as of the expiration of the initial term of the Printing Agreement. The Economist respectfully represents as follows:

BACKGROUND

1. The Economist and Quebecor World are parties to a Printing Agreement, dated September 21, 1999 (the “Original Agreement”¹), and as amended by amendments dated July 10, 2002 (the “First Amendment”²), March 30, 2005 (the “Second Amendment”³) and April 15, 2007 (the “Third Amendment”⁴). Pursuant to the Printing Agreement, Quebecor World provides certain printing services to The Economist in exchange for specified payments from The Economist to Quebecor World.

2. The initial term of the Printing Agreement, which has previously been extended on two occasions by the mutual written consent of The Economist and Quebecor World, runs “until the completion of printing and payment of the September 27, 2008 issue of the Publication [The Economist]”. Second Amendment, ¶ 1. Either party may terminate the Printing Agreement, effective as of the completion of printing and payment of the September 27, 2008 issue of The Economist, by providing the other party by March 31, 2008 with written notice of its desire to terminate the Printing Agreement at the expiration of its Initial Term. Original Agreement (Terms and Conditions), ¶ 1; Second Amendment, ¶ 1. Other than the requirement to provide notice of termination by March 31, 2008, the right of either party to terminate the Printing Agreement at the end of the initial term is unconditional. Absent such notice, and absent a termination on account of a default or other occurrence provided for in the Printing

¹ A copy of the Original Agreement, without the exhibits thereto, is annexed to this Motion as Exhibit “A”. A portion of this document has been redacted to avoid disclosure of information that might be considered to be confidential by the Debtors or The Economist.

² A copy of the First Amendment is annexed to this Motion as Exhibit “B”. A portion of this document has been redacted to avoid disclosure of information that might be considered to be confidential by the Debtors or The Economist.

³ A copy of the Second Amendment, without the exhibits thereto, is annexed to this Motion as Exhibit “C”. A portion of this document has been redacted to avoid disclosure of information that might be considered to be confidential by the Debtors or The Economist.

⁴ A copy of the Third Amendment, without the exhibits thereto, is annexed to this Motion as Exhibit “D”. A portion of this document has been redacted to avoid disclosure of information that might be considered to be confidential by the Debtors or The Economist.

Agreement, the Printing Agreement shall remain in effect until terminated upon twelve months prior written notice by either party. Original Agreement (Terms and Conditions), ¶ 1.

3. The Printing Agreement has neither been assumed nor rejected in the Debtors' bankruptcy cases.

4. The Economist desires to terminate the Printing Agreement effective at the end of the initial term by providing Quebecor World (USA) with a written notice of termination on or before March 31, 2008.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges for the Southern District of New York, dated July 10, 1984 (Ward, acting C.J.). Consideration of this Application is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is Section 362(d)(1) of the Bankruptcy Code, as complemented by Bankruptcy Rule 4001.

RELIEF REQUESTED

6. The Economist respectfully requests entry of the annexed proposed order modifying the automatic stay in effect in the Debtors' cases pursuant to Section 362(d)(1) to permit The Economist to serve Quebecor World with a written notice terminating the Printing Agreement effective as of the end of the initial term of the Printing Agreement.

7. The Economist also requests this Court to direct that relief from the automatic stay be effective immediately upon entry of an order granting this Motion and that the 10-day

stay, provided under Rule 4001(a)(3), of orders granting motion for relief from the automatic stay shall not apply.

ARGUMENT AND AUTHORITIES

8. As an initial matter, The Economist recognizes for purposes of this motion, that Quebecor World's interest in the Printing Agreement is property of the Debtors' bankruptcy estates that is protected by the automatic stay. *See In re Enron Corp.*, 300 B.R. 201, 212 (Bankr. S.D.N.Y. 2003) (debtors' interest in employment contract is subject to protection of automatic stay, enjoining nondebtor party from taking action to terminate contract).

9. However, pursuant to Section 362(d)(1) of the Bankruptcy Code, a bankruptcy court, after notice and a hearing, may terminate, annul, modify or condition the Section 362(a) automatic stay "for cause, including the lack of adequate protection of an interest in property" of the party seeking relief. 11 U.S.C. § 362(d)(1). Except for the "lack of adequate protection" circumstance provided in Section 362(d)(1), the term "cause" is not defined in the Bankruptcy Code. *In re Bogdanovich*, 292 F.3d 104, 110 (2d Cir. 2002). Whether cause exists for relief from the automatic stay must be determined on a case-by-case basis based on the totality of circumstances. *Id.*; *In re Enron Corp.*, 306 B.R. 465, 476 (Bankr. S.D.N.Y. 2004). Generally speaking, affirmative harm to the movant from the continuance of the automatic stay constitutes grounds for relief from the stay, *In re Boodrow*, 192 B.R. 57, 60 (Bankr. N.D.N.Y. 1995), *aff'd sub nom Capital Communications Federal Credit Union v. Boodrow*, 197 B.R. 409 (N.D.N.Y. 1996), *aff'd*, 126 F.3d 43 (2d Cir. 1997), *cert. denied*, 522 U.S. 1117 (1998), and the court should assess the impact of the stay to all parties and balance the harms as among them. *Bogdanovich*, 292 F.3d at 110.

10. The Economist is being harmed by the continuance of the automatic stay since the stay is all that prevents The Economist from exercising its undisputable contractual right to terminate the Printing Agreement by timely serving a written notice to terminate. The Economist's right to terminate the Printing Agreement will, in effect, be forfeited if The Economist is not permitted to send a notice of termination by March 31, 2008. Keeping the automatic stay in place in this instance would be tantamount to the bankruptcy court rewriting the Printing Agreement to remove the provisions conferring the right of termination. Such a result would contravene the well-settled law that the filing of a bankruptcy case does not confer upon the debtor greater rights under the contract than exist outside of bankruptcy. *See, e.g., In re Penn Traffic Co.*, 322 B.R. 63, 72 (Bankr. S.D.N.Y. 2003) (citing cases), *affd' in part and rev'd in part on other grounds*, 2005 WL 2276879 (S.D.N.Y. Sept. 16, 2005), *appeal dismissed*, 466 F.3d 75 (2d Cir. 2006); *In re M.J. & K. Co., Inc.*, 161 B.R. 586, 593 (Bankr. S.D.N.Y. 1993). In *M.J. & K. Co.*, the court granted a landlord relief from the automatic stay to permit the landlord to terminate its license agreement with the debtor for the use of real property where, under applicable nonbankruptcy law, the license agreement was terminable at will. 161 B.R. at 592-95. As the Printing Agreement is also terminable at will upon providing the requisite notice, this Court should grant The Economist relief from the stay to permit The Economist to terminate the Printing Agreement in accordance with its terms.

11. Granting the relief requested by The Economist will not unduly prejudice the Debtors or their estates. The Economist is not seeking to enforce a monetary claim against the Debtors or their estates. The Economist merely seeks to exercise its contractual right to terminate the Printing Agreement. Once the stay is lifted, Quebecor World will fare no worse with respect to the Printing Agreement than it would had it not filed for bankruptcy protection; it

will simply be required to deal with the consequences of a contract it freely entered into prior to the commencement of the bankruptcy cases. The anticipated termination of the Printing Agreement would not take effect immediately upon service of the notice of termination. Rather termination would not occur until “until the completion of printing and payment of the September 27, 2008 issue of the Publication”, affording the Debtors time to line-up customers to replace the income earned from The Economist under the Printing Agreement.

12. Bankruptcy Rule 4001(a)(3) provides that “[a]n order granting a motion for relief from an automatic stay . . . is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.” Since (i) The Economist must serve the notice of termination on or before March 31, 2008 and (ii) any order granting this Motion would likely not be entered earlier than 10 days prior to March 31, 2008, the Economist requests the Court to order that the 10-day stay provided under Rule 4001(a)(3) shall not apply with respect to the notice of termination to be served by The Economist. The Debtors and their estates will not be unduly prejudiced by the absence of the 10-day stay because the anticipated termination of the Printing Agreement via the notice of termination would not take effect for several months.

WAIVER

13. Because this Application does not present any novel issues of law, The Economist respectfully requests that the Court waive and dispense with the requirement set forth in Local Bankruptcy Rule 9013-1(b) that a separate memorandum of law be filed in support of this Motion. The Economist reserves the right, however, to submit a reply memorandum of law in the event objections to this Application are filed.

NOTICE

14. The Economist is serving this Motion by ECF upon all parties that have filed papers in the Debtors' cases by ECF. The Economist is also causing this Motion to be served by fax, overnight mail and/or hand delivery upon the Debtors, counsel for the Debtors, counsel for the Official Committee of Unsecured Creditors, the Office of the United States Trustee and counsel for parties having requested notice in these cases.

15. No previous application for the requested relief has been made to this or any other court.

RESERVATION OF RIGHTS

16. The Economist expressly reserves all rights and remedies under the Printing Agreement and applicable law, including the right to seek to compel the Debtors to assume or reject the Printing Agreement prior to the anticipated date of termination via the notice of termination.

[CONTINUED ON NEXT PAGE]

