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QUÉBÉCOR QORLD INC
ERNST & YOUNG INC.
500-11-032338-085

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SUPERIOR COURT
Commercial division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-032338-085

DATE: April 7, 2008

IN THE PRESENCE OF: THE HONOURABLE ROBERT MONGEON, J.S.C.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985 C. C-36 AS AMENDED

QUEBECOR WORLD INC. and the other Petitioners listed on Schedule "A" to the Initial Order and to this Order
Petitioners

v.

ERNST & YOUNG INC.
Monitor

REASONS
for Order on Motion authorizing Non-Compete Payments to Key Employees

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[1] Quebecor World Inc. (QWI), together with all other Petitioners listed on Schedule "A" move for an Order authorizing it to enter into a series of non-competition agreements with certain key employees in order to protect its business interests and investments in its US business operations.

[2] QWI contends also that without such agreements, these employees, in the present restructuring context, will be enticed to work for competitors. QWI affirms, in addition, that these agreements are rendered necessary because of the high risk of such actions on the part of third party competitors.

[3] The terms and conditions of the said agreements are outlined and discussed in greater detail in the Monitor's confidential report filed at hearing. Essentially, the said employees agree, on an individual basis, not to compete with the business of the Petitioners for a period of eighteen months following termination of their employment. If this covenant is not respected, the defaulting employee may be obligated to repay either the entire amount of the non-compete payment or a percentage thereof on a decreasing table over time. The defaulting employee may also be liable for damages.

[4] This Court will grant QWI's Motion but in doing so, certain comments are in order.

[5] In the opinion of the undersigned, the approval of this Court is necessary on two counts:

a. firstly, paragraph 17 of the Initial CCAA Order provides in part as follows:

> **17. DECLARES that, in order to facilitate the restructuring, any of the Petitioners may, subject to the terms of the DIP Documents (as defined hereinafter):**
>
> **(a) subject to approval of the Monitor, settle claims of customers and suppliers that are in dispute; and**
>
> **(b) with further order of the Court, establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith.**
>
> **(Emphasis added)**

b. secondly, although the proposed exercise may be justified by the protection of QWI's legitimate business interests, it may also be perceived as a type of transaction outside its ordinary course of business. The key employees in question are not employees of QWI.

(Emphasis added)

[6] At the hearing of QWI's Motion, Mr. Murray McDonald of Ernst & Young took time to explain the background of these agreements: as a quick and immediate reaction of QWI to protect its business this program was put in place in order to avoid an erosion of the workforce of its subsidiaries in the United States. Confronted with a very short time frame and the difficulty of negotiating separately with each employer and each employee, QWI took the decision to implement and assume the financial burden of these non-compete payments. As Mr. McDonald puts it: "this is of value to QWI as a whole".

[7] The Court accepts the recommendation of the Monitor that it is in the best interests of all Petitioners as well as of all stakeholders that this Order be granted.

[8] The question was – and still remains - in the undersigned's mind: by which Tribunal? QWI acknowledges that U.S. Court approval of these agreements is probably necessary and certainly advisable.

[9] Even though the agreements are entered into between QWI (under the jurisdiction of this Court) and 10 key employees based in the United States, employed and remunerated by QWI's U.S. subsidiaries, the fact remains that such subsidiaries are also subject to the jurisdiction of the United State Bankruptcy Court of the Southern District of New York. Therefore, it becomes essential to ensure that such matters be dealt with a very high degree of transparence.

[10] It is common knowledge that the QWI restructuring is being carried on in parallel under the joint surveillance and control of the Quebec Superior Court , sitting as a Designated Tribunal under the Companies' Creditors Arrangement Act, R.S.C. 1985 c.C-36 (as amended) and of the United States Bankruptcy Court sitting as the competent Tribunal under Chapter 11 of the US Bankruptcy Code, 11 U.S.C.sect. 101 et seq., each Tribunal acting within the scope of its respective jurisdiction.

[11] While it is true that this Court has jurisdiction over QWI as well as its U.S. subsidiaries (which have elected to file for CCAA protection in Canada), the U.S. Bankruptcy Court only has jurisdiction over the US subsidiaries, -and not over QWI-, because the latter has not filed under Chapter 11. On the other hand, the said key employees are employed by US subsidiaries and, as such, are subjected to all U.S. federal and state employment and labour related legislation applicable to them.

[12] When the Initial Order was issued on January 21, 2008, the undersigned also ratified the terms and conditions of a Cross-Border Insolvency Protocol[1] designed, amongst other matters, to avoid real or perceived conflicts of this nature. Although not yet ratified by the U.S. Bankruptcy Court, the undersigned is given to understand that it will soon be so ratified, subject to certain modifications currently under negotiation. Nevertheless, the principle of the necessity or, at least the advisability, of such a Protocol, appears to be accepted.

[13] In its present form, the Protocol provides as follows:

> **Purpose and Goals**
>
> **5. While the Insolvency Proceedings are pending in the United States and Canada, the implementation of basic administrative procedures is necessary to coordinate certain activities therein, to ensure the maintenance of the Courts' respective independent jurisdiction and to give effect to the doctrines of comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:**

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[1] This Protocol incorporates by reference the Guidelines Applicable to Court-to-Court communications in Cross-Broder as adopted and promulgated by the American Law Institute (Washington D.C.) on May 16, 2000, as part of its Principles of Cooperation among the NFTA Countries.

(a) harmonize and coordinate activities between the Courts in the Insolvency Proceedings;
(b) promote and facilitate the fair, open, orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of same, reduce the costs associated therewith and avoid duplication of efforts, for the benefit of all of the Debtors' creditors and other interested parties, wherever located;
(c) honor the respective independence and integrity of the Courts and other courts and tribunals of Canada and the United States;
(d) promote international co-operation and respect for comity among the Courts, the Debtors, the Committee, the Representatives (as defined below) and other creditors and interested parties in the Insolvency Proceedings; and
(e) implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the Chapter 11 Cases and Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditor of any other interested party shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.
7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the Chapter 11 Cases. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the Canadian Proceedings. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

(a) increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court for tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

(b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United Sates;

(c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

(d) require the Debtors, the Monitor, the Committee or the Representatives to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

(e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action specifically is described in this Protocol); or

> (f) preclude the Debtors, the Committee, the Monitor, the Office of the United States Trustee, any creditor or any other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.
>
> 8. The Debtors, the Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, nondelegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws an court orders.
>
> . . .
>
> 10. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. Without limitation:
>
> (a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural matter relating to the Insolvency Proceeding.
>
> (b) If the issue of the proper jurisdiction of either Court to determine an issue is raised by any interested party in either of the Insolvency Proceedings with respect to a motion or application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined; which process shall be subject to submissions by the Debtors, the U.S. Trustee, the Committee, the Monitor and any interested party prior to any determination on the issue of jurisdiction being made by either Court.
>
> (c) The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.
>
> . . .
>
> 11. Notwithstanding the terms of paragraph 10 above, this Protocol recognizes that the U.S. Court and Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, either of the Courts may at any time exercise its independent jurisdiction and authority with respect to: (i) matters presented to and properly before such Court; and (ii) the conduct of the parties appearing in such matter.

[14] The present issue appears to fall within the kind of issues for which the Protocol could have been invoked in order to avoid any possible conflict or ambiguity resulting from the ratification of agreements entered into between parties not necessarily subject to the jurisdiction of the Court pronouncing the ratification (i.e., the employees).

[15] However, as matters now stand, the undersigned's concerns are substantially alleviated, if not completely eliminated by the fact that the Petitioners have agreed to petition the United States Bankruptcy Court seeking a Complementary Order substantially in the same form and to the same effect as the present one.

[16] Although the Monitor's report and agreements between QWI and the said key employees are to be kept confidential and put under seal, the undersigned is satisfied that the Motion was in fact served upon all parties appearing on the Canadian and U.S. Service Lists and that no one has indicated any opposition to the conclusions sought. A confidentiality order shall therefore issue.

[17] The confidentiality order sought shall suffer two exceptions, one permitting access to the relevant information by the relevant tax authorities and the other, even if it goes without saying, in favor of the United States Bankruptcy Court to be seized of the Petition for a Companion Order.

[18] **FOR THESE REASONS**, the Court pronounces the following Order:

SEEING the Petitioners' Motion for an Order Authorizing Non-Compete Payments to Key Employees, and that such Payments and the Names of the Employees, Including the Monitor's Confidential Report thereon, be Kept Confidential and Permanently Sealed pursuant to Sections 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended and Articles 13, 20 and 46 of the *Code of Civil Procedure of Quebec*, R.S.Q. c. C-25 , the Monitor's Confidential Report and the affidavit of Mr. Mario Saucier in support thereof (Motion), and the submissions of counsels for the Petitioners and the Monitor, and other interested parties.

GIVEN the provisions of the *Companies' Creditors Arrangement Act* and the *Code of Civil Procedure of Quebec*.

GRANTS the Motion:

AUTHORIZES Quebecor World Inc., subject to the U.S. Petitioners obtaining a Complementary Order from the United States Bankruptcy Court for the Southern District of New York with respect to these non-compete payments, to make the non-compete payments to the employees identified in the Monitor's Confidential Report dated March 31st, 2008 and for the amounts provided therein, and in accordance with the related confidential non-compete agreements.

ORDERS that the Monitor's Confidential Report dated March 31st, 2008 be permanently kept confidential in a sealed envelope to be opened only by a judge of this Court or pursuant to an order of this Court, and be only available to the Petitioners, the Monitor and this Court.

DECLARES that nothing in the present Order will prevent the United States Bankruptcy Court for the Southern District of New York and any tax authority that would otherwise have the right to obtain such information under applicable law to obtain a copy of the said Monitor's Report, including the names of the employees and the amounts of the non-compete payments made to any of them, as well as copy of the non-compete agreement signed by any of these employees provided that in the case of the said tax authorities, such information is treated in accordance with the applicable legislation relating to its confidentiality.

DECLARES that the notices given of the presentation of the Motion are proper and sufficient.

ORDERS the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

The whole **WITHOUT COSTS**.

ROBERT MONGEON, J.S.C.

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Date of hearing: April 4th, 2008