

**Hearing Date:** June 19, 2008 10:00 a.m.  
**Objection Deadline:** June 17, 2008 at 4:00 p.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

**DEBTORS' MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105 AND 363 AND  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AUTHORIZING ENTRY  
INTO LAND SALE AGREEMENTS WITH THE COMMONWEALTH OF  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move this Court (the “Motion”) for the entry of an order (the “Order”), substantially in the form attached hereto as Exhibit A, authorizing the Debtors to enter into a land sale agreement and a temporary easement agreement with the Commonwealth of Pennsylvania Department of Transportation to avoid an eminent domain action. In support of this Motion, the Debtors rely on

the Declaration of Laura K. Norden submitted herewith. In further support of this Motion, the Debtors respectfully 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 predicates for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rule 9019 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 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 these Cases.
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”).<sup>1</sup> Each of the Debtors was joined in the Canadian

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<sup>1</sup> 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.

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.,<sup>2</sup> 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 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.

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

### **Relief Requested**

10. Debtor Quebecer World Hazelton Inc. (“QW Hazelton”) owns and operates a printing facility in Hazelton, Luzerne County, Pennsylvania. The total land owned at the Hazelton facility is 19.93 acres.

11. The Commonwealth of Pennsylvania Department of Transportation (“PennDOT”) has apprised QW Hazelton that PennDOT needs to acquire certain of the Debtors’ property for the purposes of improving a State road, known as State Route 924, Section 305. PennDOT has filed with the Recorder of Deeds a statement of its authority to take the property through condemnation. Rather than obtain this property interest through a formal eminent domain action, PennDOT has proposed that it acquire the property by agreement in lieu of condemnation.

12. PennDOT and QW Hazelton have entered into two agreements. The first, an Agreement of Sale (Fee Simple) attached as Exhibit B to the Motion, provides for the transfer to PennDOT of .71 acres of land. The second agreement, attached as Exhibit C to the Motion, called Temporary Easement for Construction Purposes, grants PennDOT an easement on another .69 acres which will be impacted temporarily during the construction phase of the project.

13. PennDOT and the Debtors have agreed on a compensation package for the Debtors of \$60,300.00. Of this amount, \$52,050.00 is for the sale of the .71 acres and \$8,250.00 is for the temporary construction easement on the .69 acres. This compensation package was based on a professional appraisal of the subject property undertaken for PennDOT in accordance with the Uniform Standards of Professional Appraisal Practice.

14. The Debtors have determined in their business judgment that this is a reasonable and appropriate transaction and in the interests of Debtors and their estates, for several reasons. First, the .71 acres needed by the PennDOT is not necessary to the Debtors’ ongoing business needs or their reorganization, as no business is presently conducted on that property. Second, PennDOT

would be entitled to take the property through its eminent domain authorities (with payment of fair compensation), and the proposed agreement avoids the burden and expense to all parties of such a process. Third, the compensation being paid to the Debtors is fair and appropriate, based on an appraisal done for PennDOT, and in line with property values in the area. The book value of the .71 acres of land, reflecting Debtors' acquisition cost, is \$12,718.

15. For the above reasons, the Debtors seek authority to enter into the two agreements with PennDOT.

### **Basis For Relief**

16. The Debtors' agreements here could be viewed as either a compromise of a potential claim (the claim for fair compensation were the land to be taken through eminent domain) or as a sale of land. Either way, entry into the agreements represents an appropriate exercise of the Debtors' business judgment.

17. Settlements and "[c]ompromises are 'a normal part of the process of reorganization'" and are strongly favored over litigation. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (internal citations omitted); see also Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.), 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

18. Bankruptcy Rule 9019 empowers this Court to approve compromises and settlements if they are in the best interest of the debtor's estate. The decision whether to approve a particular settlement is within the discretion of the court. See Anaconda-Ericsson Inc. v. Hessen (In re Teltronics Servs., Inc.), 762 F.2d 185, 189 (2nd Cir. 1985).

19. Section 363(b) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." See 11 U.S.C. § 363(b). A debtor in possession's decision to use, sell, or lease assets

outside the ordinary course of business must be based upon its sound business judgment. See In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is “good business reason”). The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). Indeed, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts generally will not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently and appropriately have been reluctant to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and have upheld such decisions as long as they are attributable to any “rational business purpose.” In re Integrated Res., 147 B.R. at 656.

20. Additionally, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out provisions of this title.” See 11 U.S.C. § 105(a).

21. Accordingly, the Debtors request that the Court enter an order authorizing them to enter into the two agreements with PennDOT. The Debtors submit that the agreements are in the best interests of the Debtors and their estates and creditors.

### **Memorandum Of Law**

22. 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**

23. Notice of this Motion has been provided to the Commonwealth of Pennsylvania Department of Transportation and 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' claim and noticing agent, Donlin, Recano & Company, Inc. at [www.donlinrecano.com](http://www.donlinrecano.com).

### **No Prior Request**

24. 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, (i) authorizing the Debtors to enter into the Agreement of Sale (Fee Simple) and the Temporary Easement for Construction Purposes, and (ii) granting the Debtors such other and further relief as is just and proper.

Dated: June 9, 2008  
New York, New York

Respectfully submitted,

/s/ Michael J. Canning  
Michael J. Canning  
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*Counsel for the Debtors  
and Debtors In Possession*

**EXHIBIT A**

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

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Case No. 08-10152 (JMP)  
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**ORDER UNDER 11 U.S.C. §§ 105 AND 363 AND FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 9019 AUTHORIZING ENTRY INTO  
LAND SALE AGREEMENTS WITH THE COMMONWEALTH OF  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

Upon the motion (the “Motion”)<sup>1</sup> of the above-captioned debtors (collectively, the “Debtors”) for entry of an Order authorizing the Debtors to enter into a land sale agreement and a temporary easement agreement with the Commonwealth of Pennsylvania Department of Transportation; it appearing that the relief requested is 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 and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of this Motion and the opportunity for a hearing on this Motion 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:

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to enter into and perform under the Agreement of Sale (Fee Simple) and the Temporary Easement for Construction Purposes, both with the Commonwealth of Pennsylvania Department of Transportation as set forth in the Motion.
3. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
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 ten day stay set forth in Bankruptcy Rule 6004(h) is hereby abrogated and the terms and conditions of this Order shall be immediately effective and enforceable upon entry.
6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June \_\_\_\_\_, 2008

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United States Bankruptcy Judge