

Hearing Date: **July 17, 2008 at 10:00 a.m.**
Objection Date: **July 15, 2008 at 4:00 p.m.**

ARNOLD & PORTER LLP
399 Park Avenue
New York, New York 10022-4690
Telephone: (212) 715-1000
Facsimile: (212) 715-1399
Michael J. Canning
Joel M. Gross

*Counsel for the Debtors
and Debtors-in-Possession*

**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

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE
PAYMENT OF CERTAIN PREPETITION EMPLOYEE BONUSES**

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 continue to pay and honor certain prepetition employee bonuses. In support of this Motion, the Debtors rely on the Declaration of Ben Schwartz. 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), 363(b), and 507(a)(4) of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

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 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 (the “Creditors’ Committee”).
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 Proceeding in order that each Debtor may obtain the protection of a stay under the CCAA as well as under the Bankruptcy Code.

¹ 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.

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) 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.

The Debtors' Employees

10. The Debtors employ, as of the Petition Date, approximately 19,531 employees, of whom approximately 17,359 are full-time employees and approximately 1,947 are part-time or

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

contract employees. A total of approximately 15,473 employees are paid on an hourly basis and approximately 3,170 are paid on a salary basis. In addition, certain sales force employees are paid principally through commissions on the sales they generate.

11. The Debtors have a highly skilled and dedicated labor force. The employees perform a wide range of critical functions. These tasks can be divided into three general categories: (1) press room workers, (2) bindery workers, and (3) sales and general support staff. The following describes some of the main tasks of these employees: (1) press room workers ensure that the customers' printed product is produced, and these employees are tasked with operating and maintaining large web offset and gravure presses; (2) bindery workers operate a variety of equipment that involves the binding together of printed pages into magazines, catalogs, books and directories; and (3) sales and general support staff provide services related to sales and marketing, staffing for customer service, scheduling, quality control, shipping and receiving, accounts payable, and accounts receivable.

12. The Debtors' employees are necessary for all elements of the Debtors' businesses, including such tasks as paper handling, press maintenance, machinists, stockroom maintenance, shipping and receiving, and sales. The employees' skills, knowledge and understanding of the Debtors' infrastructure, operations and customer relations are essential to effect a successful reorganization and to maintain the value of the Debtors' assets and businesses.

13. As stated above, the Debtors' employees are a critical and necessary component of their printing business. Given the necessity of the Debtors' employees to the overall operation of the Debtors' businesses, on January 22, 2008, the Debtors filed a motion (the "Wage and Benefits Motion") for entry of an order (A) Authorizing the Debtor's to Continue to Pay and Honor Certain Prepetition Claims for (I) Wages, Salaries, Employee Benefits and Other Compensation, (II) Withholdings and Deductions and (III) Reimbursable Expenses

(B) Authorizing the Debtors to Continue to Provide Employee Benefits in the Ordinary Course of Business; (C) Authorizing the Debtors to Pay All Related Costs and Expenses; (D) Directing Banks to Receive, Process, Honor and Pay All Checks Presented for Payment and Electronic Payment Requests Relating to the Forgoing; and (E) Setting a Final Hearing. On January 23, 2008, the Court granted an interim order (the “Interim Order”), and on March 20, 2008, the Court entered a final order (the “Final Order”), granting the relief requested in the Wage and Benefits Motion.

14. As part of the Wage and Benefits Motion, the Debtors were granted authority to pay their employees for wages and salaries the employees earned prepetition, and to honor certain other prepetition employee-related obligations (such as, profit sharing, employee benefits, insurance, and other similar benefits).

15. In the Wage and Benefits Motion, the Debtors were authorized to pay each employee his or her accrued prepetition wages, salary and benefits, so long as the total compensation to such employee was less than \$10,950. To the extent any such payment exceeded \$10,950, the Debtors stated in the Wage and Benefits Motion that they would seek further authority to make such payments.

16. Since the filing of the Wage and Benefits Motion on the first day of these Chapter 11 Cases, the Debtors have on a few occasions sought further authority to pay prepetition accrued compensation, which, for some employees, exceeded the \$10,950 threshold. For instance, the Debtors have previously filed two motions seeking authority to pay and honor commissions that accrued prepetition (the “Sales Commission Motions”), and also filed, on March 10, 2008, a motion for authority to pay and honor certain management incentive awards that accrued prepetition (the “Incentive Compensation Motion”).

Relief Requested

17. Through this Motion, the Debtors now seek authority to pay additional compensation to approximately twenty-three employees in the form of bonuses earned prepetition, with certain of such bonus amounts exceeding \$10,950.

18. Unlike the prepetition incentive compensation payments previously approved by the Court pursuant to an order granting the relief requested in the Incentive Compensation Motion, the bonus awards sought herein are not part of a company wide incentive plan, but are provided for under specific employment contracts entered into prepetition by the Debtors with certain employees.

19. Specifically, the Debtors have now determined that they owe approximately twenty-three employees bonuses in the aggregate amount of approximately \$203,403 pursuant to the terms and conditions of such employees' respective prepetition employment contracts. These payments are owed to such employees as prepetition signing bonuses offered to certain new hires, and/or to employees asked to relocate. Moreover, these bonuses were offered to incentivize the respective employees to either accept the Debtors' offer of employment, or a transfer of employment to a different location, as applicable, by offering such employees additional compensation in the form of a bonus at the end of an agreed upon period of employment.

20. While the bonuses were intended to induce the affected employees to enter into employment with the Debtors, or to remain with the Debtors after the requested relocation, the amounts payable were included as part of each employee's total annual compensation. The employees are both salaried and hourly employees, and for some of the employees the bonus owed, or owing, equates to two months of such employee's annual compensation.

21. The bonuses owed, or owing, to these twenty-three employees range from approximately \$1,500 to \$27,675. For twelve of these employees, the payments currently due, or expected to become due, on account of prepetition services do not exceed the \$10,950 threshold of prepetition compensation, even when wages and benefits previously paid to such employees under the Wage and Benefits Motion are included in the determination.

22. With respect to four of the remaining employees, the proposed bonuses are now due and payable, and when added to their previously paid prepetition compensation, will result in such employees receiving total prepetition compensation in excess of the \$10,950 threshold. The bonus amounts due to these four employees range from \$9,105 to \$27,675, and total \$69,403.

23. Of the final seven employees, two of such employees are each scheduled to receive \$10,000 in August 2008 and another \$10,000 in August 2009, under their prepetition employment contracts. The other five employees are owed payments during 2008 and 2009 under their prepetition agreements aggregating between \$10,000 and \$15,000 per employee.

24. The Debtors seek authority to make the requested payments due under prepetition employment contracts in order to minimize the personal hardship that the affected employees will suffer if they are not paid when due, and to maintain the morale of their workforce during this critical time, by adhering to the payment terms provided for under employment contracts entered into prepetition with the affected employees.

Basis For Relief

25. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Debtors seek authority to continue to pay and honor certain prepetition employee signing bonuses.

26. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor in possession to use property of the estate other than in the ordinary course of business after notice and a hearing.

Section 105(a) of the Bankruptcy Code further provides, in pertinent part, that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

27. The Debtors believe that the majority of the employee claims it seeks to pay herein are entitled to priority status under sections 507(a)(3) and 507(a)(4), and do not exceed \$10,950 for each employee. The Debtors would therefore have to pay these claims in full in order to exit from these bankruptcy proceedings through confirmation of a plan of reorganization. See 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries and commissions and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, granting the relief sought herein would, by and large, only affect the timing, and not the amount, of the payment of the bonuses, to the extent that they constitute priority claims.

28. To the extent the payments sought to be authorized exceed the \$10,950 priority limitation per employee, such payments are authorized by section 105 because they are critical to the maintenance of a strong and dedicated work force.

29. Further, courts frequently apply section 105(a) to authorize relief in chapter 11 cases similar to that sought herein, where the debtor has a workforce that is important to the preservation of its business. See In re Chateaugay Corp., 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to pay pre-bankruptcy wages); see also In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate” under section 105(a)); In re Gulf Air, Inc., 112 B.R. 152, 153-54 (Bankr. W.D. La. 1989); In re Ionosphere Clubs, Inc., 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989).

30. In so holding, courts typically rely on the “necessity of payment” doctrine, first enunciated by the Supreme Court in Miltenberger v. Logansport Ry. Co., 106 U.S. 286 (1882), by which courts may authorize a debtor to make postpetition payments with respect to prepetition claims where such payments are necessary for the preservation of the estate. See, e.g., In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1989) (noting that, under the necessity of payment doctrine, “if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is out of corpus [of the estate]”).

31. As discussed above, this Court has previously recognized the importance of paying prepetition compensation to employees of the Debtors, even when such amounts were over the statutory threshold. Consistent therewith, the Debtors’ hereby request authority to pay certain additional prepetition amounts, in the form of previously agreed upon relocation and employment bonuses to affected employees. The failure to grant such relief could have a material adverse impact on the Debtors and on employee morale, and would run afoul of the rehabilitative nature of the Bankruptcy Code.

32. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of all parties in interest.

Memorandum Of Law

33. 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

34. Notice of this Motion has been provided to all parties on the Notice List as set forth in the Case Management Order. The Debtors submit that no other or further notice of this Motion is required. 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.

No Prior Request

35. No prior motion, other than the Wage and Benefits Motion discussed above, 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, (a) granting the Debtors authority to continue to pay and honor certain prepetition employee bonuses; and (b) granting such other further relief as is just and proper.

Dated: July 7, 2008
New York, New York

Respectfully submitted,

_____/s/_____

Michael J. Canning

ARNOLD & PORTER LLP
399 Park Avenue
New York, New York 10022-4690
Telephone: (212) 715-1000
Facsimile: (212) 715-1399

*Counsel for the Debtors
and Debtors In Possession*

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 GRANTING THE DEBTORS' MOTION OF THE DEBTORS FOR
ENTRY OF AN ORDER AUTHORIZING THE PAYMENT OF
CERTAIN PREPETITION EMPLOYEE BONUSES**

Upon the motion (the "Motion")¹ of the above-captioned debtors (collectively, the "Debtors") for entry of an Order authorizing the Debtors to continue to pay and honor certain prepetition employee bonuses; 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; 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:

1. The Motion is GRANTED as set forth herein.

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

2. The Debtors are authorized to pay the prepetition employee bonuses as described in the Motion, as such employee bonuses become due and owing.

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 terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. 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.

6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: July _____, 2008

United States Bankruptcy Judge