

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-10152

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In the Matter of:

QUEBECOR WORLD (USA) INC.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 2, 2008

10:27 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

1
2 Hearing re: Motion Filed by the Debtors to (i) Assume, as
3 Amended, (a) an Unexpired Lease of Non-Residential Real
4 Property Located in Nashville, Tennessee and (b) an Unexpired
5 Lease of Non-Residential Real Property Located in Taunton,
6 Massachusetts, (ii) Amend (a) Unexpired Lease of Non-
7 Residential Real Property Located in Nashville, Tennessee and
8 (b) an Unexpired Lease of Non-Residential Real Property Located
9 in Taunton, Massachusetts and (iii) Enter Into a Stipulation of
10 Settlement Regarding Landlord's Motion with Respect to
11 Unexpired Leases of Non-Residential Real Property Located in
12 Nashville, Tennessee and Taunton, Massachusetts

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14 Hearing re: Motion Filed by the Debtors for an Order
15 Authorizing the Implementation and Continuation of Incentive
16 Compensation Plans

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24 Transcribed by: Hana Copperman

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UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
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New York, NY 10004

BY: ANDREW D. VELEZ-RIVERA, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Mr. Canning, please proceed.

3 MR. CANNING: Good morning, Your Honor. Michael
4 Canning from Arnold & Porter on behalf of the debtors. Your
5 Honor, we only have two items on the agenda today, and I will
6 take them in the order in which they are noted.

7 The first matter is the debtors' motion to assume, as
8 amended, two leases, one with respect to property in Nashville,
9 another with respect to property in Taunton, Massachusetts,
10 also seeking authority to enter into amendments to each of
11 those leases, and then also to enter a stipulation among the
12 debtors and the landlords of each of those properties.

13 Your Honor, as you'll recall we've been before this
14 Court on two other occasions with respect to matters relating
15 to this motion. The last time we were here we advised the
16 Court that the parties had reached agreement and we needed
17 additional time to finalize the lease amendments, which are the
18 subject of this particular motion. We have worked with the
19 landlords' counsel. We have resolved those lease amendments to
20 the satisfaction of the debtors and to the landlords and also
21 to the satisfaction of each of the creditors' committees who
22 have had those lease amendments and had an opportunity to
23 review those. So we're actually quite pleased, Your Honor, to
24 be here today seeking entry of an order that approves those two
25 lease amendments, allows the debtors to assume each of those

1 leases as so amended, and to enter the stipulation that
2 embodies some of the other terms and conditions that the
3 parties agreed to. Mr. Cohn is here representing the landlords
4 and I think he can confirm the accuracy of what I've said, and,
5 again, there's been no objection filed by any of the committees
6 or the U.S. Trustee.

7 THE COURT: If there are no objections I'm prepared
8 to approve this.

9 MR. CANNING: Thank you, Your Honor. Your Honor,
10 we'll submit the order at the end of the session.

11 THE COURT: Yes.

12 MR. CANNING: There were just very minor
13 modifications to the order, only, frankly, attaching the lease
14 amendments. We refer to the lease amendments themselves as
15 attachments to the order. Other than that the order is the
16 same.

17 THE COURT: I did have one question, actually, that
18 maybe Mr. Cohn can answer this. These landlords appear to have
19 no obvious connection to each other except that they're
20 represented by the same law firm. And one's in Massachusetts
21 and one's in Tennessee, I think. How did that happen?

22 MR. COHN: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. COHN: Daniel Cohn. It's the same family.

25 But --

1 THE COURT: Okay.

2 MR. COHN: -- one is a father and one is the son, or
3 sons, rather, and they have various trusts.

4 THE COURT: Fine. It wasn't obvious from the
5 submissions as to how these two properties connected to each
6 other.

7 MR. COHN: That's how.

8 THE COURT: Thank you. Okay.

9 MR. CANNING: Your Honor, the other matter on this
10 morning is the debtors' motion for entry of an order
11 authorizing the implementation and continuation of the
12 employees' incentive compensation plans. Just some preliminary
13 remarks, Your Honor, just to address sort of how we got here.
14 You may remember that in March, I think it was at a hearing on
15 March 20, the debtors had sought authority of the Court to
16 approve certain payments under two management incentive
17 compensation plans that the debtors had maintained
18 historically. One is what we refer to as the MICP, which is
19 the Management Incentive Compensation Plan. The other the
20 PBIP, the Plant Based Incentive Plan.

21 At that time we had initially sought entry of an
22 order approving payment of the balance of the 2007 amounts that
23 had been earned by the eligible employees under each of those
24 plans, and also had initially asked for authority to continue
25 those on a going forward basis. At that hearing, as we advised

1 the Court, we withdrew the request with respect to the 2008
2 implementation of those plans, frankly, in recognition that
3 since they had initially been considered very early in the
4 year, before the commencement of the case, that a lot had
5 happened to the debtors, and the debtors wanted to reconsider
6 those particular plans in the context of its current situations
7 as both Chapter 11 debtors here and with respect to its
8 affiliated entities in the Canadian proceedings. Over the last
9 almost ninety days, Your Honor, the debtors have worked, you
10 know, quite diligently in addressing what it believes are the
11 most important aspects of employee performance in order to
12 drive this case to a successful resolution. And that included
13 developing an extensive five year business plan and also
14 addressing that plan with each of the creditor constituencies
15 and their financial advisors and to try to meld together the
16 interests of the employees, the importance of having the right
17 performance targets so as to insure the successful
18 restructuring of the case and the emergence of Quebecor from
19 these bankruptcies, and to do it in a way that was supportive
20 of stakeholders and creating value for the stakeholders.

21 You've read our papers, Your Honor, and pretty
22 extensive declarations from Towers Perrin, who the company had
23 engaged to assist in that process, as well as a confidential
24 report from the company itself with respect to the PBIP. Both
25 Mr. Schwartz and Mr. Ullman, who are the declarants of each of

1 those respective documents, are here in Court. We're certainly
2 available to answer questions, Your Honor. As you know, a lot
3 of the information is confidential. I'm pleased to say that we
4 have the support of all of the committees and the U.S. Trustee.

5 The last thing I would comment on in my initial
6 remarks are we have made a modification, it's actually three
7 modifications, to the plan as presented to the Court. And if I
8 may, I would summarize those three modifications for the Court
9 at this time.

10 THE COURT: Please.

11 MR. CANNING: These were requests made by the
12 unsecured creditors' committee within the last week, which are
13 certainly acceptable to the debtors. We've modified the
14 proposed order, Your Honor, to reflect each of those changes.

15 First, with respect to the 2009 performance target,
16 as Your Honor will recall from the papers, it's tied to an
17 EBITDA target. The unsecured creditors' committee has asked if
18 they could have an additional three weeks or so to review just
19 the 2009 EBITDA target. And the debtors have agreed that they
20 can do that and we'll have their approval by July 31st. If we
21 don't, if for some reason they don't approve it, then the order
22 contemplates that we would come back to the Court on notice and
23 hearing and present evidence and have Your Honor fix that
24 target for 2009. So we're seeking approval of the plans, in
25 all respects, with just the 2009 target, which has been signed

1 off on by each of the bank group, as well as the ad hoc
2 bondholder group, but the UCC would like additional time to
3 complete their review. So that's the first modification that
4 we've made to the plan.

5 THE COURT: I certainly hope that doesn't ever become
6 a problem, because if I'm going to be asked to determine what
7 the correct EBITDA target should be for 2009, so as not to be
8 arbitrary I will need either my own expert or I will need some
9 evidence, which can be presented either by the agreement of the
10 parties or through live witnesses, but that seems to me to be a
11 remarkably cumbersome process if we ever have to get there.

12 MR. CANNING: I think all parties agree, Your Honor,
13 and I believe that this is more a timing issue than a concern
14 issue.

15 THE COURT: Mr. Botter, you seem to be anxious to say
16 a few words to make it seem like you're not being unreasonable.

17 MR. BOTTER: Your Honor, I guess, unfortunately, I'm
18 always anxious to say a few words, as Your Honor knows. David
19 Botter, Akin Gump Strauss Hauer & Feld on behalf of the
20 official committee. Your Honor, I don't anticipate that that
21 is going to be necessary. As Mr. Canning told Your Honor
22 during his remarks, we are in the process of vetting their
23 business plan. 2009 EBITDA number is embedded within that
24 business plan. Hard for us to sign off at the time when we're
25 in the process of vetting that plan. It's our hope that we

1 will never have to present this issue to Your Honor.

2 THE COURT: Fine. That makes two of us.

3 MR. CANNING: The other two modifications, Your
4 Honor, which, actually, I think are consistent with the
5 incentive based nature of the plan, is with respect to the 2008
6 amount that's owing to just Group 1, and Your Honor will recall
7 there are several groups. And with respect to the enhanced
8 portion payable to that Group 1, Your Honor will recall there
9 is sort of an existing MICP amount and then there's an enhanced
10 amount. With respect to the enhanced amount, fifty percent of
11 that enhanced amount that's otherwise payable to the Group I
12 participants will be conditioned upon a timely filing of what
13 we would refer to in the U.S. as their 10-K on March 31 of
14 2009. In Canada it's actually referred to as the -- I got it
15 here -- the annual information form for their December 31, 2008
16 year, to be filed with the Canadian securities regulatory
17 authorities on or before March 31, 2009. That's the debtors'
18 obligations. I have no doubt that they'll be able to meet
19 that.

20 THE COURT: That's when the form is otherwise due?

21 MR. CANNING: That's when the form is otherwise due,
22 Your Honor. Yes. And then the last modification that the
23 debtors have agreed to is, again, with respect to the Group 1
24 participants, with respect to their 2009 payment. And, again,
25 with respect to the enhanced portion of that payment. That

1 payment is due, under the plan, on or before September 30 of
2 2009. We've agreed that that amount, that enhanced amount for
3 Group 1, will be payable upon the later of September 30, 2009
4 or the filing of a plan of reorganization for the debtors that
5 has the support of its creditors' committee.

6 Once again, it's our intention, frankly, long before
7 that date to have a plan of reorganization on file that we'll
8 be able to say has the support of the committee. As Your Honor
9 knows, our DIP loan expires -- it's an eighteen month term --
10 in July, so we're, frankly, highly confident we'll be able to
11 meet that. So those are the three changes, Your Honor.

12 THE COURT: But that would make the trigger date both
13 the filing date -- well, I'm conditioning it. It's a filing of
14 a plan that has the support of the committee.

15 MR. CANNING: Correct.

16 THE COURT: So to some extent the committee has, not
17 that this is a bad thing, but they've injected themselves
18 pretty fully in whether or not these payments will be paid on a
19 particular date.

20 MR. CANNING: That is correct, Your Honor.

21 THE COURT: And I take it the debtor is comfortable
22 in this three legged race?

23 MR. CANNING: The debtor is comfortable, Your Honor.
24 Again, it's just the enhanced piece for this limited group, the
25 Group 1 participants, and the debtor is comfortable with that

1 insertion, yes.

2 THE COURT: And those participants are the ones who
3 are most highly compensated?

4 MR. CANNING: That is correct, Your Honor.

5 THE COURT: All right.

6 MR. CANNING: So those are the three modifications.
7 As I say, it's been added to the order, and I have a blackline
8 for Your Honor that I can hand up at the appropriate time if
9 you'd like to look at it. With those changes, again, I'm
10 pleased to say that these plans have been approved by all of
11 the committees as well as vetted with the U.S. Trustee's
12 office. I can answer any questions, Your Honor, but I'll let
13 you decide how best we should proceed.

14 THE COURT: I actually don't have any questions. And
15 the presentation made both here and in the written submissions
16 was very helpful to me. I should point out that I received
17 chambers' copies of a Towers Perrin confidential proposed
18 2008/2009 Management Incentive Compensation Plan, which
19 includes names and numbers, as well as a confidential plant
20 based incentive plan prepared by the company, which similarly
21 includes the names of plan participants and proposed
22 compensation numbers. It's obvious, given the nature of these
23 documents, why they are being treated as confidential. It's
24 also obvious to me, based upon my review, that this is an
25 incentive plan construct that has historical resonance within

1 the company. The individuals who are to be benefitted by these
2 plans have reasonably expected such compensation during their
3 pre-bankruptcy years and have even more of a need for the
4 assurance that incentive plans will be in place now. It is
5 meaningful to the Court that the key constituencies here have
6 carefully reviewed these proposed plans and have signed off on
7 them. The whole subject of employee incentive or retention
8 compensation is controversial in light of the amendments to the
9 Bankruptcy Code that are embodied in Section 503(c). This
10 construct does include certain retention based provisions,
11 notably the we have to be employed and in good standing in
12 order to collect feature. But I don't view that feature as
13 being in any way contrary to the purposes for which 503(c)
14 amendments have been enacted. Indeed, these plans are broad
15 based and involve substantially all of the individuals whose
16 work and dedication are needed in order to ensure that this
17 will be a successful reorganization. And so I'm satisfied,
18 based on my review, that the incentive programs that are being
19 adopted are fair and reasonable and entirely appropriate under
20 the circumstances. They also reflect a thoughtful and
21 independent analysis at the management level by Towers Perrin
22 and are geared to an adjusted EBITDA concept which appears to
23 make good sense in light of the realities of this case. So I
24 will approve it.

25 MR. CANNING: Thank you very much, Your Honor. Those

1 are the only two items we had on officially today. I did have
2 two other matters to bring to the Court's attention. One is
3 just informational, regarding the litigation involving the Cha
4 (ph.), which I think you were aware of.

5 THE COURT: We had a little dustup last time.

6 MR. CANNING: Mr. Curley asked me to let the Court
7 know that as of yesterday the settlement agreement had been
8 agreed upon and actually, I think, executed by the parties
9 subject to review by the creditors' committee and then subject
10 to the approval of the Court. So he did want me to at least
11 let you know that progress had been made and that --

12 THE COURT: Good.

13 MR. CANNING: -- an agreement had been agreed upon.
14 And the last item I wanted to address to the Court really has
15 to do with scheduling. As Your Honor knows, we only have
16 omnibus dates until July 17th, and we do have a hearing later
17 this month. I was hoping to see if we could get some time on
18 Your Honor's calendar, particularly with respect to the time
19 the debtors have to assume or reject leases. You'll recall we
20 had an extension put in place through August 18th, so we do
21 need to get a motion before the Court to resolve our assumption
22 and rejection of real estate leases. We do have a number of
23 them, and a considerable effort has been underway by the
24 company and the professionals that were retained by the Court
25 to analyze their many locations. We had thought that perhaps

1 August 14, which is the Thursday before the 18, but, Your
2 Honor, I don't know your schedule at all so --

3 THE COURT: Let me take a look at my calendar that's
4 here. Did you happen to speak to my courtroom deputy?

5 MR. CANNING: I did not, Your Honor. And I'll be
6 happy to go do that after the hearing and we can resolve on a
7 date that works for the Court.

8 THE COURT: If the 14th is a good date I'm not doing
9 anything else that day and appear to have nothing else
10 scheduled so --

11 MR. CANNING: Okay. That's fine, Your Honor. And
12 then --

13 THE COURT: That's fine.

14 MR. CANNING: -- if not now, perhaps at the 17th we
15 could -- I can talk to your clerk about setting a schedule for
16 our omnibus hearings going forward.

17 THE COURT: I think it makes sense, given what's
18 going on in this case, for us to have omnibus hearing dates, at
19 least through the balance of the year.

20 MR. CANNING: That would be our thought as well, Your
21 Honor, and we found that the third Thursday of each month has
22 worked well, and we might suggest that to your clerk as
23 something she might check with your calendar.

24 THE COURT: Unless there happens to be some third
25 Thursday when it's not convenient you can --

1 MR. CANNING: Like Thanksgiving, or perhaps something
2 else.

3 THE COURT: That would be one. Okay.

4 MR. CANNING: All right. Thank you very much then.

5 THE COURT: We'll set that up. Thank you very much.

6 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

7 (Proceedings concluded at 10:47 AM)

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

HANA COPPERMAN

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Date: July 3, 2008