

Hearing Date: October 16, 2008 at 10:00 a.m.
Objection Deadline: October 14, 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

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C.
§ 363 AUTHORIZING QUEBECOR WORLD ATLANTA II LLC TO ENTER
INTO THE ASSIGNMENT AND ASSUMPTION AGREEMENT AND SECOND
AMENDMENT TO LEASE AGREEMENT AND PERFORM OBLIGATIONS
UNDER A LEASE OF REAL PROPERTY LOCATED
IN DEKALB COUNTY, GEORGIA**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move this Court (the “Motion”) for the entry of an order substantially in the form of Exhibit A hereto, authorizing Debtor Quebecor World Atlanta II LLC (“QW Atlanta II”) to enter the Assignment and Assumption of Lease and Second Amendment to Lease Agreement for real property located in DeKalb County, Georgia and to perform all

obligations under said Lease Agreement, as amended. In support of this Motion, the Debtors rely on the Declaration of Mario R. D'Arienzo submitted herewith. In further support of the Motion, the Debtors 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 predicate for the relief requested herein is section 363 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 United States Code (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 (the "Creditors Committee") 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”).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.

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) catalogs for customers such as Williams-Sonoma, Oriental Trading

¹ The Canadian Court appointed Ernst & Young, Inc. to serve as Monitor for the Canadian Proceeding, and UBS Investment Bank is serving as QWI’s financial advisor.

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

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.

3101 McCall Drive, Atlanta, Georgia

10. Corporate Property Associates 9, L.P (the "Landlord") and Corporate Property Associates 8, L.P., Landlord's co-landlord, which co-landlord was merged into Landlord by merger effective December 31, 2000, and Amersig Southeast, Inc. ("Amersig"), entered into a lease, dated as of May 1, 1996, with respect to property located in DeKalb County, Georgia (the "Original Lease"). The leased premises are described in Exhibit A to the Original Lease, and include Land Lots 313 and 312, 18th District, DeKalb County, Georgia. The leased premises are more commonly known as 3101 McCall Drive, Atlanta, Georgia.

11. On January 22, 1997, Amersig entered into an Assignment and Assumption of Lease Agreement with Quebecor World Atlanta, Inc. f/k/a/, Quebecor Printing Atlanta Inc. ("Quebecor World Atlanta"), which is not a debtor in these Chapter 11 Cases, whereby Amersig assigned all of its right, title and interest in the Original Lease to Quebecor World Atlanta.

12. On March 1, 1997, the Landlord and Quebecor World Atlanta entered into that certain First Amendment to Lease Agreement (collectively, with the Original Lease, the "Lease") and, pursuant to that certain Guarantee and Suretyship Agreement, dated as

March 1, 1997, QWI guaranteed the obligations of Quebecor World Atlanta under the Lease.

13. Although Quebecor World Atlanta is the tenant under the Lease, Debtor QW Atlanta II has for some time been occupying the leased premises located at 3101 McCall Drive, Atlanta, Georgia, and performing the obligations of tenant under the Lease.

14. In this regard, Debtor QW Atlanta II has now determined that it would be in its best interest, and in the best interests of the Debtors' bankruptcy estates and creditors, to take an assignment of the Lease and to assume the obligations of Quebecor World Atlanta under the Lease.

15. To the end, Debtor QW Atlanta II, together with Quebecor World Atlanta, has been in negotiations with the Landlord regarding certain modifications and amendments to the Lease, as well as the assignment of the Lease, as so amended, from Quebecor World Atlanta to Debtor QW Atlanta II. The Landlord and Quebecor World Atlanta, with the agreement of Debtor QW Atlanta II, have now reached agreement on the terms and conditions of such further modifications and amendments to the Lease, which terms and conditions are set forth in that certain Second Amendment to the Lease Agreement, dated October 6, 2008 (the "Second Amendment"), a copy of which is attached hereto as Exhibit B.

16. Accordingly, Debtor QW Atlanta II hereby seeks authority from this Court (a) to enter into (i) the Second Amendment, solely with respect to certain release provisions as set forth in paragraph 17 thereof, and (ii) that certain Assignment and Assumption of Lease (the "Assignment and Assumption Agreement"), a copy of which is

attached hereto as Exhibit C, whereby Quebecor World Atlanta assigns its right, title and interest as tenant under the Lease, as amended by the Second Amendment (collectively, the “Amended Lease”), and all of the rights, benefits, privileges and obligations of tenant thereunder to Debtor QW Atlanta II; and (b) to thereafter perform all of its obligations thereunder and under the Amended Lease.

Second Amendment to the Lease and Assignment and Assumption Agreement

17. The Second Amendment, dated as of October 6, 2008, provides, inter alia, a reduction of Basic Rent (as defined in the Second Amendment), repairs to the parking area, and a replacement of the roof, all as more specifically set forth in the Second Amendment.

18. Specifically, the Basic Rent payable for the period commencing on October 1, 2008, and continuing thereafter until the Plan Effective Date (as defined in the Second Amendment) shall be one million nine hundred forty thousand six hundred twenty four and 96/100 Dollars (\$1,940,624.96) per annum, payable in advance on each Basic Rent payment date under the Amended Lease in equal installments of one hundred sixty one thousand seven hundred eighteen and 74/100 dollars (\$161,718.74) each. Commencing on the later to occur of (a) the first day of the month immediately following the Plan Effective Date and (b) January 1, 2010, and continuing thereafter for the remainder of the Term (defined below), Basic Rent shall be one million six hundred sixty five thousand three hundred fifty two dollars (\$1,665,352.00) per annum, payable in advance on each Basic Rent payment date in equal installments of one hundred thirty eight thousand seven

hundred seventy nine and 33/100 (\$138,779.33), which amount shall be further adjusted annually as provided for in the Second Amendment.³

19. The Second Amendment also requires that on the Plan Effective Date, paragraph 11 of the Lease, entitled Maintenance and Repair, shall be deemed amended by adding language that requires the Landlord, to replace the roof and repair the parking lot on the leased premises, in each case as set forth and provided for in the Second Amendment.

20. In addition, the Second Amendment extends the term (the “Term”) of the Lease from December 31, 2009 to December 31, 2017.

21. Finally, although the Second Amendment is being executed by the Landlord and Quebecor World Atlanta,⁴ it contemplates that the Amended Lease will be assigned by means of the Assignment and Assumption Agreement to Debtor QW Atlanta II, with the effectiveness of the proposed Second Amendment, and the agreements, covenants and obligations provided for therein being specifically conditioned upon (a) entry of a final order acceptable to Landlord, in its sole discretion, which (i) authorizes the assignment of the Amended Lease to Debtor QW Atlanta II, and (ii) authorizes Debtor QW Atlanta II to

³ The Second Amendment also provides that if no Event of Default exists, commencing on the first day of the month immediately following the Plan Effective Date and on the twenty-three (23) Basic Rent Payment Dates thereafter, Tenant shall be granted a credit toward the Basic Rent in the amount of \$16,666.67 per month for a total of twenty-four (24) such Credits (each defined term herein has the meaning set forth in the Second Amendment).

⁴ Debtor QW Atlanta II will execute the Second Amendment for the sole purpose of acknowledging and consenting to paragraph 17 in the Second Amendment, which requires that in exchange for the lease concessions being made by the Landlord, Quebecor World Atlanta and Debtor QW Atlanta II agree, all as set forth in the Second Amendment, to waive and release the Landlord and its affiliates, and all of their respective officers, directors, employees, agents and attorneys, from any and all fraudulent conveyance claims, and other claims and causes of action against Landlord with respect to rent previously paid to Landlord prior to entry of the Order approving this Motion.

perform all obligations of Quebecor World Atlanta thereunder; (b) there then being no Event of Default (defined in the Amended Lease); and (c) Landlord having received, upon a final order from the Canadian Court authorizing its execution and delivery or evidence satisfactory to Landlord that such an order is not required under the Canadian Proceeding, a signed original Guaranty and Suretyship Agreement in the form attached to the Second Amendment as “Exhibit A” from QWI.

Relief Requested

22. Once again, the Landlord has conditioned the effectiveness of the Second Amendment and the Assignment and Assumption Agreement upon the Debtors obtaining Court approval and authorization for Debtor QW Atlanta II (a) to enter into (i) the Second Amendment, solely with respect to paragraph 17 thereof, and (ii) the Assignment and Assumption Agreement; and (b) to perform its obligations thereunder and under the Amended Lease, in order to avoid any question as to whether or not the Debtors’ entry into each of the Second Amendment and Assignment and Assumption Agreement is an “ordinary course” transaction for purposes of section 363 of the Bankruptcy Code.

23. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession to “use, sell, or lease, other than in the ordinary course of business, property of the estate” with court approval. 11 U.S.C. § 363(b)(1). 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 Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. The LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that court considering a section 363(b) application must find a good business

reason to grant such application); see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (same); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (same); 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”).

24. 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.

25. Debtor QW Atlanta II has determined that entry into each of the Second Amendment and the Assignment and Assumption Agreement is in its best interests and is essential to its business operations.

26. The premises leased under the Amended Lease, which constitute approximately 432,000 square feet at 3101 McCall Drive, Atlanta, Georgia, are both a manufacturing plant and an office facility. Moreover, the premises leased under the Amended Lease are integral to Debtor QW Atlanta II's operations and the Debtors' businesses, and to remain in possession of the premises, Debtor QW Atlanta II must become a party to the Amended Lease.

27. In light of the fact that Debtor QW Atlanta II is already occupying the premises leased under the Amended Lease and responsible for performing the obligations of tenant under the Amended Lease, Debtor QW Atlanta II believes that entry into the Second Amendment and the Assignment and Assumption Agreement is a sound exercise of its business judgment. Further, the proposed Second Amendment, the Assignment and Assumption Agreement, and the performance of its resulting obligations under the Amended Lease, will provide long-term stability and reassurance to Debtor QW Atlanta II that it has the legal right and authority to remain at the leased premises.

28. Accordingly, Debtor QW Atlanta II seeks authority to (a) enter into (i) the Second Amendment, solely with respect to paragraph 17, and (ii) the Assignment and Assumption Agreement; and (b) to perform its obligations thereunder and under the Amended Lease.

Notice

29. Notice of this Motion has been provided to the Landlord 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.

No Prior Request

30. 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, authorizing Debtor QW Atlanta II to (a) enter into (i) the Second Amendment, solely with respect to paragraph 17 thereof, and (ii) the Assignment and Assumption Agreement; (b) perform all obligations of tenant thereunder and under the Amended Lease; and (c) granting such other and further relief as the Court deems just and appropriate.

Dated: October 6, 2008
New York, New York

Respectfully submitted,

/s/ Michael J. Canning
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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 AUTHORIZING QUEBECOR WORLD ATLANTA II LLC ENTER INTO THE
ASSIGNMENT AND ASSUMPTION AGREEMENT AND SECOND AMENDMENT TO
LEASE AGREEMENT AND PERFORM OBLIGATIONS UNDER A LEASE OF REAL
PROPERTY LOCATED IN DEKALB COUNTY, GEORGIA**

Upon the motion (the “Motion”) of the above-captioned debtors (collectively, the “Debtors”), for entry of an order (the “Order”)¹ approving (a) the entry by Debtor QW Atlanta II into (i) the Assignment and Assumption Agreement, as referenced in the Motion, with Quebecor World Atlanta, a non-debtor entity, assigning a Amended Lease for real property located in DeKalb County, Georgia to Debtor QW Atlanta II, and (ii) the Second Amendment, solely with respect to paragraph 17 thereof and as referenced in the Motion; and (b) to thereafter perform all of its obligations thereunder and under the Amended Lease; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; it appearing that this 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 in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; it appearing that notice of the Motion and the opportunity for a hearing on the Motion

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

was appropriate and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Debtor Quebecor QW Atlanta II (i) is authorized and directed to enter into the Assignment and Assumption Agreement, as referenced in the Motion, with Quebecor World Atlanta, a non-debtor entity, assigning a Amended Lease for real property located in DeKalb County, Georgia to Debtor QW Atlanta II; (ii) is authorized and directed to enter into the Second Amendment, solely with respect to paragraph 17 thereof and as referenced in the Motion; and (iii) is authorized to perform all obligations of tenant thereunder and under the Amended Lease.
3. The ten day stay set forth in Bankruptcy Rule 6004(h) is hereby abrogated and this Order shall be effective immediately upon entry.
4. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: October _____, 2008

United States Bankruptcy Judge