

1 **THE BIEGLER LAW FIRM**

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8 Team Power Forklifts Inc.

9 **UNITED STATES BANKRUPTCY COURT**

10 **SOUTHERN DISTRICT OF NEW YORK**

11 In re)
12 Quebecor World (USA), et al.,)
13 Debtors.)
14 _____)
15 Eugene I. Davis, as Litigation Trustee for the)
16 Quebecor World Litigation Trust,)
17 Plaintiff,)
18 vs.)
19 Clarklift-West, Inc. dba Clarklift Team Power,)
20 Defendant,)
21 _____)

Bk. No. 08-10152-JMP
(Jointly Administered)
Chapter 11
Hon. James M. Peck
Adv. No.

22 ANSWER

23 Comes Now Defendant Clarklift West Inc. dba Clarklift Teampower and answers
24 Plaintiff's Complaint as follows:

- 25 1. Defendant lacks the information necessary to respond to the allegations of paragraph 1 of
26 Plaintiff's Complaint, and, on that basis, denies each and every allegation therein.
27 2. Defendant admits as to jurisdiction of this Court.
28 3. Defendant lacks information necessary to respond to the allegations in Paragraph 3, and,

1 on that basis denies each and every allegation therein.

2 4. Defendant admits proper venue.

3 5. Defendant denies the allegations of paragraph 5 of Plaintiff's Complaint, based on
4 information and belief.
5

6 6. Defendant denies the allegations of paragraph 6 of Plaintiff's Complaint, based on
7 information and belief.

8 7. Admit.

9
10 COUNT I

11 8. Paragraph 8 incorporates by reference each preceding paragraph of the Complaint such
12 that, in response, Defendant incorporates its prior stated admissions and denials as set forth in
13 this Answer.

14 9. Defendant denies the allegations of paragraph 9 of Plaintiff's Complaint, based on
15 information and belief.

16 10. Defendant denies the allegations of paragraph 10 of Plaintiff's Complaint, based on
17 information and belief.

18 11. Defendant denies the allegations of paragraph 11 of Plaintiff's Complaint, based on
19 information and belief.
20

21 12. Defendant denies the allegations of paragraph 12 of Plaintiff's Complaint, based on
22 information and belief.
23

24 13. Admit.

25 14. Defendant denies the allegations of paragraph 14 of Plaintiff's Complaint.

26 15. Defendant denies the allegations of paragraph 15 of Plaintiff's Complaint.
27

1 16. Defendant denies the allegations of paragraph 16 of Plaintiff's Complaint, based on
2 information and belief.

3 17. Defendant denies the allegations of paragraph 17 of Plaintiff's Complaint.
4

5 18. Defendant denies the allegations of paragraph 18 of Plaintiff's Complaint.

6 COUNT II

7 19. Paragraph 19 incorporates by reference each preceding paragraph of the Complaint such
8 that, in response, Defendant incorporates its prior stated admissions and denials as set forth in
9 this Answer.
10

11 20. Defendant denies the allegations of paragraph 20 of Plaintiff's Complaint.

12 21. Defendant denies the allegations of paragraph 21 of Plaintiff's Complaint.

13 COUNT III

14 22. Paragraph 22 incorporates by reference each preceding paragraph of the Complaint such
15 that, in response, Defendant incorporates its prior stated admissions and denials as set forth in
16 this Answer.
17

18 23. Defendant denies the allegations of paragraph 23 of Plaintiff's Complaint.

19 COUNT IV

20 24. Paragraph 24 incorporates by reference each preceding paragraph of the Complaint such
21 that, in response, Defendant incorporates its prior stated admissions and denials as set forth in
22 this Answer.
23

24 25. Defendant denies the allegations of paragraph 25 of Plaintiff's Complaint.

25 26. Defendant denies the allegations of paragraph 26 of Plaintiff's Complaint.

26 27. Defendant denies the allegations of paragraph 27 of Plaintiff's Complaint.
27

COUNT V

28. Paragraph 28 incorporates by reference each preceding paragraph of the Complaint such that, in response, Defendant incorporates its prior stated admissions and denials as set forth in this Answer.

29. Defendant denies the allegations of paragraph 29 of Plaintiff's Complaint.

30. Defendant denies the allegations of paragraph 30 of Plaintiff's Complaint.

31. Defendant denies the allegations of paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the allegations of paragraph 32 of Plaintiff's Complaint.

33. Defendant denies the allegations of paragraph 33 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

01. As a first, separate and affirmative defense to the Complaint, and to each cause of action thereof, Defendant alleges that the Complaint, or any cause of action thereof, does not set forth sufficient facts to state a cause of action against Defendant.

02. As a second, separate and affirmative defense to the Complaint, and to each cause of action thereof, Defendant alleges that any and all of the relevant payments/transfers enumerated in Plaintiff's Complaint were made in the ordinary course of business of the Debtor and Plaintiff and/or a transfer made according to ordinary business terms per 11 USC §547(c)(2). As such any such payment is not a preferential transfer.

03. As a third, separate and affirmative defense to the Complaint, and to each cause of action thereof, Defendant alleges that under the doctrine of mitigation of damages, Plaintiff failed to mitigate the alleged damages set forth in the Complaint, and that such failure to mitigate was the sole and proximate cause of the damages to Plaintiff, if any.

1 04. As a fourth, separate and affirmative defense to the Complaint, and to each cause of
2 action thereof, Defendant alleges that under the doctrine of laches, Plaintiff unreasonably delayed
3 in seeking assistance from the Court, which delay has prejudiced Defendant.
4

5 05. As a fifth, separate and affirmative defense to the Complaint, and to each cause of action
6 thereof, Defendant alleges that the purported acts of Defendant was not the proximate cause of
7 Plaintiff's alleged damages and that unforeseen, independent and intervening acts on the part of
8 Plaintiff and/or other parties operated to produce Plaintiff damages, if any.
9

10 06. As a sixth, separate and affirmative defense to the Complaint, and to each cause of action
11 thereof, Defendant alleges that, as a result of Plaintiff's actions and conduct during and after the
12 events alleged in the Complaint, Plaintiff is estopped to recover any or all damages arising out of
13 said events, if any exist.
14

15 07. As a seventh, separate and affirmative defense to the Complaint, and to each cause of
16 action thereof, Defendant alleges that the alleged conduct of the Defendant was justified and
17 reasonable under the circumstances alleged in the Complaint.
18

19 08. As an eighth, separate and affirmative defense to the Complaint, and to each cause of
20 action thereof, Defendant alleges that under the doctrine of unclean hands, Plaintiff dealt unfairly
21 and unjustly with Defendant and is now seeking assistance from the Court to remedy its own
22 wrongdoing.
23

24 09. As a ninth, separate and affirmative defense to the Complaint, and to each cause of action
25 thereof, Defendant alleges that this action is barred by the applicable statutes of limitations.
26

27 10. As a tenth, separate and affirmative defense to the Complaint, and to each cause of action
28 thereof, Defendant alleges that the alleged conduct of Defendant was privileged under the

1 circumstances alleged in the Complaint.

2 11. As an eleventh, separate and affirmative defense to the Complaint, and to each cause of
3 action thereof, Defendant alleges that Plaintiff waived its rights, if any, to claim the matters
4 asserted in the Complaint herein.
5

6 12. As a twelfth, separate and affirmative defense to the Complaint, and to each cause of
7 action thereof, Defendant alleges that at all times mentioned in the Complaint, Plaintiff
8 consented to the acts and events set forth therein.

9 13. As a thirteenth, separate and affirmative defense to the Complaint, and to each cause of
10 action thereof, Defendant alleges that at all times mentioned in the Complaint, Plaintiff failed to
11 exhaust their administrative remedies.
12

13
14
15 WHEREFORE, Defendant prays for judgment as follows:

- 16
17 1. That Plaintiff take nothing by way of its Complaint;
18 2. That Defendant be awarded costs, including reasonable attorney's fees; and
19 3. For such other and further relief as the Court deems proper.
20

21 Dated: May 25, 2010

THE BIEGLER LAW FIRM

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Robert P. Biegler
Attorney for Defendant
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