Hearing Date: February 28, 2012 at 10:00 a.m.
Objection Deadline: February 25, 2012 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
Charles A. Malloy (admitted *pro hac vice*)
Ken L. Hashimoto

Counsel for the Reorganized Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
Quebecor World (USA) Inc., et al.,	Case No. 08-10152 (JMP) Jointly Administered
Debtors.	Honorable James M. Peck

MOTION OF THE REORGANIZED DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a) AND 107(a) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 7016 AND 7026 SEEKING ENTRY OF AN ORDER FIXING A DISCOVERY SCHEDULE AND SCOPE OF DISCOVERY

Quebecor World (USA) Inc. ("**QWUSA**") and 52 of its domestic direct and indirect subsidiaries (the "**Subsidiary Debtors**"),[1] as reorganized debtors (collectively, the "**Debtors**" or

[1] The Subsidiary Debtors are Quebecor Printing Holding Company, Quebecor World Capital Corporation, Quebecor World Capital II GP, Quebecor World Capital II LLC, WCZ, LLC, Quebecor World Lease GP, Quebecor World Lease LLC, QW Memphis Corp., The Webb Company, Quebecor World Printing (USA) Corp., Quebecor World Loveland Inc., Quebecor World Systems Inc., Quebecor World San Jose Inc., Quebecor World Buffalo Inc., Quebecor World Johnson & Hardin Co., Quebecor World Northeast Graphics Inc., Quebecor World UP / Graphics Inc., Quebecor World Great Western Publishing Inc., Quebecor World DB Acquisition Corp., WCP-D, INC., Quebecor World Taconic Holdings Inc., Quebecor World Retail Printing Corporation, Quebecor World Arcata Corp., Quebecor World Nevada Inc., Quebecor World Atglen Inc., Quebecor World Krueger Acquisition Corp., Quebecor World Book Services LLC, Quebecor World Dubuque Inc., Quebecor World Pendell Inc., Quebecor World Fairfield Inc., QW New York Corp., Quebecor World Dallas II Inc., Quebecor World Nevada II LLC, Quebecor World Dallas, L.P., Quebecor World Mt. Morris II LLC, Quebecor World Petty Printing Inc., Quebecor World Hazleton Inc., Quebecor World Olive Branch Inc., Quebecor World Dittler Brothers Inc., Quebecor World Atlanta II LLC, Quebecor World RAI Inc.,

Footnote continued on next page

"**Reorganized Debtors,**" as applicable)[2] hereby submit this motion (the "**Motion**") in the pending Action (as defined below) relating to sales, use and/or transaction privilege taxes, for the entry of an order, substantially in the form attached hereto as Exhibit A, providing that: (i) all discovery, both party and third-party, shall be directed only to the issues of nexus and the amount of taxes owed, and in this regard shall be limited to the Sample Periods (as defined below), (ii) the States (as defined below) shall not be permitted to serve any additional third-party subpoenas and document requests, absent further order of the Court, (iii) each of the parties shall be limited to not more than ten depositions in this Action, consistent with Bankruptcy Rule 7030 and Rule 30 of the Federal Rules and (iv) all discovery in the Action shall be concluded by a date certain.

In support of the Motion, the Reorganized Debtors state as follows:

PRELIMINARY STATEMENT

1. In connection with the resolution of certain proofs of claim filed in the Chapter 11 Cases, the Reorganized Debtors are currently seeking to resolve disputes (collectively, the "**Action**") with each of the Texas Comptroller of Public Accounts (the "**Texas Comptroller**") and the Arizona Department of Revenue (the "**Arizona DOR**") regarding certain claims filed by the Texas Comptroller and the Arizona DOR, respectively, in the Chapter 11 Cases in respect of certain sales and use tax and transaction privilege tax obligations, and Texas civil penalty claims

---

Footnote continued from previous page
Quebecor World KRI Inc., Quebecor World Century Graphics Corporation, Quebecor World Waukee Inc., Quebecor World Logistics Inc., Quebecor World Mid-South Press Corporation, Quebecor Printing Aviation Inc., Quebecor World Eusey Press Inc., Quebecor World Infiniti Graphics Inc., Quebecor World Magna Graphic Inc., Quebecor World Lincoln Inc. and Quebecor World Memphis LLC.

[2] In connection with the Debtors' emergence from these Chapter 11 Cases, Quebecor World (USA) Inc. changed its name to World Color (USA) Corp. and each of the affiliated Debtors changed its name to adopt the "World Color" name instead of the "Quebecor" or "Quebecor World" name, and, similarly, Quebecor World Inc. changed its name to World Color Press Inc. Further, on July 2, 2010, World Color Press Inc. was acquired by Quad/Graphics, Inc. Nevertheless, pursuant to section 6.4(c) of the Plan, the Reorganized Debtors retained their "Quebecor" names for purposes of these Chapter 11 Cases in all respects.

related thereto, alleged to be owed by certain of the Debtors to each of the Texas Comptroller and the Arizona DOR, as applicable, related to periods prior to the commencement of the Chapter 11 Cases through the Effective Date (collectively, the "**Claims**").

2. As the Court is by now aware, the Texas Comptroller and the Arizona DOR (together, the "**States**") have to date sought extensive discovery in these proceedings. The Texas Comptroller has served the Debtors with two sets of requests for production of documents (totaling 67 separate requests) and two sets of interrogatories (totaling 24 interrogatories, including sub-parts), and the Texas Comptroller has noticed and taken five depositions and served 24 subpoenas on the Debtors' current and former customers and accounting firms. The Arizona DOR has served on the Debtors two sets of document requests (totaling 124 separate requests), 23 interrogatories and 93 requests for admissions, and has noticed two depositions and has served 20 subpoenas on the Debtors' current and former customers and accounting firms. In this regard, each of the States has indicated its intent to notice further depositions and serve subpoenas on an undisclosed number of additional current and former customers of the Debtors. Indeed, the Arizona DOR served three of the above-referenced subpoenas on customers of the Reorganized Debtors in the last two weeks!

3. In advance of the status conference before the Court held on June 28, 2011 (the "**June Discovery Conference**"), the Reorganized Debtors expressed their concerns to the States regarding the unlimited breadth and scope, and questionable relevance, of the discovery that had been undertaken by the States prior to the June Discovery Conference, and engaged in consensual discussions with the States in an effort to limit and manage the discovery process related to the Action in a manner that would allow the States to properly prepare for the prosecution of their respective sales tax claims against the Debtors, while not unreasonably

burdening the Reorganized Debtors or its successors in interest, Quad/Graphics, Inc. ("**Quad**"), or compromising the Reorganized Debtors' and/or Quad's businesses, including specifically their relationship with their critical customers.

4. Following discussions, the parties generally agreed on a discovery plan and schedule proposed by the Debtors by which discovery would be bifurcated between the issue of nexus, on the one hand, and the quantification of the tax amounts that would be due and owing to the extent that nexus was found to exist, on the other hand, with the discovery period for nexus limited to a 10-month sample period from July 1, 2007 through April 30, 2008, and the discovery period for the determination of sales tax amounts limited to a three-month sample period from February 1, 2008 through April 30, 2008. After counsel to the Reorganized Debtors set forth this discovery proposal on the record at the June Discovery Conference, the Court elicited the affirmative agreement of each of the States to abide by this discovery plan, subject to the right of the States to readdress the scope of discovery with the Court if, upon completion of this effort, they reasonably believed that further discovery was necessary and appropriate. At the June Discovery Conference, the Court also directed the parties to reach consensual agreement on an appropriate form of confidentiality agreement that would be operative in respect of the agreed-upon discovery proposal.

5. Now, six months later, the parties have only just recently reached agreement on the form of a Stipulated Protective Order in respect of the protection of confidential materials, with party discovery on hold while the terms and conditions of the Stipulated Protective Order were being negotiated, finalized and ultimately approved by this Court. In this regard, the Stipulated Protective Order was approved and entered by the Court on January 13, 2012.

6. Although agreement on the Stipulated Protective Order was not reached for nearly six months, and party discovery was placed on hold during that period, the Texas Comptroller and the Arizona DOR have nevertheless pressed ahead with expansive third-party discovery, including issuing subpoenas to the Debtors' customers and accountants, without regard for the sample periods explicitly agreed to at the June Discovery Conference. As a result of the States' unabated third-party discovery efforts, and in order to protect its rights and the very confidentiality concerns expressed and discussed at the June Discovery Conference, the Reorganized Debtors are being required to conduct a burdensome and expensive review of the documents produced by third-parties to the States, in order to protect against disclosure of privileged or confidential information. In addition, the possibility that the Texas Comptroller and the Arizona DOR may attempt to create issues of fact based on their expansive third-party discovery efforts will also require that the Reorganized Debtors review and produce their own transactional documents, for periods far beyond those agreed to at the June Discovery Conference, in order to protect their rights and to properly defend and object to the allowance of the States' respective Claims in the chapter 11 cases.

7. Moreover, and as set forth more fully below, despite the affirmative agreement of each of the Texas Comptroller and the Arizona DOR at the June Discovery Conference to an orderly plan of discovery, their conduct during the past six months has been wholly inapposite of that agreement, as they have continued to press for burdensome and overbroad third-party discovery. Indeed, despite the Reorganized Debtors' renewed efforts to bring some order to the discovery process, consistent with the June Discovery Conference, the Arizona DOR has not only served additional subpoenas on customers of the Reorganized Debtors, but has within the past week written to counsel to the Reorganized Debtors to affirmatively disavow any effort to

limit discovery to the agreed-upon sample periods, not only in respect of third-party discovery, but party discovery as well, a reversal of position apparently joined in by the Texas Comptroller, in direct contravention of the agreement reached with this Court at the June Discovery Conference.

8. Accordingly, as the parties are now about to recommence party discovery, the Debtors seek an order to (1) reaffirm the discovery plan agreed to by all parties at the June Discovery Conference; (2) manage and limit the scope of discovery and the number of depositions and (3) establish a deadline for the conclusion of discovery in this Action.

JURISDICTION

9. 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).

10. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory predicates for the relief requested herein are sections 105(a) and 107(b) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Rules 16 and 26 of the Federal Rules of Civil Procedure (the "**Federal Rules**"), and Rules 7016, 7026 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

BACKGROUND

A. Commencement of the Chapter 11 Cases and Filing of the Sales Tax Motion

12. 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.

13. On January 31, 2008 an official committee of unsecured creditors (the "**Creditors' Committee**") was appointed by the United States Trustee, and the membership of the Creditors' Committee was amended on February 8, 2008.

14. On October 18, 2008, the Debtors filed a motion to establish procedures (the "**Sales Tax Motion**") pursuant to which the Debtors sought to resolve consensually potential sales, use or transaction privilege tax[3] liabilities to certain taxing authorities, including the Texas Comptroller and the Arizona DOR, for a subset of Debtors that had not registered previously with the applicable taxing authorities.[4]

15. On May 18, 2009, the Debtors filed their Third Amended Joint Plan of Reorganization (Docket No. 1662), and on July 2, 2009, the Court entered an order confirming the Debtors' Third Amended Joint Plan of Reorganization, as modified (the "**Plan**"). The Plan's effective date occurred on July 21, 2009 (the "**Effective Date**").

B. June 28th Discovery Conference

16. On June 28, 2011, the Court conducted a status conference during which the Reorganized Debtors, the Texas Comptroller and the Arizona DOR addressed the Court regarding, among other things, the status of discovery in the Action. In this regard, counsel to the Reorganized Debtors proposed limiting the time frame with respect to which discovery would be taken, with discovery on the issue of nexus limited to a nine-month period from July 1, 2007 through April 30, 2008, and discovery with respect to the amount of taxes owing, if any, limited to the three-month period from February 1, 2008 through April 30, 2008, which is the sample period originally used in the Debtors' Sales Tax Motion for determining sales tax

---

[3] "Transaction privilege tax" is the term used by Arizona for taxes that are analogous to sales tax in other jurisdictions.

[4] *See* Motion Pursuant to 11 U.S.C. §§ 105(a), 502 and 505 and Federal Rule of Bankruptcy Procedure 9019 to (A) Implement Procedures to Determine Prepetition and Postpetition Sales Tax Liabilities of Certain Debtors Pursuant to State and Local Voluntary Disclosure Procedures and (b) Determine the Amount of Prepetition and Postpetition Sales Tax Liability of Certain Debtors (Docket No. 1219).

liability.[5] At the June Discovery Conference, counsel to the Reorganized Debtors highlighted as an area of contention that the Texas Comptroller and the Arizona DOR had sought voluminous third-party discovery, including subpoenas issued to the Debtors' customers and accountants, and proposed that depositions be delayed until after document discovery had concluded.[6]

17. Counsel to the Texas Comptroller agreed that "the main issues" in the Action were (i) the nexus of each of the applicable Debtors with Texas for purposes of determining the right of Texas to assess sales tax against some or all of the Debtors and (ii) the amount of taxes owed to Texas to the extent nexus was determined to exist between Texas and any of the applicable Debtors.[7] With regard to the Debtors' proposal to limit discovery regarding nexus to the July 1, 2007 through April 30, 2008 timeframe, counsel to the Texas Comptroller stated that the Texas Comptroller would be willing to "give it a try and see what we get, without prejudice to my right to say, you know, maybe we need to go back further than that." As to the sample period of February 1, 2008 through April 30, 2008, for determining the amount, if any, of sales tax owing to the Texas Comptroller on account of their filed claims, counsel to the Texas Comptroller agreed to use this sample period for determining tax liability, if any, "without prejudice to whatever we may discover in terms of investigation and discovery that is ongoing."[8]

18. In his remarks to the Court at the June Discovery Conference, counsel to the Texas Comptroller also noted two additional areas of contention among the parties: confidentiality and the number of depositions to which each of the Texas Comptroller and the

---

[5] Transcript of June Discovery Conference at 9-14. *See* Affidavit of Michael J. Canning ("Canning Aff."), Exh. B.

[6] *Id.* at 15.

[7] *Id.* at 30. In response to the Debtors' proposal, counsel for Texas also noted for the record but asked the Court to overrule his "formal objection" to extending the time allowed for discovery; the Court granted his request. *Id.* at 28.

[8] *Id.* at 30.

Arizona DOR would be entitled in the Action. Although it required six months of seemingly endless negotiations, agreement was finally reached among the parties on the terms and conditions of a confidentiality agreement that would be operative in the Action, with the approval of the Stipulated Order or Protection being entered by this Court on January 13, 2012.

19. With respect to the number of depositions to which the Texas Comptroller will be entitled in connection with the Action, however, the Reorganized Debtors and the Texas Comptroller have yet to reach agreement. At the June Discovery Conference, counsel to the Texas Comptroller indicated that he would need at least 20 depositions, while noting to the Court his view that the Texas Comptroller was entitled to at least 40 depositions,[9] and to date he has not modified his stated position in this regard.

20. Subject to his stated view as to confidentiality and the number of depositions to which the Texas Comptroller should be entitled in the Action, counsel to the Texas Comptroller stated for the record that essentially he did not disagree with the discovery plan that was proposed by counsel to the Reorganized Debtors.[10]

21. With respect to the Arizona DOR, counsel advised the Court of the Arizona DOR's agreement to the proposed sampling periods, stating "I don't think Arizona ever had any objections to the sampling period,"[11] and later, when the Court asked counsel to the Arizona DOR directly "[a]re you generally on board with respect to what has been outlined by [counsel to the Reorganized Debtors]?" counsel to the Arizona DOR replied "Yes, your honor."[12]

---

9 *Id.* at 36.

10 *Id.* at 37.

11 *Id.* at 40.

12 *Id.* at 44.

22. As to confidentiality, counsel to the Arizona DOR stated to the Court that under Arizona state laws, she "cannot bind Arizona to a confidentiality agreement."[13] In response, the Court stated, "There will be a confidentiality stipulation."[14] Once again, although it required over six months to reach agreement on the form of a confidentiality agreement, the Stipulated Order of Protection was finally agreed to and entered by the Court on January 13, 2012.

23. At the conclusion of the June Discovery Conference, the Court indicated its willingness to approve a pre-trial order consistent with the terms of the discovery plan proposed by the Debtors, particularly the bifurcation between nexus-related discovery and discovery focused on the determination of the amount of tax, if any, due and owing from the Debtors.[15] To date, however, the parties have not been able to agree upon a pre-trial order consistent with the terms of the discovery plan agreed upon with the Court at the June Discovery Conference.

C. Stipulated Order of Protection and Scheduling Order

24. In view of the parties' basic agreement reached at the June Discovery Conference, and the Court's admonition that there would be a confidentiality agreement in respect of the discovery process, the Debtors anticipated that a mutually acceptable confidentiality stipulation would be agreed to and entered by the Court relatively quickly.

25. In fact, however, over six months was required before a mutually agreeable confidentiality stipulation was agreed to among the parties, largely due to the parties' inability to reach agreement on whether confidential information could be used by the States other than in connection with the resolution of the claims filed in the Chapter 11 Cases.

---

13 *Id.* at 42.

14 *Id.* at 40.

15 *Id.* at 45-46.

26. In the first instance, the Texas Comptroller took the position that it should be able to use documents and information received in discovery in this Action for purposes of investigation and pursuing claims in other actions, including actions unrelated to the Debtors and the Chapter 11 Cases. The Debtors were concerned that this could include, for example, claims or causes of action against employees of the Reorganized Debtors or customers of the Reorganized Debtors or Quad. Ultimately, after considerable negotiations, the Reorganized Debtors and the Texas Comptroller agreed that documents and information disclosed in connection with the Action could only be used for purposes of resolving the sales tax claims that were the subject of the Action, or claims previously filed by the Texas Comptroller against the Debtors in the Chapter 11 Cases.

27. The Arizona DOR, on the other hand, insisted throughout the negotiations that under Arizona state law, the Arizona DOR could not restrict the ability of the State of Arizona, and all of its agencies and departments, from having full access to all documents and information disclosed in the Action, nor could it limit the ability of such agencies or departments to use such documents and information in any manner they chose to, including bringing actions against third-parties unrelated to claims in the Chapter 11 Cases. To that end, the Arizona DOR insisted that any protective order include language that would permit Arizona to retain and use documents in whatever way Arizona, or its agencies and departments, deemed necessary in order to comply with Arizona state statutes.

28. Ultimately, the Arizona DOR relented and agreed to the Stipulated Order of Protection that had previously been agreed to by the Reorganized Debtors and the Texas Comptroller, subject to a separate agreement between the Reorganized Debtors and the Arizona DOR allowing the Arizona DOR to comply with its document retention and destruction policies.

29. With respect to the scheduling order, although the Reorganized Debtors provided a proposed order to the Texas Comptroller and the Arizona DOR in July 2011, in light of the parties' difficulties in reaching an agreement on the Stipulated Order of Protection, no agreement has yet been reached on a scheduling order.

GOOD CAUSE EXISTS FOR AN ORDER ENFORCING THE SAMPLE PERIODS AND LIMITING DISCOVERY

30. Although party discovery has been hampered by disputes over the Stipulated Order of Protection, the Arizona DOR and the Texas Comptroller have nonetheless continued to pursue aggressive third-party discovery. Since the commencement of this Action, the Arizona DOR and the Texas Comptroller together have issued no fewer than 44 subpoenas to third parties in numerous cities in Texas, Arizona and California, and such third-party subpoenas -- which were issued primarily to customers and accountants of the Reorganized Debtors -- were not limited in scope to the July 2007 to April 2008, and to the knowledge of the Debtors, such third-parties have yet to be advised that their responsive production should be limited by the Sample Periods, as was agreed to by the parties before the Court at the June Discovery Conference.

31. Instead, the 17 subpoenas issued by the Arizona DOR cover the entire period from January 1, 2004 through July 21, 2009. The 25 subpoenas issued by the Texas Comptroller cover the entire period from January 1, 2001 through July 21, 2009. Apart from the temporal breadth of the subpoenas, many of the documents sought by the States from third parties are simply not relevant to the issues of sales and use tax nexus and liability. As an example, in its subpoena to KPMG, LLP, the Debtors' auditors ("**KPMG**"), the Texas Comptroller has requested 11 categories of documents relating to the Debtors' historical calculation of their tax liabilities, including income tax, property tax, sales or transaction privilege taxes, and use tax liabilities for the period between January 1, 2001 and July 21, 2009, including calculations in

respect of income and property taxes having nothing to do with the sales tax liabilities at issue in this Action.[16]

32. As noted above, in order to protect their rights and confidentiality concerns, the Reorganized Debtors will be required to conduct a burdensome review of all of the documents being produced by third parties for privilege and confidentiality purposes, which is precisely what the use of sampling periods sought to avoid. This is all the more egregious to the extent that the States are seeking expansive third-party discovery, without regard to the sample periods, from the Debtors' accountants KPMG, Ernst & Young LLP ("**E&Y**") and Grant Thornton LLP ("**GT**," and together with KPMG and E&Y, the "**Accounting Firms**"), as much of the information sought from the Accounting Firms consists of materials prepared in anticipation of litigation that contain the mental impressions, conclusions, opinions or legal theories of the Debtors' and Reorganized Debtors' attorneys and other representatives concerning this Action and, therefore constitutes work product that is protected from discovery under the Federal Rules and Bankruptcy Rules.

33. In an effort to curtail the States' abusive third-party discovery practice and bring closure to other issues, on December 9, 2011, counsel to the Reorganized Debtors sent a letter to counsel for the Texas Comptroller and the Arizona DOR requesting a meet and confer session to address third-party discovery and the protection of work product, as well as the number of depositions to which the States are entitled, and a schedule for discovery.[17] Counsel to the Texas Comptroller initially responded by seeking to defer any such discussion until a later date. For its part, counsel to the Arizona DOR responded on January 26, 2012 with a letter stating that the

---

[16] See Subpoena issued to KPMG on May 12, 2011, at Canning Aff., Exh. C.

[17] Letter from Michael J. Canning to Jay Hurst and April Theis, dated December 9, 2011. *See* Canning Aff., Exh. D.

Reorganized Debtors "belief that the 'parties agreed to limit discovery to sample periods relating to nexus and liability, if any' . . . is an *erroneous statement. . . . We do not consent* to narrowing the litigation to the proposed sample periods."[18] (emphasis added). Further, by e-mail dated February 2, 2012, the Texas Comptroller appears to have also disavowed its agreement to limit discovery to the Sample Periods.[19] This flatly contradicts the States' statements on the record at the June Discovery Conference. Indeed, without addressing the numerous distortions and inaccuracies in its January 26, 2012 letter, we note that Arizona has baldly stated that it "intend[s] to use all documentation relating to any and all disputed periods, until such time as we can agree to reasonably narrow the issues and timeframe," including pursuit of access to electronic documentation going back to 1988, further evidencing Arizona's decision to ignore the agreements reached at the June Discovery Conference.

34. Given the States' course of conduct to date, and the nature of the responses of the Texas Comptroller and the Arizona DOR to the Reorganized Debtors' December 9, 2011 meet and confer request, the Reorganized Debtors believe that further attempts to resolve certain discovery issues without the Court's assistance would be fruitless, and would only delay inevitable motion practice on these issues.

35. Accordingly, in light of the foregoing, the Reorganized Debtors seek entry of an order providing that: (i) all discovery, both party and third-party, shall be directed only to the issues of nexus and the amount of taxes owed, and in this regard shall be limited to the Sample Periods, (ii) the States shall not be permitted to serve any additional third-party subpoenas and

---

[18] Letter from April J. Theis to Michael J. Canning, dated January 26, 2012. *See* Canning Aff., Exh. E.

[19] E-mail from Jay Hurst to Michael J. Canning, dated February 2, 2012. *See* Canning Aff., Exh. F.

document requests, absent further order of the Court, (iii) each of the parties shall be limited to not more than ten depositions in this Action, consistent with Rule 30 of the Federal Rules and (iv) all discovery in the Action shall be concluded by a date certain.

BASIS FOR FIXING A DISCOVERY SCHEDULE AND SCOPE OF DISCOVERY

36. Pursuant to Rule 16 of the Federal Rules, made applicable to bankruptcy cases pursuant to Bankruptcy Rule 7016, this Court has broad discretion to formulate and simplify the issues in litigation, avoid unnecessary proof and cumulative evidence, control and schedule discovery, identify witnesses and documents, assist in resolving disputes, adopt procedures for managing potentially difficult or complex issues, and facilitate the just, speedy and inexpensive disposition of this Action. Fed. R. Civ. P. 16(c)(2)(A, D, F, G, L and P); *see also In re Rafter Seven Ranches, LP*, 2008 WL 4330009, at *3 (Bankr. D. Kan. Sep. 19, 2008) (noting that Rule 16 authority may be exercised in contested matters, especially where the matter is relatively complex); *In re Philbert*, 340 B.R. 886, 889 (Bankr. N.D. Ind. 2006) ("[T]he vices that Rule 16 was designed to combat—wasted effort, unnecessary expense, and delay—are just as real and the goals it seeks to promote—efficient and expeditious management of cases—are just as important in contested matters as they are in adversary proceedings."). As set forth below, a pretrial discovery order within this broad authority is appropriate in this Action, in view of the looming certainty of burdensome and duplicative party depositions and third-party discovery, which threaten to capsize the parties' agreement at the June Discovery Conference to limit discovery to sample periods, and which will make impossible any efforts by the parties to settle the action without litigation.

A. The Sample Periods Must be Enforced for All Discovery

37. All parties agree that the two principal issues in the case are nexus and, to the extent nexus is established, what amount of taxes (if any) are owed by the Debtors. In addition,

the parties agreed at the June Discovery Conference to use a 10-month sample period to determine nexus (the "**Nexus Sample Period**") and that, if nexus is established, a 3-month sample period (the "**Liability Sample Period**," and together with the Nexus Sample Period, the "**Sample Periods**") to determine the amount of taxes owed by the Debtors, subject to the States' ability to re-address the scope of discovery with the Court if, upon completion of this effort, they reasonably believe additional discovery is necessary.[20]

38. To date, the Texas Comptroller and the Arizona DOR have served discovery requests on the Debtors that are more than sufficient to permit a determination of these two issues. Indeed, once the Reorganized Debtors have responded to the Texas Comptroller's 67 requests for documents and 24 interrogatories, and the Arizona DOR's 124 requests for documents, 23 interrogatories and 93 requests for admissions, for the Sample Periods, it is difficult to imagine how any documents or facts necessary to determine the Debtors' potential nexus to the States for sales tax purposes, and the amount of tax liability due and owing to the extent nexus is found to exist, could be left undiscovered.

39. The States, however, seem intent on continuing third-party discovery, whether necessary or not, and to do so in a manner that circumvents the agreement reached at the June Discovery Conference to limit discovery to the Sample Periods. Thus, for example, to the Reorganized Debtors' knowledge, the States have not yet taken steps to advise any third parties to whom discovery requests have previously been issued that their responses should be limited to the Sample Periods. Indeed, just within the past week the Arizona DOR has issued three additional subpoenas to customers of the Reorganized Debtors that seek information for the broader five year period. Moreover, in light of the States' recent conduct, it is difficult not to

[20] June Discovery Conference Tr. (Canning Aff., Exh. B) at 30.

question whether the States' unwillingness to limit third-party discovery to the Sample Periods is anything more than an "end run" around the parties' agreement to use the Sample Periods for discovery purposes, and that their overly burdensome approach to third-party discovery is being undertaken, at best, for strategic reasons, and at worst, for purposes unrelated to this Action.

40. In this regard, many of the discovery requests propounded by the Texas Comptroller and the Arizona DOR reach broadly beyond what is required for the determination of nexus or the Debtors' sales tax liabilities, and some of the subpoenas seek documents that are not even relevant to such issues. Indeed, not only have the Texas Comptroller and the Arizona DOR requested that the Accounting Firms produce documents for the broader periods from 2001 to 2009, and 2004 to 2009, respectively, related to the Debtors' sales tax obligations, they are also requesting that the Canadian affiliate of the Debtors' auditor, KPMG, produce documents and information relating to the preparation, filing and auditing of the Debtors' income and property taxes for such periods. Obviously, documentation relating to the Debtors' income taxes and property taxes, particularly in Canada, is of no relevance to the sales tax issues in dispute.

41. Moreover, any argument by the States that (i) third-party discovery issued to date should not be limited to the Sample Periods or (ii) third-party discovery beyond discovery issued to date is necessary to resolve the Claims is disingenuous and unsupported, and suggests that the States may be seeking information from customers and professionals of the Reorganized Debtors for purposes other than the resolution of the Claims, which may explain why the States resisted the Reorganized Debtors' insistence that discovery be used only in connection with the resolution of the Claims. Needless to say, such unfettered discovery is a significant burden on the Reorganized Debtors, their customers and professionals.

42. In addition, permitting the States to take such free-ranging third-party discovery, while limiting party discovery to the applicable Sample Periods creates an inherent inequity in the parties' rights related to discovery in the litigation of this Action. The Reorganized Debtors are prepared to proceed with producing and analyzing the records they have gathered related to the Sample Periods in respect of nexus and liability in response to the party discovery requests served by the Texas Comptroller and the Arizona DOR. However, if the Texas Comptroller and the Arizona DOR are free to take third-party discovery regarding nexus and liability over the entire span of time with respect to which they have asserted claims (five years for the Arizona DOR and almost ten years for the Texas Comptroller), the Reorganized Debtors will be forced to review their own records and transaction data for such extended periods in order to ensure that they will be able to refute whatever fact issues, if any, are raised in third-party documents or depositions. And, of course, if the Reorganized Debtors are in fact required to rely on their own data and documents relating to periods outside the Sample Periods in order to refute the States' third-party evidence, the Arizona DOR and the Texas Comptroller will in turn require that such documents and data be made available to them -- and so the discovery process continues! This ever-expanding effort undermines entirely the point of having the Sample Periods, which was neither intended nor expected by the Reorganized Debtors or, we believe, by the Court, and will likely require discovery of documents and information far beyond the Sample Periods.

43. The Reorganized Debtors also submit that permitting the Texas Comptroller and the Arizona DOR free-ranging discovery over the periods asserted in their Claims, rather than in respect of the Sample Periods, will make it virtually impossible for the parties to reach a consensual resolution of the Claims, and will instead necessitate a litigated determination of the Claims. Specifically, the possibility that the Texas Comptroller or the Arizona DOR may be able

to create an issue of fact based on records and testimony relating to sales activities spanning nearly a decade (during which the Debtor entities and their sales forces were repeatedly merged, acquired and reorganized) will make it difficult, if not impossible, for any party to determine an evidentiary basis with which to arrive at a mutually agreeable settlement value.

B. The States Should Each be Limited to Ten Depositions as Provided by the Federal Rules

44. With respect to depositions, the Texas Comptroller initially asserted that it is *entitled* to 400 depositions,[21] and stated at the June Discovery Conference that it *requires* at least 20 depositions, although reserving its "rights" in this regard.

45. The Debtors submit that the States cannot be permitted to conduct unlimited depositions, as to do so would be unwarranted in this Action and contrary to the spirit and the intent of the applicable Rules of Procedure. Frankly, a party that understands in advance that it must prudently exercise its right to take testimony is much more likely to select its witnesses more carefully than a party that believes, as the Texas Comptroller has asserted, that it is entitled to virtually unlimited depositions.

46. To date, the Texas Comptroller has taken two party depositions and three third-party depositions, and the Arizona DOR has deposed two party witnesses, with the Texas Comptroller and the Arizona DOR attending each others' depositions as well. There is simply no need for the Texas Comptroller or the Arizona DOR to take 400 — or even the 40 depositions to which the Texas Comptroller asserted it was entitled at the June Discovery Conference[22] — in order to support a determination by this Court regarding nexus and (if necessary) liability with respect to the Sample Periods. Instead, once document discovery has been completed, the

---

[21] Email from Jay Hurst to Michael J. Canning, dated June 3, 2011. *See* Canning Aff., Exh. A.

[22] June Discovery Conference Tr. (Canning Aff., Exh. B) at 36.

Reorganized Debtors submit that the Texas Comptroller and the Arizona DOR should each be permitted to complete taking the ten depositions to which they are entitled under the Federal Rules, in respect of the questions of nexus and liability for the Sample Periods. Thereafter, if the Texas Comptroller and/or the Arizona DOR reasonably believe that they require additional testimony in order to prosecute their Claims, they would be entitled to make an appropriate application to the Court for additional discovery, as provided under Federal Rule 30(a)(2)(A)(i).

47. Moreover, as the parties recommence the discovery process incident to the Action, the Reorganized Debtors believe that it is necessary to impose reasonable and appropriate limitations on further discovery in this Action, consistent with the parties' agreement on the record at the June Discovery Conference.

WHEREFORE, the Reorganized Debtors respectfully request entry of an order providing that (i) all discovery, both party and third-party, shall be directed only to the issues of nexus and the amount of taxes owed, and in this regard shall be limited to the Sample Periods, (ii) the States shall not be permitted to serve any additional third-party subpoenas and document requests, absent further order of the Court, (iii) each of the parties shall be limited to not more than ten depositions in this Action, consistent with Rule 30 of the Federal Rules; (iv) all discovery in the Action shall be concluded by a date certain; and (v) the Reorganized Debtors shall be entitled to such other and further relief as the Court deems just and appropriate.

Dated: February 10, 2012
New York, New York

Respectfully submitted,

/s/ Michael J. Canning

Michael J. Canning
Charles A. Malloy (admitted *pro hac vice*)
Ken L. Hashimoto
ARNOLD & PORTER LLP
399 Park Avenue
New York, New York 10022-4690
Telephone: (212) 715-1000
Facsimile: (212) 715-1399
Counsel for the Reorganized Debtors

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
Quebecor World (USA) Inc., et al.,	Case No. 08-10152 (JMP) Jointly Administered
Debtors.	Honorable James M. Peck

ORDER GRANTING MOTION OF THE REORGANIZED DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a) AND 107(b) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 7016 AND 7026 SEEKING ENTRY OF AN ORDER FIXING A DISCOVERY SCHEDULE AND SCOPE OF DISCOVERY

Upon the Motion of the Reorganized Debtors Pursuant to 11 U.S.C. §§ 105(a) and 107(b) and Federal Rules of Bankruptcy Procedure 7016 and 7026 Seeking Entry of an Order Fixing a Discovery Schedule and Scope of Discovery (the "Motion"); the Court having reviewed the Motion and considered the statements of counsel at a hearing before the Court (the "Hearing"); the Court having found that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion was appropriate under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish grounds for the relief granted herein;

IT IS FOUND AND DETERMINED THAT:

A. On November 14, 2008, the Court entered the Amended Order Pursuant to 11 U.S.C. §§ 105(a), 502 and 505 and Federal Rule of Bankruptcy Procedure 9019 Authorizing the

Debtors to (A) Implement Procedures to Determine Prepetition and Postpetition Sales Tax Liabilities of Certain Debtors Pursuant to State and Local Voluntary Disclosure Procedures and (B) Determine the Amount of Prepetition and Postpetition Sales Tax Liability of Certain Debtors (the "Procedures Order," Docket No. 1289).

B. The Procedures Order set forth procedures for the consensual resolution of sales tax liabilities of certain Debtors, together with the amount of the Debtors' prepetition sales tax liability to each of the taxing authorities subject to the Procedures Order.

C. The State of Arizona *ex rel.* Arizona Department of Revenue ("Arizona") and the Texas Comptroller of Public Accounts ("Texas," and together with Arizona, the "States") each objected to the proposed amount of sales tax liability set forth in the Procedures Order. In addition, the States filed proofs of claim against certain of the Debtors related to the sales tax claims that are the subject of the Procedures Order (the "Proofs of Claim").

D. The Procedures Order provided that "[i]f the Debtors and the objecting Taxing Authority are unable to resolve the Taxing Authority's objection by the end of the Review Period, then the Debtors and the Taxing Authority may either extend the Review Period by mutual agreement for a further definite period of time in order to continue negotiations, or, alternatively, the Debtors or such Taxing Authority shall notify the Court that the parties have not been able to resolve the Taxing Authority's objection and request an evidentiary hearing to determine the amount of the Taxing Authority's claim."[23]

E. On October 5, 2010 Texas filed a motion requesting that the Court determine the Debtors' sales tax liabilities to Texas, and on October 15, 2010 Arizona filed a similar motion

[23] *See* Procedures Order at ¶ 2.f.

(collectively, the "Motions").[24] The Reorganized Debtors filed initial responses to each of the Motions on October 29, 2010, (collectively, the "Responses").[25] The Court conducted a status conference on November 2, 2010 to consider certain issues raised in the Motions and the Responses.

F. On December 6, 2010, the Court entered a Stipulation and Consent Order Establishing Preliminary Schedule for Discovery, Briefing and Evidentiary Hearing on Determination of Sales Tax Claims of Texas Comptroller of Public Accounts and State of Arizona ex rel. Arizona Department of Revenue (Docket No. 4333) (the "Preliminary Scheduling Order").

G. On January 28, 2011 the Reorganized Debtors filed the Reorganized Debtors' (i) Supplemental Response and Objection to Motion of the Arizona Department of Revenue to Determine the Debtors' Sales Tax Liabilities Pursuant to the Court's Procedures Order and(ii) Omnibus Objection to Certain Sales Tax Claims of the Arizona Department of Revenue (Docket No. 4411) (the "Arizona Claim Objection") and the Reorganized Debtors' (i) Supplemental Response and Objection to Motion of the Texas Comptroller of Public Accounts to Determine the Debtors' Sales Tax Liabilities Pursuant to the Court's Procedures Order and (ii) Omnibus Objection to Certain Sales Tax Claims of the Texas Comptroller of Public Accounts (Docket No.

---

[24] *See* the *Motion of the Texas Comptroller of Public Accounts to Determine the Debtors' Sales Tax Liabilities Pursuant to the Court's Procedures Order* (Docket No. 4161) and the *Motion of Arizona Department of Revenue to Determine the Debtors' Sales Tax Liabilities Pursuant to the Court's Procedures Order* (Docket No. 4208).

[25] *See* the *Reorganized Debtors' Response and Objection to Motion of the Texas Comptroller of Public Accounts to Determine the Debtors' Sales Tax Liabilities pursuant to the Court's Procedures Order*(Docket No. 4228) and the *Reorganized Debtors' Response and Objection to Motion of the Arizona Department of Revenue to Determine the Debtors' Sales Tax Liabilities pursuant to the Court's Procedures Order*(Docket No. 4229).

4410) (the "Texas Claim Objection," together with the Arizona Claim Objection, the "Claim Objections").

H. The Claim Objections, together with the Proofs of Claim, the Motions and the Responses constitute one or more contested matters under Bankruptcy Rule 9014 (the "Action").

I. The States have served discovery on the Reorganized Debtors with respect to the Proofs of Claim and the Reorganized Debtors have served discovery on the States in connection with the Proofs of Claim and the Claim Objections, and the States have served discovery on various third-parties in connection with the Action.

J. On June 7, 2011 the Court conducted a telephonic status conference in this matter, and on June 28, 2011, the Court conducted a further status conference during which the Reorganized Debtors, Texas and Arizona discussed, among other things, the status of discovery in connection with the Action.

K. Based on the Motion and the statements of counsel at the Hearing, good cause exists to limit discovery with respect to this Action as set forth herein.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. Discovery to be taken by the States in connection with the Action shall be subject to the following provisions:

A. **Scope of Discovery.** The time periods for which the States are entitled to take discovery in this matter shall be as follows:

(i) **Tax Nexus**. All discovery, both party and non-party discovery, on the issue of whether any of the Debtors that are the subject of the Action had the requisite nexus to establish liability for sales tax in Texas, or for transaction privilege tax or sales tax in Arizona, shall be limited to the period from July 1, 2007 through April 30, 2008 (the "**Nexus Sample Period**"). The Nexus Sample Period shall be without prejudice to the right of the Reorganized

Debtors, Arizona or Texas to seek to enlarge such period, either by mutual agreement or by any party pursuant to an order of the Court for good cause shown.

(ii) **Calculation of Tax Liability**. All discovery, both party and non-party discovery, on the issue of the amount of tax liability, if any, owed by any of the Debtors that are the subject of the Action to the States shall be limited to information relating to the period February 1, 2008 through April 30, 2008 (the "**Tax Sample Period**"). The Tax Sample Period shall be without prejudice to the right of the Reorganized Debtors, Arizona or Texas to seek to enlarge such period, either by mutual agreement or by any party pursuant to an order of the Court for good cause shown.

B. **Depositions.**

(i) Texas and Arizona shall be entitled to a maximum of ten depositions each, including any depositions previously taken in the Action.

(ii) In addition to the depositions permitted under subsection (i) above, the States shall be entitled to take the joint deposition of any person who has not previously been deposed by either Texas or Arizona and who the Reorganized Debtors identify as a potential witness in an evidentiary hearing in the Action.

(iii) Texas shall be entitled to attend any deposition noticed by Arizona, and Arizona shall be entitled to attend any deposition noticed by Texas; provided, however, that if Texas or Arizona questions a witness at a deposition noticed by the other State, such deposition also shall count as a deposition by Texas or Arizona, as applicable, under subsection (i) above, notwithstanding that such deposition was initially noticed by the other State.

(iv) The provisions of this Section B, "Depositions," is without prejudice to (a) the rights of the parties to mutually agree to additional depositions, (b) the rights of the States to seek leave of the Court, upon consent or otherwise, to allow additional depositions pursuant to the Federal Rules of Civil Procedure and (c) the Reorganized Debtors' rights under the Federal Rules of Civil Procedure to take depositions in this matter.

C. **Subpoenas to Third Parties.** The States shall not issue any further subpoenas to third parties in connection with the Action, including without limitation any subpoenas seeking the production of documents or things or compelling attendance at a deposition, without further order of the Court authorizing the issuance of such subpoenas for good cause shown.

D. **Timing of Discovery.**

(i) All discovery, including written discovery, expert reports (if any), and fact and expert witness depositions, shall be concluded on _____ __, **2012** (the "**Discovery Deadline**"), which date may be extended upon mutual agreement of the parties or by order of the Court for good cause shown.

(ii) Following the Discovery Deadline, the Reorganized Debtors and the States shall have an ongoing duty to supplement their discovery responses and respond to inquiries regarding the completeness of their respective productions.

E. **Status Conference.** The Court shall conduct a telephonic status conference on or about the date that is 30 days prior to the Discovery Deadline to discuss the status of this matter, including, but not limited to, the timing of dispositive motion practice, conducting mediation or other alternative dispute resolution procedures, and scheduling an evidentiary hearing.

F. **Effect on Preliminary Scheduling Order.** This Order supersedes the Preliminary Scheduling Order, and all dates and deadlines set forth in the Preliminary Scheduling Order, or otherwise agreed upon by the parties prior to the date hereof, are modified as set forth herein. For the avoidance of doubt, dates for dispositive motions, pretrial matters and an evidentiary hearing contained in the Preliminary Scheduling Order are adjourned pending further order of the Court.

3. This Order shall be effective immediately upon entry.

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

Dated: New York, New York
_____, 2012

Hon. James M. Peck
United States Bankruptcy Judge