Thoughts on Changes in KRIP from long time veteran of Kodak Pension Department

If you are receiving a monthly payment from KRIP, you should be aware of the changes that are being made by current Kodak management(sic). I will try and do this in a Q&A format.

What is going on with the plan? The KRIP trust has more assets than are required to pay current and future benefits for retirees. That is what is shown in the annual funding notice which we all recently received. Kodak management has decided to terminate KRIP and use the over-funding for non-pension purposes.

How did the plan become over-funded? In the early days of pension administration, plans generally purchased annuities for participants and kept some cash in the plan. Over the years, Kodak employed experts in managing pension plan assets. One of them, Rusty Olsen, turned the theory of pension trust management on its head. He basically invented the current practice of management that uses a broad array of investments to yield positive returns. If you are interested in learning what he did, he wrote the book <u>The School of Hard Knocks</u> which goes into detail around Kodak's pension portfolio theory.

So, over many years Kodak made contributions to the KRIP trust in cash or stock. The returns on those funds along with premier asset management yielded the current over-funding and put the company in an enviable position of likely never having to make another pension contribution. I don't have the exact date, but the last contribution was, I believe, in the 1990s.

What did the Company intend the funding for? By law contributions to the fund were intended to benefit retirees and employees only. By having excess plan assets, the plan was able to offer various retirement incentives over the years and paid termination benefits from the plan.

As required by ERISA, the plan has a committee that acts as a fiduciary in managing the assets in the plan-- The Kodad Retirement Income Plan Committee (KRIPCO). (some on this email served on KRIPCO-- my regards to them) KRIPCO is required to act solely in the interest of plan participants. They can make no decisions that favor the company or themselves over the good of the participants.

If KRIPCO is a fiduciary, how is the company able to take the over-funding for its own use? That's the thing. ERISA has specific rules for pension plans should a company choose to offer one. However, there is no requirement that a company offer a pension plan. That decision is not KRIPCO's but rather company management. So there was really nothing KRIPCO could do to prevent the decision to terminate the plan.

Isn't all the over-funding a result of Kodak management prior to bankruptcy? Yes. The funds were put into the plan with the intent that they would benefit employees and retirees. Current management had no part in creating the over-funding.

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So, how much over-funding will go to the company? There are laws around that. Loosely, the plan buys annuities for the participants receiving monthly payments, the left over funds are available to the company after it pays a 50% excise tax to the government.

So, rather that use 100% of the excess assets to benefit employees and retirees, the company will take 50% of it for its own use.

What could the company do with the over-funding?

1. As mentioned above, they could use it to increase benefits for active employees or increase pension payments. The last pension uplift was done 34 years ago in 1991.

2. They can take the funds and invest them in the operation of the company adding to its long-term health.

3. They can use the funds to pay officers and high-level executives above-market bonuses.

I don't know which of 2 or 3 they are planning, but I have an opinion.

The communications for KRIP said I was getting the same amount of payment, why should I care? Your current pension payment is protected by the PBGC, a quasi-government agency set up to assure that retirees receive the benefits they earned from their employers.

There are requirement in ERISA that if a plan purchases an annuity for a participant that the annuity must be the safest possible. Kodak will do due diligence to determine from which insurers to buy annuities and meet that requirement. However, the PBGC insurance you currently have will disappear and your annuity will be dependent on the solvency of the company that provides it. If that company goes bankrupt, some or all fo the annuity may be insured by a fund in the state of your residence.

What can we do about this? In a nutshell – nothing. What they are doing is legal. You can have opinions about the ethics, but it's legal.

You could sue them, but you would lose and rack up a bunch of legal fees.