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Analysis: Troubled Kodak faces UK pension woes

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(Reuters) - Eastman Kodak (EK.N: [Quote](#), [Profile](#), [Research](#), [Stock Buzz](#)), an American icon that is struggling to survive, could find that one of its costliest problems hails from overseas.

The bill is coming due for years of generous pensions and other benefits that the photography company promised employees, especially in the UK where it has manufacturing operations dating to the 1800s and still supports thousands of retirees.

Whatever Kodak's fate as it grapples with a global shift to digital photography, five consecutive years of annual net losses and a consistent cash drain as it spends on new businesses, the UK pension problems are not going away.

Kodak has promised to spend about \$800 million over the next decade to shore up its UK pension fund. Unlike its UK counterpart, Kodak's U.S. fund has gotten no such pledges from the company, and as of the end of 2010 was fully funded.

The UK Pensions Regulator can seek legal authority under UK law to take aim beyond its borders -- its so-called moral hazard powers -- setting up a scenario in which UK pension interests could be a major factor in any Kodak restructuring. UK pension fund trustees and regulators have increasingly tried, with some success, to maneuver U.S. companies into paying more into underfunded UK plans in recent years.

There could be "substantial pensions claims" from the UK against Kodak if the company lands in bankruptcy, said attorney Paul Silverstein of law firm Andrews Kurth LLP. He is advising some Kodak creditors who may have claims against the company.

Rochester, New York-based Kodak is engaged in financing negotiations with its lenders, as part of an effort to raise cash, according to a source with direct knowledge of the talks but who declined to be identified because the discussions are not public.

Bankruptcy is a possible outcome, this person said.

Kodak spokesman Christopher Veronda this week declined to comment on the possibility of bankruptcy or on the role of the UK pension in the company's current restructuring. The company said Tuesday it was reorganizing into two business units, commercial and consumer, down from three. The move came weeks after three board members resigned without explanation.

Talk of a Kodak meltdown heated up in September after the company drew down \$160 million in cash from a credit line, an unprecedented move for Kodak.

Kodak had \$862 million in cash as of late September, down from \$1.4 billion a year earlier. It warned in a November filing with the U.S. Securities and Exchange Commission that its ability to keep operating over the next 12 months depended on its ability to issue new debt or sell patents.

Pensions have been a looming issue for Kodak, which like many U.S. manufacturers offered extensive medical benefits and pension payouts for workers when times were better and such perks were standard.

Kodak's ties to the UK began in the 1800s and continued in the 1900s. Whole communities were built around the plants, similar to its hometown of Rochester.

Kodak opened a sales office in London in 1885 and built its first UK manufacturing plant in 1891 in Harrow, in northwest London.

"In the town where I grew up, Kodak was one of the biggest employers," said Susan Laws, who once worked at Kodak to finance law school and is now a corporate finance and mergers and acquisitions lawyer for Duane Morris in the UK. Her mother is a Kodak pensioner.

"It was a paternalistic company," she said. "Whole families worked there and it was ahead of the game in giving benefits."

In 2007, Kodak first guaranteed to shore up its UK fund. Then in its 2010 annual report, it disclosed a new obligation to make about \$830 million in aggregate payments into the UK pension plan from 2011 through 2022.

UK CASES UNDERWAY

Typically in U.S. bankruptcies, pension obligations are an unsecured claim, falling to the bottom of the list of creditors to be paid



back. U.S. pension obligations often are shifted to the U.S. pension insurer, the Pension Benefit Guaranty Corp, once a company files for bankruptcy.

However, the UK Pensions Act of 2004 gave the UK Pensions Regulator legal authority to more broadly seek financial support for pensions.

If Kodak does file for bankruptcy protection, the Kodak UK pension trustees or UK regulators may try to exert power in the United States, as they have in the bankruptcies of Lehman Brothers (LEHMQ.PK: [Quote](#), [Profile](#), [Research](#), [Stock Buzz](#)), Nortel (NRTLQ.PK: [Quote](#), [Profile](#), [Research](#), [Stock Buzz](#)), Visteon and Sea Containers.

Currently Lehman and Nortel's overseas counterparts are involved in a UK case that addresses whether pension fund claims can get priority over other claims in the United States. And, after a UK court said Sea Containers owed money to its UK pension fund, Sea Containers agreed on a settlement that included the company contributing to its UK pension fund.

When asked about Kodak on Wednesday, a spokesman for the UK Pensions Regulator said the office "is aware of the situation and in contact with the Pensions Trustee." The spokesman, Ben Lloyd, declined further comment.

Hogan Lovells LLP, the law firm advising the Kodak UK pension trustees in London, declined comment on Wednesday.

Kodak's overseas pension and benefit obligations have been underfunded for most of the past decade, its annual reports for that time period show.

The company has employee pension plans in France, for instance, but the UK Pension Regulator is unique in that it has aggressive legal authority to pursue funding claims abroad.

(Reporting by Caroline Humer in New York and Sue Zeidler in Los Angeles; Editing by [Martha Graybow](#) and [Tim Dobbyn](#))

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