

# The Deal Pipeline<sup>®</sup>

## Kodak seeks to discuss benefits with retirees

by [Aviva Gat](#) | Published April 5, 2012 at 3:21 PM ET



Eastman Kodak Co. wants to give its retirees a voice in its bankruptcy case to aid in the negotiation of a proposal to modify or terminate retiree medical and survivor benefits.

The once-storied photography giant on Wednesday, April 4, withdrew its motion to automatically terminate benefits for about 16,030 retirees and contemporaneously moved the U.S. Bankruptcy Court for the Southern

District of New York in Manhattan to appoint an official committee of retired employees under Section 1114(d) of the Bankruptcy Code.

Judge Allen L. Gropper is set to consider the motion on April 16.

Wednesday's motion notes that Kodak withdrew the request to terminate retiree benefits without prejudice -- meaning the debtor could file it again -- and that the company instead will modify or terminate benefits pursuant to discussions with the retiree committee, which would operate pursuant to a budget.

Kodak on Feb. 27 had requested to terminate medical benefits for employees that had retired after Oct. 1, 1991. According to the motion, "critical" benefits would still have been provided, but core medical coverage would have been dropped. Kodak said the move would save about \$223 million and would yield annual cost savings of \$13.7 million in fiscal 2012 and \$20.5 million for every fiscal year thereafter. Kodak asked to terminate certain benefits effective May 1.

The motion was met with resistance from numerous parties, however. A group of retirees and Ekra Ltd., which represents about 4,500 former Kodak employees, objected to the motion on March 13 and moved the court to appoint a committee of retirees.

"Although, according to debtors the dollar values at stake in the motion are modest, they are particularly important to retirees," the group of certain retirees wrote. "These retiree healthcare benefits are the difference between inadequate and adequate health care."

Ekra is a nonprofit advocacy group formed in 2009 in response to modifications to Kodak's benefits. Ekra noted Kodak's employees are not unionized and thus have no collective bargaining power. A committee would ensure their concerns are not ignored. Eighteen other former Kodak employees and spouses of former employees also wrote letters to the court objecting to the benefit termination motion.

Arthur T. Miller, a former employee in Webster, N.Y., said in a March 21 letter that he is no longer receiving a

pension, which he depended on to pay bills. He also noted he has no life or dental insurance.

"At our age finding jobs [is] hard if not impossible," Miller wrote. "The American Dream is Over! Anything that you can do to help the small group of employees who fall into my category would be greatly appreciated."

The official committee of unsecured creditors, on the other hand, supported Kodak's motion to terminate the benefits.

Gropper considered both sides on March 20, but during the hearing he encouraged Kodak to discuss the motion with the former employees and advocated for a 1114(d) committee, documents show.

Kodak said it is "amenable" to the formation of a retiree committee that would operate on a limited-cost basis until the company can present it with a proposal to modify or terminate the benefits.

Kodak proposed an initial budget of \$50,000 per month for the committee's professional fees. The budget would increase to \$100,000 per month between 30 and 60 days before Kodak submits a proposal to modify the benefits and would again increase to \$175,000 after the proposal was submitted through the court's ruling on the modification motion.

According to the Wednesday motion, Kodak has about 39,000 retired employees, long-term disability recipients and survivors or dependants of retirees. About 2% of the retirees came from executive-level positions, and about 86% are eligible for Medicare. About 60% of the retirees retired after Oct. 1, 1991, and would have been subject to cuts under the withdrawn motion.

Kodak's liabilities for retiree benefits is about \$1.2 billion. Since 2003, Kodak has reduced employees from 63,900 to about 17,000 while its revenue dropped from \$14.4 billion to \$6 billion. The company thus believes its benefits are not appropriately scaled for its size, documents show.

Kodak is not the only company recently to seek modification of employee or retiree benefits.

AMR Corp. had also sought to terminate pension plans of nonpilot employees, but it relented to continue negotiations with its workers. AMR pledged to freeze the plans, rather than terminate them, but it has been unable to negotiate an agreement with employees.

The parent company of American Airlines Inc. then moved the court last month to reject nine separate collective bargaining agreements under Section 1113 of the U.S. Bankruptcy Code after it could not secure new deals with its labor groups. The fate of the pension plans if the CBAs are rejected is unclear.

Judge Sean Lane of the Manhattan court is set on April 23 to hear opening arguments on the issue, according to a scheduling order filed Monday. AMR would begin making its case for termination the same day, and two weeks after it finishes, the unions would begin their response.

The Pension Benefit Guaranty Corp. and AMR's creditors' committee would have chances to respond after that, if they desired, and AMR would lay out its rebuttal case. Lane will rule on the issue within 30 days of the start of the hearing, although that period will be extended by two weeks for the break between the first two portions of the hearing.

Nortel Networks Corp. is also negotiating with an official committee of retirees as well as a committee for long-term disabled employees over the modification or termination of their benefits. On March 30, Nortel sought to appoint a mediator to expedite discussions with the committees, warning it could seek to terminate the benefits but that it preferred to attempt a modification.

Kodak, meanwhile, may also get another committee. A group of its equity holders seek their own committee to represent their concerns in the case. The debtor and its creditors' committee oppose the request, asserting it would result in undue costs to the estate.

Gropper is scheduled to consider that motion on April 18.

Kodak, founded in 1880 by George Eastman, was once the world's leading producer of film and cameras and today has a diverse collection of mature and growth businesses.

Kodak has been working to transform itself from a film and consumer photography company to a smaller business focused on the commercialization of proprietary digital-imaging and printing technologies.

Kodak filed for Chapter 11 on Jan. 19 after a long-term transformation and other restructuring moves failed to reverse a protracted decline.

Andrew G. Dietderich, John J. Jerome, Michael H. Torkin and Mark U. Schneiderman at Sullivan & Cromwell LLP, and Pauline K. Morgan and Joseph M. Barry at Young Conaway Stargatt & Taylor LLP are debtor counsel. James A. Mesterharm of AlixPartners LLP is Kodak's chief restructuring officer.

Matthew J. Hart of Lazard is the company's investment banker.

R. Scott Williams of Haskell Slaughter Young & Rediker LLC and J. Brian McTigue and Bryan T. Veis of McTigue & Veis LLP represent the group of retirees that objected to the termination motion.

Marc E. Richards of Blank Rome LLP and Jeffrey A. Dove of Menter, Rudin & Trivelpiece PC represent Ekra.

Dennis F. Dunne, Tyson M. Lomazow and Brian Kinney of Milbank, Tweed, Hadley & McCloy LLP are counsel to the creditors' committee.

Robert J. Stark and Neal A. D'Amato of Brown Rudnick LLP and Stephen G. Grygiel at Keefe Bartels LLC represent the equity holders seeking a committee.

Michael S. Stamer, David H. Botter, Abid Qureshi and Alexis Freeman of Akin Gump Strauss Hauer & Feld LLP represent an official committee of second-lien noteholders.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , <sup>1</sup>	)	Case No. 12-10202 (ALG)
	)	(Jointly Administered)
Debtors.	)	

**ORDER SHORTENING NOTICE WITH RESPECT TO THE DEBTORS’ MOTION  
FOR AN ORDER DIRECTING THE APPOINTMENT OF A SECTION 1114  
COMMITTEE**

Upon the motion (the “**Motion**”)<sup>2</sup> of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for entry of an order (this “**Order**”) shortening notice with respect to the Debtors’ Motion for an Order Directing the Appointment of a Section 1114 Committee, dated April 4, 2012 (the “**1114 Committee Motion**”); it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and this Court having found that proper

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.



and adequate notice of the Motion and opportunity for hearing on the Motion has been provided under the circumstances; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The 17-day notice period, otherwise applicable to the hearing for approval of the 1114 Committee Motion pursuant to the Case Management Procedures, is shortened pursuant to Bankruptcy Rules, 9006(c) and 9007 and Local Bankruptcy Rules 9006-1(b) and 9077-1, so that the hearing to consider the 1114 Committee Motion shall be held on **April 16, 2012, at 2:30 p.m. (ET). The objection deadline shall be April 12, 2012, at 4:00 p.m. (ET).**
3. The Debtors are authorized and empowered to take and perform all actions necessary to implement and effectuate the relief granted in this Order.
4. The requirements set forth in Local Rule 9013-1(b) are satisfied.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: April 4, 2012  
New York, New York

**s/Allan L. Gropper**  
Allan L. Gropper  
United States Bankruptcy Judge