

## Kodak execs try to squash suit over pension collapse

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A group of Eastman Kodak Co. workers who saw their 401(k)

plans lose huge chunks of value now are fighting efforts to get their litigation targeting company executives tossed out.

Attorneys for those workers, as well as attorneys representing the Kodak executives, both wrote U.S. District Court Judge David J. Larimer late last month after a federal appeals court threw out a separate lawsuit against Morgan Stanley. That suit dealt with Morgan Stanley allegedly losing \$25 million for a New York City pension fund by investing too heavily in toxic mortgage-backed securities.

The letter from William J. Kilberg, a partner with Washington law firm Gibson, Dunn & Crutcher LLP, representing the Kodak executives, argued that the Morgan Stanley suit and Kodak allegations are very similar — a violation of fiduciary duties with people who should have known better than to invest in an obvious money loser — and that the ruling in Morgan Stanley’s favor bolsters the case for the Kodak executives as they seek to have the lawsuit against them dismissed.

Representing the Kodak employees, Mark P. Kindall with Connecticut law firm IZARD Nobel LLP, said they “have identified specifically what the Second Circuit found lacking in Morgan Stanley .... specific objective facts which rendered that investment imprudent.” Consequently, he said, the Morgan Stanley decision doesn’t have any bearing on the Kodak case.

The legal fight revolves around the collapse of Kodak’s stock in the months leading up to its filing for Chapter 11 bankruptcy protection in early 2012, and that collapse’s impact on employee retirement plans.

In the weeks following Kodak filing for bankruptcy, seven separate employee lawsuits were filed against CEO Antonio Perez and other top executives and board members — though not the company itself — arguing that they should be held responsible for the company continuing to offer company stock as an option in various company investment plans, even as it was going through severe business struggles that made the stock a poor investment choice.

The lawsuits also argued that Kodak misled investors, including participants in the 401(k) plans, by publicly painting a too-positive picture of the company’s progress even as it was approaching bankruptcy.

The various suits by the Kodak workers — all nearly identical in their contentions — were combined into one last year.

The Kodak executives filed a motion in October seeking to have the complaints thrown out, arguing that past federal court decisions have held that offering company stock as a 401(k) investment option is typically seen as prudent, and that the two retirement plans in fact required Kodak stock be included as an investment option.

Oral arguments in the motion to dismiss are scheduled for May 23.