
Kodak shareholders face uphill battle in bid for equity committee



By [Nick Brown](#)

(Reuters) - As Kodak prepares to present its restructuring plan to a court, a group of shareholders is holding out hope that a judge will appoint a committee to represent them.

The group, consisting of some 500 shareholders, has started two online message boards - Kodak-shareholders.com and Kodak.boards.net - and is peppering the court with letters.

But such grassroots movements usually fall by the wayside in bankruptcies, where higher-priority creditors swallow up any value in the bankrupt company and equity committees are becoming increasingly rare.

In the Kodak case, the group is trying to overcome those odds without a lawyer and after a judge already refused an earlier request to appoint a shareholder committee.

Kodak went bankrupt last year with \$6.75 billion in debt, and shed key components of its business, including its digital imaging patents. It hopes to exit Chapter 11 as soon as the third quarter, primarily as a commercial imaging business.

Under its proposed restructuring plan, shareholders would be wiped out, with most new stock going to second-lien bondholders and a portion going to unsecured creditors.

The shareholder group claims the company's restructuring plan drastically undervalues its assets, and that the U.S. Trustee Program, the Justice Department's bankruptcy watchdog, has been unresponsive to pleas for help.

Members of the group have flooded both the court and the Trustee with letters to appoint a committee to vouch for shareholder rights.

BECOMING RARER

U.S. insolvency laws allow the appointment of equity committees at the bankrupt firm's expense, but in order to justify the cost the Trustee or the judge overseeing the case must conclude there is a reasonable chance of value for the equity class.

That scenario is rare, and has become increasingly rarer, said Jay Goffman, who leads the bankruptcy practice at Skadden, Arps, Slate, Meagher & Flom. As company capital structures have become more complex and heavily secured, less is left over for shareholders, he said.

According to the UCLA-LoPucki Bankruptcy Research Database, between 1980 and 1989, 40 of 89 large corporate bankruptcies, or 45 percent, included an equity committee. But in 841 large cases since 1989, only 93 of them - or 11 percent - included a committee, according to the database, which does not include cases that are still pending.

Equity committees spiked somewhat in 2008 and 2009, when liquidity crises caused otherwise healthy companies with potential equity value, like Chemtura Corp and General Growth Properties, to go bankrupt, Goffman said.

That trend has slowed and small shareholders of more recent bankrupt companies have lost bids for equity committees.

In the restructuring of educational supply company School Specialty Inc, a judge last month denied bids by two individual shareholders to form an equity committee.

In the Kodak case, the Trustee and the judge have already rejected one bid to appoint a shareholder committee, which was made by institutional equity holders including Greycapital.

At the time, Judge Alan Gropper of U.S. Bankruptcy Court in New York said an equity committee would be redundant because other creditor constituencies shared the same interest in maximizing Kodak's value.

The shareholders bringing the new effort point to changes they say could yield value for equity holders, including a deal to sell two of Kodak's imaging businesses to its British pension. They say Kodak is also underestimating the value it could glean from existing net operating losses and its remaining patent portfolio.

Kodak declined to comment.

DAVID AND GOLIATH

Matt Glassman, one of the leaders of the shareholder group, said the Trustee has not acknowledged the group's letters.

"It's like David versus Goliath, except, in this particular situation, Goliath is not fighting fair, and no one is looking out for David," Glassman told Reuters.

The Trustee declined to comment.

Demonstrating that equity has value is a tricky task that requires sophisticated and expensive advisers familiar with bankruptcy laws.

While Kodak is represented by Sullivan & Cromwell and creditors have their own attorneys and financial advisers, including Blackstone, it is unclear whether the shareholder group will even have an attorney at a hearing on June 13, at which Kodak will seek court approval of its plan outline before sending the plan to creditors for a vote.

"Little guys are fighting an uphill battle to begin with against advisers who are part of a regular group within that world and who are looking not to have interlopers," said Clint Krislov, a Chicago-based plaintiffs' lawyer.

Krislov has represented small creditors in bankruptcy cases, who face many of the same challenges as shareholders. Krislov's most recent foray into bankruptcy is in the case of former bookseller Borders Group Inc, where he represents gift card holders who say they deserve payback from Borders' estate. Krislov said Borders should not have expected unsophisticated consumers to understand the process and deadlines for filing claims without much notice, but so far, two judges have ruled against the holders. The matter remains on appeal.

On the rare occasion that grassroots movements prove successful, it is usually because they are led by someone energetic, savvy, and well-connected.

In MF Global's \$40 billion bankruptcy in 2011, fund managers James Koutoulas and John Roe not only had time and resources but connections both in Congress and within the Chicago commodities trading world when they created the Commodity Customer Coalition to fight for traders' rights. That helped the CCC solicit donations from thousands of traders and eventually convince a big-firm lawyer - Barnes & Thornburg's Trace Schmeltz - that the group was more than just a pie-in-the-sky underdog.

The CCC didn't get many of its motions granted during MF Global's bankruptcy, but it forced a seat at the table and gained access to James Giddens, the trustee winding down MF Global's estate. That helped bolster the flow of information to average customers.

"Sometimes when you don't know what's going on, you feel like you're being screwed," Schmeltz said. "You may or may not be, but that's the feeling."

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