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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
EASTMAN KODAK COMPANY, et al.,	:	Case No. 12-10202 (ALG)
Debtors.	:	(Jointly Administered)

KODAK SHAREHOLDERS' JOINT MOTION FOR ORDER DIRECTING THE APPOINTMENT OF AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS PURSUANT TO 11 U.S.C. § 1102(a)

Certain holders of common stock (the "Shareholders") issued by Eastman Kodak Company ("Kodak" and, together with its Chapter 11 debtor-affiliates, the "Debtors"), by and

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through their respective undersigned counsel, respectfully submit this Joint Motion, pursuant to Section 1102(a)(2) of Title 11 of the United States Code (the "Bankruptcy Code"), requesting an Order compelling the United States Trustee (the "U.S. Trustee") to appoint an official committee of equity security holders (an "Official Equity Committee") in the Debtors' Chapter 11 cases. In support of this Joint Motion, the Shareholders respectfully state as follows:

PRELIMINARY STATEMENT

1. The Shareholders comprise two separate groups that independently (and almost simultaneously) requested the U.S. Trustee appoint an Official Equity Committee. Each group cited to abundant evidence in the case record indicating shareholder value entitlements from this bankruptcy case. These requests drew opposition from the Debtors, the Official Committee of Unsecured Creditors, and the *Ad Hoc* Second Lien Noteholders Committee. The Shareholders responded to those oppositions by submitting responsive letters. The U.S. Trustee ultimately declined to appoint an Official Equity Committee. Copies of all such correspondence are attached hereto as Exhibit A.

2. Notwithstanding the U.S. Trustee's decision, the facts and circumstances do give rise to a compelling need for the appointment of an Official Equity Committee. The legal and evidentiary predicates for an Order compelling such appointment are carefully set forth herein.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this Joint Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

I. General Case Background.

4. On January 19, 2012 (the "Petition Date"), each of the Debtors filed with this Court a voluntary Chapter 11 petition. The Debtors continue to operate their businesses as debtors-in-possession under Bankruptcy Code Sections 1107(a) and 1108.

5. The Debtors' Chapter 11 cases have been consolidated for procedural purposes only, and the cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

6. On January 25, 2012, the U.S. Trustee appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee"). The Creditors' Committee is comprised of the following seven members: (i) the Pension Benefit Guaranty Corporation; (ii) KPP Trustees Limited; (iii) U.S. Bank, N.A.; (iv) Sony Pictures Entertainment, Inc.; (v) Strategic Procurement Group; (vi) Walmart Stores Inc.; (vii) Primax Electronics Ltd.

II. Facts Bearing On Whether The Cost Associated With The Appointment Of An Official Equity Committee "Significantly Outweighs" The Need.

7. On February 28, 2012, the Court entered an Order approving the Debtors' retention of Sullivan & Cromwell LLP ("Sullivan and Cromwell") and Lazard Frères & Co. LLC ("Lazard") as counsel and financial advisor respectively, along with Young Conway Stargatt and Taylor LLP and Linklaters, LLP. According to its approved retention application, Sullivan & Cromwell's hourly rates range from $990 to $1,150 for partners, $990 to $1,050 for of counsel and special counsel, and $395 to $875 for associates. According to its approved retention application, Lazard will receive $250,000 monthly plus a $12.5 million transaction fee (no monthly fee crediting), with opportunities to receive additional, incremental transaction fees.

8. On February 15, 2012, the Court conducted a hearing to consider final approval of the Debtors' proposed post-petition financing (the "Final DIP Hearing"). At the Final DIP Hearing, the Debtors unveiled a consensual financing arrangement under which the Debtors will pay monthly the invoices submitted by professionals to the *Ad Hoc* Second Lien Noteholders Committee, including Akin Gump Strauss Hauer & Feld LLP (presumably at rates comparable to those presented by Sullivan & Cromwell) and The Blackstone Group ($175,000 monthly plus a $5 million transaction fee (50% monthly fees credited)). See 2/15/12 Hearing Transcript at 78: 1-8 (copy attached hereto as Exhibit B).

9. As of the date of this filing, the Creditors' Committee has not yet filed retention applications for its selected counsel, Milbank Tweed Hadley & McCloy LLP ("Milbank Tweed"), or its two selected financial advisors, Alvarez & Marsal ("A&M") and Jefferies & Company, Inc. ("Jefferies"). Presumably, Milbank Tweed's proposed hourly rates are similar to those presented by Sullivan & Cromwell, A&M will earn millions on an hourly basis, and Jefferies will receive a compensation package comparable to what has been reserved for The Blackstone Group.

LEGAL ARGUMENT

I. Applicable Legal Standard.

10. Bankruptcy Code Section 1102(a)(2) provides that "on request of a party in interest, the court may order the appointment of additional committees . . . of equity security holders if necessary to assure adequate representation of . . . equity security holders."

11. The Court reviews the U.S. Trustee's decision not to appoint an Official Equity Committee de novo. See, e.g., In re Oneida Ltd., 2006 Bankr. LEXIS 780, at *3 (Bankr. S.D.N.Y. May 4, 2006) (the Court reviewed U.S. Trustee's decision de novo); In re Enron Corp., 279 B.R. 671, 684 (Bankr. S.D.N.Y. 2002) (same), aff'd, 2003 U.S. Dist. LEXIS 18149

(S.D.N.Y. Oct. 9, 2003); In re Texaco, Inc., 79 B.R. 560, 566 (Bankr. S.D.N.Y. 1987) (whether or not request for additional committee is made to the U.S. Trustee, Court must exercise its own judgment); In re McLean Indus., 70 B.R. 852, 856-57 (Bankr. S.D.N.Y. 1987) (an abuse of discretion standard does not apply with respect to U.S. Trustee's initial exercise of discretion); see also In re Value Merchants, 202 B.R. 280, 284 (E.D. Wis. 1996) (reviewing U.S. Trustee decision de novo); In re Dow Corning Corp., 194 B.R. 121 (Bankr. E.D. Mich. 1996) (Court has de novo authority to alter an existing committee), rev'd on other grounds, 212 B.R. 258 (E.D. Mich. 1997); In re First RepublicBank Corp., 95 B.R. 58, 59 (Bankr. N.D. Tex. 1998) (applying de novo standard of review to determine adequacy of representation).

12. While the Bankruptcy Code does not provide a test for determining "adequate representation" under Section 1102, Courts have developed the relevant inquiry. An initial focal point is whether the debtor appears to be "*hopelessly* insolvent." See In re Wang Laboratories, Inc., 149 B.R. 1, 3 (Bankr. D. Mass. 1992)(emphasis in original); In re Emons Indus., Inc., 50 B.R. 692, 694 (Bankr. S.D.N.Y. 1985). Case law instructs that an Official Equity Committee is unnecessary in cases of "hopeless" insolvency, given that stockholders have unlikely value entitlements in such circumstances. But, since "only the passage of time and the debtor's attempt to restructure its business will determine whether a recovery will be available for equity," 7 Collier on Bankruptcy ¶ 1102.03[2][a] (15th ed. rev. 2010), the evidence must establish very low probability of stockholder value entitlement to support a conclusion that an Official Equity Committee should not be appointed.

13. In fact, "the solvency of the debtor should not be the only factor, or even the principal factor, in deciding whether to appoint a committee of equity security holders." Id.; see also In re Mirant Corp., 334 B.R. 800 (Bankr. N.D. Tex. 2005)(at conclusion of a complex valuation trial, Court rejected view advanced by debtors and creditors that stockholders were

billions of dollars out-of-the-money, instead concluding that stockholders did, in fact, have significant value entitlements from the case).

14. Other points of inquiry may have just as great a bearing on the appointment inquiry. The law also considers, for example, whether: (1) the case is large and complex; (2) the debtor publicly issued a large amount of stock that remains widely held as of the bankruptcy filing; and (3) the cost associated with the requested appointment "significantly outweighs" the need for stockholder representation. Albero v. Johns-Maville Corp. (In re Johns-Manville Corp.), 68 B.R. 155 (S.D.N.Y. 1986), appeal dismissed, 824 F.2d 176 (2d Cir. 1987).

15. On the third point in the preceding sentence, the law calls for a burden shifting, if circumstances otherwise suggest appointment is appropriate. See, e.g., In re Beker Indus. Corp., 55 B.R. 945, 949 (Bankr. S.D.N.Y. 1985)(once the need for adequate representation is established, "the burden shifts to the opponent of the motion [to appoint an official equity committee] to show that the cost of the additional committee sought significantly outweighs the concern for adequate representation and cannot be alleviated in other ways."); 4 Norton Bankr. L. & Prac. 2d § 78:5 (2d ed. 2005) ("Should the moving party be successful in showing that an additional committee is required, the burden then shifts to the opponent to demonstrate that the cost of such an additional committee notably outweighs the interest in adequate representation.").

16. Perhaps for these reasons, Official Equity Committees tend to be appointed in massive restructuring cases that will involve complex operational reorganization, and value entitlements are indeterminable at the forefront. See, e.g., In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y); In re General Growth Properties, Inc., Case No. 09-11977 (Bankr.S.D.N.Y.); In re Tronox Inc., Case No. 09-10156 (Bankr. S.D.N.Y.); In re Spectrum Brands, Case No. 09-50455 (Bankr. W.D. Tex.); In re Pilgrim's Pride Corp., Case No. 08-45664 (Bankr. N.D. Tex.); In re Washington Mutual, Inc., Case No. 08-12229 (Bankr. D. Del.); In re

Oneida Ltd., Case No. 06-10489 (Bankr. S.D.N.Y); In re Peregrine Sys., Inc., 06-10489 (Bankr. D. Del.); In re Calpine Corp., Inc., Case No. 05-60200 (Bankr.S.D.N.Y.); In re Delphi Corp., Case No. 05-44481 (Bankr.S.D.N.Y.); In re Interstate Bakeries Corp., Case No. 04-45814 (Bankr.W.D. Mo.); In re Gadzooks, Inc., 04-31486 (Bankr.N.D. Tex.); In re Loral Space & Commc'ns Ltd., Case No. 03-41710 (Bankr.S.D.N.Y.); In re Solutia Inc., Case No. 03-17949 (Bankr.S.D.N.Y.); In re Mirant Corp., Case No. 03-46590 (Bankr. N.D. Tex.); In re Adelphia Communications Corp., Case No. 02-41729 (Bankr.S.D.N.Y.); In re Cone Mills Corp., Case No. 03-12944 (Bankr. D. Del.); In re Seitel, Inc., Case No. 03-12227 (Bankr. D. Del.); In re Exide Techs., Case No. 02-11125 (Bankr.D. Del.); In re USG Corp., Case No. 01-2094 (Bankr.D. Del.); see also American College of Bankruptcy Best Practices Report, Formation, Function & Obligations of Equity Committees in Chapter 11 (2011) at 2-3 ("In the last decade…there has been a remarkable increase in the number of requests for, and appointment of, Equity Committees. In the first half of the decade alone, Equity Committees were appointed in over 30 cases in 12 separate jurisdictions, and the appointment of Equity Committees in so-called 'mega-cases' has become relatively common." (citations omitted.))

II. The Joint Motion Should Be Granted Because The Factual Record Meets The Legal Requirements Of Section 1102(a)(2).

A. The Joint Motion Should be Granted Because The Debtors Are Not "Hopelessly" Insolvent.

1. Substantial Evidence In The Record Demonstrates That Shareholders Have Significant Value Entitlements.

17. At this juncture, the value of Kodak's bankruptcy estate is uncertain. It is a sprawling international conglomerate that includes business units (domestic and foreign) likely to have substantial enterprise value over-and-above "break-up" value. The conglomerate also includes business units that substantially underperform and, therefore, likely will be sold

(through an M&A process) or shuttered before the bankruptcy concludes. Kodak's historical SEC reporting speaks little to what the bankruptcy estates may be worth, given that: (i) Kodak is now in the throes of a radical operational reformulation and rehabilitation; (ii) much estate value appears tied to intellectual property, which is a more difficult asset class to value in a bankruptcy; and, perhaps most important, (iii) bankruptcy law focuses on the emergent company's anticipated production value, and away from pre-bankruptcy GAAP accounting. See, e.g., Consolidated Rock Products Co. v. Dubois, 312 U.S. 510 (1941). Kodak's end-game enterprise valuation is, today (like in so many other cases where Official Equity Committees were appointed), a "black box" question.

18. But, that having been said, there is already evidence presently in the case record regarding estate value. This evidence is credible, substantial, and strongly suggests equity value. The Court has already relied on this evidence in connection with approval of post-petition financing. This valuation evidence – much of which comes from the Debtors themselves – substantially informs the inquiry here.

19. As part of its "first-day" pleadings, Kodak provided several evidentiary submissions, including: (1) the January 18, 2012 declaration of Antoinette P. McCorvey, Kodak's Chief Financial Officer [Docket Number 2] (the "McCorvey Declaration"); (2) the January 19, 2012 declaration of Matthew J. Hart of Lazard (the "Hart Declaration"), in support of the Debtors' motion for approval of post-petition debtor-in-possession financing [Docket Number 16] (the "DIP Motion"); and (3) the January 18, 2012 declaration of Michael J. Lasinski of 284 Partners LLC, Kodak's patent appraiser [Docket Number 16] (the "Lasinski Declaration"). The relevant pages of each of these Declarations are attached hereto as Exhibits C, D, and E, respectively. These Declarations attest to the following assessments of estate value:

Asset Category	Low Appraisal (millions)	High Appraisal (millions)
Certain Intellectual Property[1]	$2,210.00	$2,573.00
US Cash	820.00	820.00
US Accounts Receivable	142.00	257.00
US Inventory	149.00	369.00
US Machinery & Equipment	32.00	294.00
Total:	**$3,353.00**	**$4,313.00**

20. In connection with its request for "first day" relief, Kodak conceded that its evidentiary presentation was incomplete. According to the Hart Declaration, absolutely no valuation has been provided regarding the following classes of *incremental* estate value: (1) Kodak's "globally-recognized and highly reputable brand"; (2) the stock of more than 120 foreign affiliated companies; (3) over 9,000 other patents beyond the Debtors' digital imaging patent portfolio; and (4) "what is likely a materially higher enterprise value for the Debtors as a going concern." Hart Declaration at ¶ 24. Regarding Kodak's foreign value, it is particularly noteworthy that 67% of the entire conglomerate's revenue through Q3 2011 came from these as-yet-unvalued foreign affiliates. See McCorvey Declaration at ¶ 16. No valuation has been provided regarding widely-observed IP litigation Kodak initiated pre-petition against Apple Inc., Research In Motion Ltd., and HTC Corp. – litigation that Kodak CEO Antonio Perez reportedly said "may generate $1 billion in revenue from settlements." See Susan Decker, Kodak Pushes Patent Value With Apple, HTC Lawsuits as It Seeks Turnaround, Bloomberg Reports, January 11, 2012 (copy attached hereto as Exhibit G). The above asset appraisals also do not account for tax attributes described in Kodak's motion to establish stock trading restrictions [Docket Number 8] (copies of the relevant pages hereto as Exhibit H), including: (i) approximately $1.9 billion of consolidated net operating loss carry-forwards; (ii) approximately $656 million of foreign tax credits; and (iii) approximately $18.5 million of Federal Research and Development Credits.

[1] Copies of analyst reports concurring with this appraisal are attached hereto as Exhibit F.

21. In sum, according to their own statements and evidence, the Debtors' estates likely are *substantially* more valuable than the $3.4 billion to $4.3 billion range presented.[2]

22. To evaluate the law's "*hopeless* insolvency" test, the Debtors' pre- and post-petition liabilities (as described in the McCorvey Declaration at ¶¶ 19, 20) are set forth below:

Liability Class	**Face Amount**
DIP Term	$ 700.00
DIP ABL (fully drawn)	225.00
Second Lien Secured Notes	750.00
Convertible Unsecured Notes	400.00
Senior Unsecured Notes	283.00
Environmental	100.00
Unsecured Trade	425.00
Total:	**$2,883.00**

23. This comparison of assets to liabilities shows stockholder value exceeding (probably *substantially* exceeding) $570 million to $1.53 billion.

2. The Record Does Not Now Evidence Substantial Retiree Claims Burdening The Estates.

24. There is, of course, one liability class not reflected above that could absorb equity value. That liability class pertains to pension and retiree benefits, and may be broken down into the following three sub-categories: (1) the guarantee of UK pension benefits by US Debtors, GAAP-estimated to be $1.2 billion in the McCorvey Declaration (at ¶ 19); (2) US

[2] It also should be noted that, in advancing this request for an Official Equity Committee, no comparison is being drawn to In re Nortel Networks, Inc., Case No. 11-1895 (Bankr. D. Del), wherein the "stalking horse" bid for the debtors' intellectual property portfolio was $900 million, and the auction concluded with a bid of $4.5 billion. See Peg Brickley, Nortel $4.5-Billion Patent Sale to Apple, Microsoft, Others Approved, Wall Street Journal, July 11, 2011. (copy attached hereto as Exhibit I). Although such case comparison is not drawn here, many in the marketplace have wondered whether a Nortel auction result might be achievable in Kodak's case.

pension-related liabilities under ERISA; and (3) other post-employment benefits, often colloquially referred to as "OPEB" obligations, estimated to be $1.3 billion in the McCorvey Declaration (also at ¶ 19). To be sure, GAAP estimates of pension-related liabilities may not accurately reflect ultimately claim allowance. See Andrew E.C. Scrutin, "The Role of Historical Performance and GAAP Data in Enterprise Valuation," in Contested Valuation in Corporate Bankruptcy, at ¶ 7.04[5] (pension liability is an "area [that] has been the subject of extensive bankruptcy litigation, with differing results and negotiated resolutions.").

25. But, regardless and much more importantly, precious little analysis has been presented as to the likelihood such claims ever will be triggered. We respectfully submit that, in Kodak's case, this is the most critical inquiry under Section 1102(a).

a. The Record Does Not Reflect High Probability That Substantial UK Retiree Claims Will Be Triggered.

26. Regarding the guarantee of UK pension liabilities, Kodak disclosed in its 2011 10-K Statement that its non-Debtor UK subsidiary (Kodak Limited) reached an accord with the UK pension trustee towards shoring up plan underfunding. See Kodak 2011 10-K Statement, pp. 49-50 (copies attached hereto as part of Exhibit J). That accord obligates Kodak Limited to contribute to the UK pension plan $50 million in each of the years 2011 through 2014, and $90 million in each of the years 2015 through 2022. See id. That is all that is required to be paid annually.

27. The 10-K Statement further discloses that the US guarantee obligation is more in the nature of a "keep-well" arrangement, to wit: US Kodak guarantees "the ability of Kodak Limited, *only to the extent it becomes necessary to do so*, to (1) make contributions to the Plan to ensure sufficient assets exist to make plan benefit payments, and (2) make contributions to the Plan such that it will achieve full funded status by the funding valuation for the period ending [December 31, 2022]." Id. (emphasis added). It is, meanwhile, widely understood that

Kodak Limited has substantial cash reserves of its own and/or other readily-available liquidity (perhaps in the hundreds of millions of dollars), as well as other substantial asset value. Kodak Limited is, after all, the "gateway" company for much of Kodak's foreign value (again, the foreign value produced 67% of the entire conglomerate's revenue through Q3 2011, see McCorvey Declaration at ¶ 16). To aid the Court on this point, a copy of the conglomerate's corporate structure chart is attached hereto as Exhibit K.

28. As the Court may be aware, the UK Insolvency Act of 1986 imposes *personal* liability on directors of a UK company when the company incurs debt while insolvent. See Andrew Keay & Michael Murray, Making Company Directors Liable: A Comparative Analysis of Wrongful Trading in the United Kingdom and Insolvent Trading in Australia14 INSOL Int'l Insolv. Review 27 (2005)(copy attached hereto as Exhibit L). Indeed, the legal incentives are such that, if the UK Board today had any inkling that Kodak Limited may have insufficient assets to self-fund going forward pension-related claims (and, in turn, trigger the US guarantee), Kodak Limited most assuredly would be today under UK administration. And, again, given that Kodak Limited is the "gateway" company to so much foreign value, the US Debtors and their creditors have every economic incentive to ensure: (i) that the Board of Kodak Limited never feels insecure about its going forward pension-related exposure; (ii) never defaults on its $50/90 million annual funding obligations; and, in turn, (iii) never triggers the US guarantee claim.

29. For precisely this reason, the McCorvey Declaration bluntly states (at ¶ 17): "The company's non-U.S. businesses are expected to be funded primarily from non-U.S. sources and *should not be affected by the filing of these chapter 11 proceedings*" (emphasis added). This evidence thus establishes an extremely low probability that Kodak's bankruptcy estates will have *any* meaningful UK pension exposure (let alone the $1.2 billion GAAP estimate).

b. The Record Does Not Reflect High Probability That Substantial US Retiree Claims Will Be Triggered.

30. Kodak's historical SEC filings do not reflect a trend of tremendous US pension underfunding. In its 2011 10-K Statement, Kodak disclosed that it had only relatively modest pension contribution requirements in the last two years ($22 million in 2010 and $25 million in 2011). See Kodak 2011 10-K Statement at 95 (copy attached hereto as part of Exhibit J).

31. More recently, the Pension Benefit Guaranty Corporation (the "PBGC") confirmed that Kodak's US pension plans are not today significantly underfunded. On January 19, 2012, the PBGC issued the following "*Statement from PBGC on Bankruptcy Filing of Kodak Corporation*" (copy attached hereto as Exhibit M):

> WASHINGTON – Pension Benefit Guaranty Corporation released the following statement today on the bankruptcy filing by Kodak Corporation:
>
> "Kodak's U.S. pension plans are reasonably well funded and we want to make sure they stay that way. We will actively participate in Kodak's bankruptcy to protect Kodak's pension plans for their workers and retirees."
>
> Kodak sponsors two traditional pension plans that cover nearly 63,000 people. The plans are 86% funded, with about $4.9 billion to cover about $5.6 billion in benefits.

32. Based on this evidence, it seems very unlikely that Kodak could achieve a "distressed termination" of the US pension plans per ERISA Section 1341(c)(2)(B)(ii)(IV) and/or Bankruptcy Code Section 1114. Rather, in light of management's stated goal of effectuating a business rehabilitation and, in light of the current construct of the Creditors' Committee (two pension representatives and four trade creditors), it seems most likely that Kodak's bankruptcy will culminate in a consensual plan of reorganization, with the reorganized enterprise assuming US pension liabilities going forward in accordance with historical trends ($20-25 million per year in going-forward contribution requirements).

b. The Record Does Not Reflect High Probability That Substantial OPEB Claims Will Be Triggered.

33. The final sub-category is OPEB exposure. OPEB is a retiree commitment that, almost by definition, may not be legally enforced by retirees. OPEB obligations are not, in other words, protected under ERISA or by collective bargaining agreement, and are generally "terminable at will" by the employer. See In re Visteon Corp., 2010 U.S. App. LEXIS 14307 (3d Cir. July 13, 2010); In re Delphi Corp., 2009 Bankr. LEXIS 576, *19 (Bankr. S.D.N.Y. March 10, 2009). Importantly, a debtor does not incur any liability for termination of such OPEB benefits. Nor, according to Ms. McCorvey, will Kodak: "In addition to consistently managing reductions of its workforce, Kodak actively managed its benefit costs, including with respect to U.S. OPEB. Cost savings came from the Company *exercising its unilateral rights* to reduce or eliminate certain retiree benefits." McCorvey Declaration at ¶ 33 (emphasis added).

34. Indeed, the Debtors have already demonstrated their intention to exercise this unilateral right to reduce or eliminate OPEB exposure (without triggering claims in the bankruptcy). On February 27, 2012, Kodak filed *Debtors' Motion for an Order Authorizing Debtors to Terminate Non-Vested Medicare Enhancement Benefits for Post-1991 Retirees* [Docket No. 432] (the "Initial OPEB Termination Motion"). In the Initial OPEB Termination Motion, Kodak confirms that: (1) historically, it expressly reserved the unilateral right to terminate OPEB benefits; (2) agrees with the above statement of law that "at will" OPEB benefits may be terminated with no resulting claim against the estate; and (3) the Initial OPEB Termination Motion is only an "initial step" (¶ 5). Regarding the third point in the preceding sentence, Kodak specifically "reseve[d] all of its existing rights to modify or terminate each [OPEB] plan in whole or in part, at any time for any reason" (¶ 22 n. 8). Kodak further stated it "may request authority to modify or terminate other [OPEB] Benefits upon the filing of a

separate motion (¶¶ 19, 22). So, here too, there does not appear to be a material obstacle for equity to achieve its due value entitlement.

35. Kodak, the Creditors' Committee, and the *Ad Hoc* Second Lien Noteholders Committee relied heavily on potential retiree claims in their letters to the U.S. Trustee opposing appointment of an Official Equity Committee. The Shareholders respectfully submit that such reliance does not withstand analysis under the law and a review of the salient facts. The evidence continues to show stockholder value exceeding (probably *substantially* exceeding) $570 million to $1.53 billion. The Official Equity Committee should be appointed.

3. Debt Trading Levels Are An Unreliable Indicator Of Insolvency And Are Inadmissible As Evidence.

36. In their letters to the U.S. Trustee, Kodak, the Creditors' Committee, and the *Ad Hoc* Second Lien Noteholders Committee advanced one other piece of "evidence" to establish that shareholders are out-of-the-money: Bloomberg printouts purportedly reflecting a few trades of unsecured bonds at levels below par. This "evidence" should have been rejected immediately by the U.S. Trustee and, if presented again in opposition to this Joint Motion, should be rejected by the Court.

37. First and foremost, there is absolutely no legal support for the argument that mid-stream debt trading levels reflect likely enterprise/asset worth at the end of the process. Clear Supreme Court authority holds that the value of a business enterprise in bankruptcy is to be based on evidence of anticipated post-bankruptcy performance. See Consolidated Rock Products Co. v. Dubois, 312 U.S. 510 (1941) ("The criterion of earning capacity is the essential one if the enterprise is to be freed from the heavy hand of past errors, miscalculations or disaster, and if the allocation of securities among the various claimants is to be fair and equitable.").

38. In fact, legal authority firmly establishes that debt trading is not ever a reliable indicator of estate value. See, e.g., In re Penn Central Transport Co., 596 F.2d 1102,

1115-16 (3d Cir. 1972)("That argument [that market value should not be used] has considerable force when the securities in issue represent equity in, or long term interest bearing obligations of, a reorganized debtor. In such cases, the market value of the security will depend upon the investing public's perception of the future prospects of the enterprise. That perception may well be unduly distorted by the recently concluded reorganization and the prospect of lean years for the enterprise in the immediate future. Use of substitute 'reorganization value' may under the circumstances be the only fair means of determining the value of the securities distributed."); In re Exide Tech., 303 B.R. 48, 59 (Bankr. D. Del. 2003)(rejecting bidding at debtor's post-petition "private equity" process as indicative of enterprise value); In re New York, New Haven & Hartford R.R., 4 B.R. 758, 791 (D. Conn. 1980 ("The stigma of bankruptcy alone is a factor that will seriously depress the market value of a company's securities.").

39. Particularly instructive is Judge Lynn's authoritative valuation opinion in In re Mirant Corp:

> The market is not the proper measure for the value of [the debtor] for the purpose of satisfying claims. The Corp. Committee even suggested during argument that the market value of publicly traded debt of Mirant today is an accurate reflection of the extent of value of [the debtor]. If [debtor] debt trades at less than face value, the Corp. Committee argues, this indicates the market considers the value of [the debtor] to be inadequate to make holders of [debtor] debt whole. But, even assuming that the market is a proper gauge of the value of an entity in chapter 11, use of preconfirmation prices of debt cannot be an accurate measure.

334 B.R. 800, 832 (Bankr. N.D. Tex. 2005).

40. Second, the contention that trading levels are indicative of enterprise worth is: (i) utterly reliant on the "Efficient Marketplace" hypothesis; and, as a result, (ii) does not tend to work in bankruptcy, given that the market for the debt of bankrupt companies is generally thought to be *inefficient*.[3] That is so because companies incur dramatic and unpredictable changes in Chapter 11, the Court dialectic and inter-party battling creates value-

[3] It is, after all, this inefficiency that creates opportunity for distressed investing and profitable distress arbitrage.

distortion and delay, and parties buy/sell securities for strategic and other reasons untethered to underlying enterprise worth. See Anders J. Maxwell, "Markets, Uncertainty, and the Role of Judgment in Bankruptcy Valuation," in Contested Valuation in Corporate Bankruptcy (2011)(establishing that, for these reasons, debt trading levels are a poor indicator of the enterprise value of a Chapter 11 debtor); see also Aswath Damodaran, Investment Valuation Tools and Techniques for Determining the Value of any Asset, pp. 112-17 (2d ed. 2002)(absent assurance of market efficiency, trading levels are not necessarily reliable indicators of enterprise value). That is even more true in cases (such as this) where the capital structure is multi-tiered, because in those cases debt trading levels are often driven by hedging and derivative transactions, rather than fair appraisals of underlying estate value. And, of course, debt trading is a particularly weak basis to render a conclusion now, when Kodak's post-rehabilitation, post-bankruptcy valuation remains so uncertain; under these circumstances, the market for Kodak securities is necessarily highly inefficient given that value is predicated on management projections not yet created.

41. Third, and perhaps for the aforementioned reason, Kodak's unsecured debt does not appear to be heavily traded. This is not, in other words, feverish swapping in large volumes daily, reflecting "mass consensus" of a market valuation. Sparse trading in Kodak debt actually reflects the opposite valuation thesis: That no market consensus exists of enterprise worth, and large holders are finding a sub-par "bid" to be an unattractive offer (presumptively because they expect an indeterminately greater amount in recovery).

42. In the end, any market "static" surrounding this pop-culture bankruptcy must give way to hard evidence in the case record and sound legal analysis. Evidence and analysis show that equity has an entitlement to estate value and, in turn, a very real need for representation in these Chapter 11 cases. An appropriate showing under Bankruptcy Code Section 1102(a) has been made. An Official Equity Committee should be appointed.

B. The Joint Motion Should be Granted Because Outside Shareholders Are Not Adequately Represented In The Case.

43. The law does not expect the Creditors' Committee here to advocate stockholder interests; quite to the contrary, the law expects that the Creditors' Committee always will be inclined to oppose any equity value allocation. See, e.g., In re Saxon Indus., Inc., 29 B.R. 320, 321 (Bankr. S.D.N.Y. 1983) (unsecured creditors committees and equity committees "are separate and distinct entities with the members of the unsecured creditors and equity creditors class possessing variant priorities and interests with respect to their relationship with the debtor"); In re Evans Prods. Co., 58 B.R. 572, 575 (S.D. Fla. 1985) ("[t]he interests of creditors and shareholders are likely to conflict over the course of a Chapter 11 proceeding"). Indeed, official creditors' committees do not owe any duties to shareholders and, arguably, owe to their creditor constituency an obligation to zealously pursue a maximum recovery – even if that recovery consists, in part, of value rightfully owed to shareholders.

44. While academic theory tends to hope that management will continue advocating for stockholders post-petition, bankruptcy law acknowledges the "real world" practical constraints imposed on management post-filing. See, e.g., In re Pilgrim's Pride Corporation, 407 B.R. 211, 218-219 (Bankr.N.D.Tex 2009)("The dynamics of chapter 11 are such that Debtors and their management are likely to be constrained to accept and advocate to the court a conservative value for their business in order to obtain creditor assent to a reorganization plan. If [management] is faced with the choice of holding out for the benefit of equity and risking a failure of the reorganization or accepting a restructuring that values Debtors excessively conservatively, despite their interest in maximizing stock value, they may have little choice but to adopt the latter alternative.").

45. Here, Kodak management has already evidenced its disinclination towards shareholders by, among other things: (1) vigorously opposing the appointment of an

Official Equity Committee; (2) predicating that opposition on a premature and unstudied conclusion that equity is – and forever will be – out-of-the-money; and (3) moving the Court for an Order restricting stock trading and, in turn, preventing parties from acquiring stock in sufficient amount to justify the incurrence of professional fees to protect that investment (i.e., "transaction" costs would greatly exceed the cost basis or potential investment profit).

46. The reality of complex Chapter 11 today is that, absent the appointment of an Official Equity Committee, no one will advocate for stockholder interests. That is especially true after the debtor obtains an Order of the Court – like the one already entered here on an interim basis [see Exhibit N] – preventing stock from consolidating in the hands of a relatively small number of distressed investors that have the financial wherewithal to privately fund their valuation thesis. The relief requested herein should be granted.

C. The Joint Motion Should Be Granted Because The Critical Need For An Official Equity Committee "Significantly Outweighs" The Potential Cost.

47. The Shareholders are mindful of the expense associated with the appointment of an Official Equity Committee. Nevertheless, "[c]ost alone cannot, and should not, deprive . . . security holders of representation." McLean Indus., 70 B.R. at 860; see also Enron Corp., 279 B.R. at 694 ("[a]dded cost alone does not justify the denial of appointment of an additional committee where it is warranted."). Additional cost must be weighed against the need for adequate representation of public shareholders. See Wang Labs., 149 B.R. at 3-4; Beker Indus., 55 B.R. at 949-51.

48. Once the need for adequate representation is established, "the burden shifts to the opponent of the motion [to appoint an official equity committee] to show that the cost of the additional committee sought significantly outweighs the concern for adequate representation and cannot be alleviated in other ways." Beker Indus., 55 B.R. at 949; 4 Norton

Bankr. L. & Prac. 2d § 78:5 (2d ed. 2005) ("Should the moving party be successful in showing that an additional committee is required, the burden then shifts to the opponent to demonstrate that the cost of such an additional committee notably outweighs the interest in adequate representation.").

49. In a small case, where corporate survival depends on a close husbanding of cash, that burden may not be too heavy. But, in extremely large cases (like this one), where the debtors, secured lenders and the official creditors' committee each hire highly expensive counsel, investment bankers, financial and other advisors, none should be heard to complain about cost. The Debtors, Creditors' Committee and *Ad Hoc* Second Lien Noteholders Committee have retained three of the most highly-regarded, and most expensive, law firms in America: Sullivan & Cromwell, Milbank Tweed and Akin Gump. Kodak's investment banker (Lazard) has been promised monthly fees of $250,000, a guaranteed transaction fee of $12.5 million, and opportunities to generate other substantial incremental fees. The Blackstone Group also has been promised millions in monthly and transaction fees. Presumably, so has Jefferies and Alvarez & Marsal.

50. Each of these law, banking, and advisory firms are excellent, and their clients have every right to select "best in class" professionals, even if they are extremely expensive. But, after doing so, none should be heard to complain that an Official Equity Committee will become an overwhelming administrative burden on the estates. Under this record, the contention is insincere.

D. The Debtors' Cases Are Large And Complex and Kodak's Shares Are Widely-Held and Actively Traded.

51. These are facts that should be readily conceded by all parties-in-interest. Kodak employs 17,000 employees worldwide (9,100 in the US), and generated 2011 sales of approximately $6 billion. McCorvey Declaration at ¶ 5. It boasts an exceptionally large patent

portfolio, including nearly 9,000 patents in the U.S. and more than 13,000 patents in approximately 160 foreign countries. Id. at ¶ 5. The conglomerate comprises 121 companies located throughout the world. Id. at ¶ 16. This is, to be sure, a very large and important bankruptcy case.

52. It is also very complicated. Pre-petition, Kodak attempted to partially recreate itself as a producer of ink-jet computer printers and, to finance attendant capital expenditures, sell significant intellectual property. These efforts were unsuccessful, establishing the business need for bankruptcy rehabilitation. What comes out on the other end cannot now be predicted with any real precision.

53. Moreover, it is beyond dispute that there is quite a bit of Kodak stock in the public's hands. According to its 2011 10-K statement, Kodak has 950 million shares of authorized common stock, with a par value of $2.50 per share, of which approximately 391 million shares had been issued as of September 30, 2011. See Kodak 2011 10-K Statement, p. 55 (copy attached hereto as part of Exhibit J). Of that amount, approximately 270 million Kodak shares were outstanding (as of October 28, 2011) and 121 million shares were held in treasury. For this reason, the Debtors filed their motion to establish stock trading restrictions (stock may not concentrate beyond 5% ownership) and, in turn, ensure preservation of tax attributes [Docket Number 8]. The Bankruptcy Court granted that motion on an interim basis. See Docket Number 56, attached hereto as Exhibit N.

54. Actions have already been taken against shareholder interests, which actions ensure that stock may not concentrate in the hands of a few holders that may otherwise fund their own voice in the bankruptcy case. Moreover, stockholders are widely dispersed; they cannot be easily organized, let alone become educated as to their rightful value entitlements under bankruptcy law. Nor can the Shareholders reasonably be expected to fund their side of an adversary process against the Debtors, the Creditors' Committee, and the *Ad Hoc* Second Lien

Noteholders Committee – parties who may tap into the estate largess to quell any stockholder voice in the case. An Official Equity Committee should be appointed.

III. The Relief Requested In the Joint Motion Should Be Granted At This Time.

55. The Shareholders have acted with deliberate speed, sending detailed letters to the U.S. Trustee requesting the appointment of an Official Equity Committee only weeks after the Petition Date. See Exhibit A. The Shareholders have acted in good faith; they have not sat on their rights.

56. The relief requested herein should be granted now. Under their approved post-petition financing arrangement, the Debtors are obligated to sell the digital imaging patent portfolio in the near term. See DIP Motion at ¶ 32 (by June 30, 2012, the Debtors must file a bidding procedures motion relating to the sale of the digital imaging portfolio). Moreover, comments made by the Debtors and other parties (on the record) suggest that this process is already well underway, see, e.g., 2/28/12 Hearing Transcript at 12: 21-25 ("We're proceeding promptly now to…resolve a series of questions and claims against intellectual property as it's teed up for sale, the digital capture portfolio"), and requires the immediate participation of all stakeholders, see, e.g., id. at 13: 8-12 ("I think there's going to be a great deal of attention and work for all the stakeholders in clarifying those intellectual property rights over the coming months.").

57. The sale process will have major implications as to ultimate distributable value. Accordingly, the Shareholders need – and are entitled to – a voice in this sale process to ensure that a deal is not consummated in a way that artificially deprives them of value and that such a sale is in the best interest of the estate. Second Circuit precedent requires a hearing on the business justifications before consummation of a sale of substantial estate assets, ensuring that the sale (as opposed to a standalone reorganization) would be "in the diverse interests of the

debtor, creditors, and equity holders, alike." See In re Lionel Corporation, 722 F.2d 1063, 1071 (2nd Circ. 1983). In Lionel, the Official Equity Committee challenged an asset sale that would have left no value for equity holders, arguing that the company instead could be reorganized around the assets to be sold. Id. at 1071. The Bankruptcy Court overruled the objection and approved the sale, but the Second Circuit reversed, finding the Bankruptcy Court had failed to give proper consideration of stockholder interests. Id. Here, the appointment of an Official Equity Committee will enable bankruptcy's adversary process to work properly and obviate the risk that the interests of stock holders are not inappropriately ignored at the most crucial time in the bankruptcy case.

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CONCLUSION

WHEREFORE, for the reasons stated herein, the Shareholders respectfully requests that the Court: (i) enter an Order compelling the U.S. Trustee to immediately appoint an Official Equity Committee in the Debtors' Chapter 11 cases; and (ii) grant it such other and further relief as is just and proper.

Dated: New York, New York
March 9, 2012

Respectfully submitted,

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EXHIBIT A

KEEFE BARTELS
TRIAL ATTORNEYS

February 3, 2012

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Via Telefacsimile (212-668-2255)
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Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004

Re: **In re Eastman Kodak Company, et al., Debtors**
Chapter 11, Case No. 12-10202 (ALG)

Dear Brian,

As you know, our clients Frank E. Williams, Jr., Gregg T. Abella (on behalf of certain Investment Partners Asset Management clients), Andrew Gregor and William Stern, are pre-petition Kodak equity holders. They have requested formation of an Equity Committee in the Kodak bankruptcy. They ask that they be considered for membership on such a committee and that our firms represent the committee.

We understand your office's role in the decision about forming an Equity Committee, consistent with the procedural flexibility 11 U.S.C. § 1102(a) provides. We will not here, then, lumber you with the equivalent of a densely footnoted memorandum of law supported by numerous exhibits. We will simply highlight some of the important factors supporting formation of an Equity Committee.

First, an Equity Committee is "necessary to assure adequate representation of equity security holders." 11 U.S.C. § 1102(a)(2). A January 31, 2012 analysis by Imperial Capital, Randy Laufman, CFA ("Imperial Cap. Rep.") shows $450 MM of senior secured [DIP] debt, $750 MM of second lien senior secured debt, and $755 MM of unsecured debt. Stating the obvious here, all of those stakeholders will vigorously seek the fullest possible payment on those debts. Pursuing their own repayment, those debtholders will not be representing the equity holders' interests. Nor can they reasonably be expected to do so. Debtholders' valuation interests understandably extend primarily to ensuring their own repayment, not to ensuring maximization and protection of residual values to equity holders.

Second, Kodak's equity holders deserve the chance to protect the value that appears reasonably available to them. Kodak, an iconic company blessed with vast brand equity generated over decades of innovation and strong margins, does not "appear to be hopelessly insolvent." *In re Williams Communications Group, Inc.*, 281 B.R. 216, 220 (Bankr. S.D. N.Y. 2002).

Detailed analyses demonstrate the promising commercial prospects of Kodak's superior new printing technologies. *See, e.g.*, Rafferty Capital Markets LLC Company Note, 12/20/11 by Mark Kaufman, CFA, at pp. 5-8 ("...**Based on the potential of 90 million pages a month at $0.008 per page, using the 80% operating rate, a PROSPER printer could produce potential revenue of $720,000 per month, or $8.5 million per year, on ink and fluids alone. If it were to run only 50% of the time, it should still produce approximately $450,000 in monthly revenue or approximately $5.5 million annually from ink. In addition, Kodak would also generate revenue from the refurbishment of the jetting modules, maintenance and work flow services, helping create 15 times the revenue that it would have received if it were instead selling only digital printing plates to the customer** (emphasis in original)).

Kodak's pre-petition statements and projections reflect an iconic company's justifiable confidence in a different, but ultimately prosperous, future. *See, e.g.*, Kodak's Q3 2011 Earnings Conference Call Transcript, 3/11/11 at 3-4 (Antonio Perez describing "broad applications of our patents" to many new devices; Kodak's "digital growth initiatives....the heart of the new Kodak" with 51% year-to-date growth in "consumer inkjet and packaging solution businesses;" "consumer inkjet printer growth continues to significantly outpace the market;" "our PROSPER product line, which is the most important and the most relevant for our future, grew 40% in the quarter;" describing a number of met milestones in the commercial market PROSPER product line; "The PROSPER press's combination of image quality and productivity is superior to any digital press in the market, and our sales funnel continues to be very strong in both developed and emerging regions").

Valuations of Kodak's patent portfolio alone go a very long way to demonstrating the "substantial likelihood" of "a meaningful distribution" (*Williams Communication Group*, 281 B.R. at 223) to equity holders. *See, e.g.*, Rafferty Capital Markets LLC Company FLASH, 1/5/12 by Mark Kaufman, CFA, at 1 ("If Kodak were to realize full value for its patent portfolio later this year, which we continue to estimate at $2.4 billion, it should have sufficient cash to repay any outstanding DIP loan balances,

retire its second lien notes, and reinstate it[s] remaining creditors and exit bankruptcy leaving the equity intact.")

Underscoring the likelihood of an equity recovery, Kodak has obtained $950 Million of DIP financing. *See* Imperial Cap. Rep. at 2. Lazard Freres analyzed the DIP collateral value at $3.4 Billion - $4.3 Billion, "primarily predicated on the digital imaging patent portfolio...and U.S. asset values." *Id.* at 5. Lazard's DIP collateral valuation *excluded* some 9,000 other Kodak patents. *Id.* Kodak's stock, with some 270 million shares outstanding, continues to trade. Kodak's recent reorganization into two broad business segments, Commercial and Consumer, should produce efficiencies further supporting value for equityholders. Id. at 10 ("Management believes that certain cost-cutting initiatives could result in over $100 m[illion] of general corporate cost reductions. Management indicated that the reorganization of the operating segments into two general segments should result in reduced overhead and improved margins....").

Calculating "at least $979 million ($3.63 per share) of value (net of all debt and legacy liabilities) available for common shareholders," Wapiti Partners, L.P.'s February 2, 2002 Press Release announcing an Ad Hoc Equity Committee further confirms the need for an Equity Committee.

Third, early involvement of all important stakeholders, including equity interests, will help produce the best resolution and most readily confirmable plan. Early involvement of equity will help reduce and even prevent late-stage disruptions as plan(s) of reorganization near completion. Early involvement of equity will help Kodak reach its goal of exiting bankruptcy in 13 months.

Fourth, we understand that Kodak's CEO, Antonio Perez, has stated that Kodak management does not oppose formation of an Equity Committee.

Fifth, our firms will efficiently and cost effectively represent the Equity Committee. No partner will charge over $500/hour, and no counsel or associate will charge over $300/hour, for the duration of the case. Where only one lawyer is needed, we will use only one lawyer. We will not duplicate any properly performed work, whether by Debtor's counsel or counsel for any other committee. We will seek only to protect the interests of the equity holders. We will participate in meetings, conferences and proceedings by telephone or videoconference when those options are available, cheaper than attending in person, and do not prejudice our clients' interests. We understand that money paid to

professionals from a bankruptcy estate is money unavailable to satisfy the debtors' creditors, debtholders and equityholders.

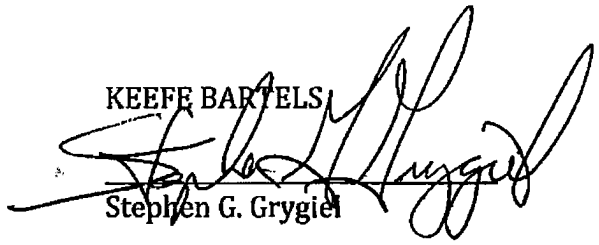
We would be happy to discuss formation of an Equity Committee, its composition, roles and representation with you at your earliest convenience.

Of course, if you have any questions, just give one of us a call.

Best regards.

Very truly yours,

KEEFE BARTELS

By: 
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February 9, 2012

BY COURIER, EMAIL AND FACSIMILE

Tracy Hope Davis, Esq.
United States Trustee
Brian S. Masumoto, Esq.
Trial Attorney
33 Whitehall Street, 21st Floor
New York, NY 10004

RE: In re Eastman Kodak Company, et al.,
Ch. 11 Case No. 12- 10202-alg (Bankr. S.D.N.Y.)

Dear Ms. Davis and Mr. Masumoto:

We write on behalf of those parties identified on Exhibit A hereto, each of which owns common stock in Eastman Kodak Company ("Kodak" and, together with its chapter 11 debtor subsidiaries, the "Debtors") as also indicated on Exhibit A. These holders respectfully request the appointment of an Official Committee of Equity Security Holders pursuant to Bankruptcy Code Section 1102(a)(1). For the reasons discussed in this letter, shareholders are not adequately represented in these Chapter 11 cases and the circumstances warrant the appointment of an Official Equity Committee.

I. Applicable Legal Standard.

As you know, Bankruptcy Code Section 1102(a)(1) authorizes the United States Trustee to appoint an Official Equity Committee under appropriate circumstances. Section 1102(a)(2) indicates that such appointment is appropriate when "necessary to ensure adequate representation of ... equity security holders." The case law has further refined this inquiry.

An initial focal point is whether the debtor appears to be "*hopelessly* insolvent." See In re Wang Laboratories, Inc., 149 B.R. 1, 3 (Bankr. D. Mass. 1992)(emphasis in original); In re Emons Indus., Inc., 50 B.R. 692, 694 (Bankr. S.D.N.Y. 1985). According to the case law, an Official Equity Committee is unnecessary in cases of "hopeless" insolvency, since stockholders have unlikely entitlement to value in such circumstances. But, since "only the passage of time and the debtor's attempt to restructure its business will determine whether a recovery will be available for equity," 7 Collier on Bankruptcy ¶ 1102.03[2][a] (15th ed. rev. 2010), the evidence must establish low probability of stockholder entitlement before the conclusion is reached that an Official Equity Committee should not be appointed.

In fact, "the solvency of the debtor should not be the only factor, or even the principal factor, in deciding whether to appoint a committee of equity security holders." Id.; see also In re Mirant Corp., 334 B.R. 800 (Bankr. N.D. Tex. 2005)(at the conclusion of a complex valuation trial, the court held that stockholders had significant value entitlement, over objections of debtors and all creditor classes). Other points of inquiry may have greater bearing on the appointment inquiry. The law also considers, for example, whether: (1) the case is large and complex; (2) the debtor publicly issued a large amount of stock that remains widely held as of the bankruptcy filing; and (3) the costs associated with the requested appointment "*significantly* outweighs" the need for stockholder representation. Albero v. Johns-Maville Corp. (In re Johns-Manville Corp.), 68 B.R. 155 (S.D.N.Y. 1986)(emphasis added), appeal dismissed, 824 F.2d 176 (2d cir. 1987). On the last point, the law calls for a burden shifting, if circumstances otherwise suggest appointment is appropriate. See, e.g., 4 Norton Bankr. L & Pract. 2d § 78:5 (2d ed. 2005)("Should the moving party be successful in showing that an additional committee is required, the burden then shifts to the opponent to demonstrate that the cost of such an additional committee notably outweighs the interest in adequate representation.").

Perhaps for these reasons, Official Equity Committees tend to be appointed in massive restructuring cases that will involve complex operational reorganization, and value entitlements are indeterminable at the forefront. See, e.g., In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y); In re General Growth Properties, Inc., Case No. 09-11977 (Bankr.S.D.N.Y.); In re Tronox Inc., Case No. 09-10156 (Bankr. S.D.N.Y.); In re Spectrum Brands, Case No. 09-50455 (Bankr. W.D. Tex.); In re Pilgrim's Pride Corp., Case No. 08-45664 (Bankr. N.D. Tex.); In re Washington Mutual, Inc., Case No. 08-12229 (Bankr. D. Del.); In re Peregrine Sys., Inc., 006-10489 (Bankr. D. Del.); In re Calpine Corp., Inc., Case No. 05-60200 (Bankr.S.D.N.Y.); In re Delphi Corp., Case No. 05-44481 (Bankr.S.D.N.Y.); In re Interstate Bakeries Corp., Case No. 04-45814 (Bankr.W.D. Mo.); In re Gadzooks, Inc., 04-31486 (Bankr.N.D. Tex.); In re Loral Space &Commc'ns Ltd., Case No. 03-41710 (Bankr.S.D.N.Y.); In re Solutia Inc., Case No. 03-17949 (Bankr.S.D.N.Y.); In re Mirant Corp., Case No. 03-46590 (Bankr. N.D. Tex.); In re Adelphia Communications Corp., Case No. 02-41729 (Bankr.S.D.N.Y.);; In re Cone Mills Corp., Case No. 03-12944 (Bankr. D. Del.); In re Seitel, Inc., Case No. 03-12227 (Bankr. D. Del.); In re Exide Techs., Case No. 02-11125 (Bankr.D. Del.); In re USG Corp., Case No. 01-2094 (Bankr.D. Del.).

II. An Official Equity Committee Should Be Appointed Under The Circumstances Of These Cases.

A. An Official Equity Committee Should Be Appointed Because The Evidence Does Not Prove "*Hopeless* Insolvency"; Quite The Contrary, It Suggests Solvency With Considerable Equity Cushion.

At this juncture, the value of Kodak's bankruptcy estate is uncertain. It is a sprawling international conglomerate that includes business units (domestic and foreign) likely to have substantial enterprise value over-and-above "break-up" value. The conglomerate also includes business units that substantially underperform and, therefore, likely will be sold (through an M&A process) or shuttered before the bankruptcy concludes. Kodak's historical SEC reporting speaks

little to what the bankruptcy estates may be worth, given that: (i) this company is now in the throes of a radical operational reformulation and restructuring; (ii) so much estate value is purportedly tied to intellectual property, perhaps the most amorphous asset class to value in a bankruptcy; and (iii) bankruptcy law focuses on business production value, and away from historical GAAP accounting, see, e.g., Consolidated Rock Products Co. v. Dubois, 312 U.S. 510 (1941). To many in the capital markets, Kodak is an absolutely-unknowable valuation "black box" and, as a result, its debt trades at substantial discount from par, if it trades at all.

But, that having been said, there is already evidence presently in the case record regarding estate value. This evidence is credible, substantial, and strongly suggests equity value. Such evidence has already been relied on by the Bankruptcy Court in connection with post-petition financing matters, and substantially informs the inquiry here.

As part of its "first-day" pleadings, Kodak filed several evidentiary submissions, including: (1) the January 18, 2012 declaration of Antoinette P. McCorvey, Kodak's CFO [Docket Number 2] (the "McCorvey Declaration"); (2) the January 19, 2012 declaration of Matthew J. Hart of Lazard Frères & Co. LLC, Kodak's investment banker in support of the Debtors' Motion for post-petition debtor-in-possession financing (the "DIP Motion") [Docket Number 16] (the "Hart Declaration"); and (3) the January 18, 2012 declaration of Michael J. Lasinski of 284 Partners LLC, Kodak's patent appraiser in support of the DIP Motion [Docket Number 16] (the "Lasinski Declaration"). The relevant pages of each of these Declarations are attached hereto as Exhibits B, C, and D, respectively. The Declarations attest to the following assessments of estate value:

Asset Category	Low Appraisal (millions)	High Appraisal (millions)
Certain Intellectual Property	$2,210.00	$2,573.00
US Cash	820.00	820.00
US Accounts Receivable	142.00	257.00
US Inventory	149.00	369.00
US Machinery & Equipment	32.00	294.00
Total:	**$3,353.00**	**$4,313.00**

Kodak concedes that its evidentiary presentation is incomplete. According to the Hart Declaration, absolutely no valuation has been provided regarding the following classes of *incremental* estate value: (1) Kodak's "globally-recognized and highly reputable brand"; (2) the stock of dozens of foreign affiliates; (3) over 9,000 other patents beyond the Debtors' digital imaging patent portfolio; and (4) "what is likely a materially higher enterprise value for the Debtors as a going concern." Hart Declaration at ¶ 24. Regarding Kodak's foreign value, it is particularly noteworthy that 67% of the entire conglomerate's Q3 2011 revenue came from these as-yet-unvalued foreign affiliates. See McCorvey Declaration at ¶ 16. No valuation has been provided regarding widely-observed IP litigation Kodak initiated pre-petition against Apple Inc., Research In Motion Ltd., and HTC Corp. – litigation that Kodak CEO Antonio Perez reportedly said "may generate $1 billion in revenue from settlements." See Susan Decker, Kodak Pushes Patent Value With Apple, HTC Lawsuits as It Seeks Turnaround, Bloomberg Reports, January 11, 2012 (copy attached hereto as Exhibit E). The above asset appraisals also do not account for tax attributes

described in Kodak's motion to establish stock trading restrictions [Docket Number 8] (a copy of the relevant pages is attached hereto as Exhibit F), including: (i) approximately $1.9 billion of consolidated net operating loss carry-forwards; (ii) approximately $656 million of foreign tax credits; and (iii) approximately $18.5 million of Federal Research and Development Credits. In sum, according to their own statements and evidence, the Debtors' estates likely are *substantially* more valuable than the $3.4 billion to $4.3 billion range presented.[1]

To evaluate the law's "*hopeless* insolvency" test, the Debtors' pre- and post-petition liabilities (as described in the McCorvey Declaration at ¶¶ 19, 20) are set forth below:

Liability Class	**Face Amount**
DIP Term	$ 700.00
DIP ABL (fully drawn)	225.00
Second Lien Secured Notes	750.00
Convertible Unsecured Notes	400.00
Senior Unsecured Notes	283.00
Environmental	100.00
Unsecured Trade[2]	325.00
Total:	**$2,783.00**

This comparison of assets to liabilities shows stockholder value exceeding (probably *substantially* exceeding) $570 million to $1.53 billion.

There is, of course, one liability class not reflected above that could absorb equity value. That liability class pertains to pension and retiree benefits, and may be broken down into the following three sub-categories: (1) the guarantee of UK pension benefits by US Debtors, GAAP-estimated to be $1.2 billion in the McCorvey Declaration (at ¶ 19); (2) US pension-related liabilities under ERISA; and (3) other post-employment benefits, often colloquially referred to as "OPEB" obligations, estimated to be $1.3 billion in McCorvey Declaration (also at ¶ 19). To be sure, GAAP estimates of pension-related liabilities may not accurately reflect ultimately claim allowance. See Andrew E.C. Scrutin, "The Role of Historical Performance and GAAP Data in Enterprise

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[1] It should also be noted that, in advancing the request for an Official Equity Committee, no comparison is being drawn to In re Nortel Networks, Inc., Case Number 11-1895 (Bankr. D. Del), wherein the "stalking horse" bid for the debtors' intellectual property portfolio was $900 million, and the auction concluded with a bid of $4.5 billion. See Peg Brickley, Nortel $4.5-Billion Patent Sale to Apple, Microsoft, Others Approved, Wall Street Journal, July 11, 2011. Although such case comparison is not drawn here, many in the marketplace have considered whether a Nortel auction result might be achievable in Kodak's case.

[2] Compare McCorvey Declaration at ¶ 20 ("The Debtors also have approximately $425 million in outstanding trade debt") with id. at ¶¶ 86-97 (anticipating use of $100 million in DIP loan to satisfy "critical vendor" claims and the claims of foreign suppliers to the US Debtors).

Valuation," in Contested Valuation in Corporate Bankruptcy, at ¶ 7.04[5] (pension liability is an "area [that] has been the subject of extensive bankruptcy litigation, with differing results and negotiated resolutions."). But, regardless and much more importantly, precious little analysis has been provided (in Court or in the marketplace) as to the likelihood such claims ever will be triggered. Respectfully, in Kodak's case, this is the most critical inquiry for Section 1102(a) analysis.

Regarding the guarantee of UK pension liabilities, Kodak disclosed in its 2010 10-K Statement that its non-Debtor UK subsidiary (Kodak Limited) reached an accord with the UK pension trustee towards shoring up plan underfunding. See Kodak 2010 10-K Statement, pp. 76-77 (copy attached hereto as part of Exhibit G). That accord obligates Kodak Limited to contribute to the UK pension plan $50 million in each of the years 2011 through 2014, and $90 million in each of the years 2015 through 2022. See id. The 10-K Statement further discloses that the US guarantee obligation is more in the nature of a "keep-well" arrangement, to wit: US Kodak guarantees "the ability of Kodak Limited, *only to the extent it becomes necessary to do so*, to (1) make contributions to the Plan to ensure sufficient assets exist to make plan benefit payments, and (2) make contributions to the Plan such that it will achieve full funded status by the funding valuation for the period ending [December 31, 2022]." Id. (emphasis added). Meanwhile, it is widely understood that Kodak Limited has substantial cash reserves of its own and/or other readily-available liquidity (perhaps in the hundreds of millions of dollars), as well as other substantial asset value. It is precisely for this reason that the McCorvey Declaration includes the following blunt statement (at ¶ 17): "The company's non-U.S. businesses are expected to be funded primarily from non-U.S. sources and *should not be affected by the filing of these chapter 11 proceedings*" (emphasis added). Based on the evidence now in the case record, the probability that Kodak's bankruptcy estates will have *any* meaningful UK pension exposure (let alone the $1.2 billion GAAP estimate) appears to be extremely low.

Regarding US pension, the record does not now include a reliable estimate of any such exposure, but Kodak's historical SEC filings do not reflect a trend of tremendous underfunding. In its 2010 10-K Statement (filed approximately 12 months ago), Kodak GAAP-estimated its underfunding exposure to be $210 million. See Kodak 2010 10-K Statement, p. 90 (copy attached hereto as part of Exhibit G). A reasonable extrapolation of the past strongly suggests that US pension is not today substantially underfunded, which in turn engenders healthy skepticism that the Debtors could achieve a "distressed termination" of the plans per ERISA Section 1341(c)(2)(B)(ii)(IV) and/or Bankruptcy Code Section 1114. In fact, on January 19, 2012, the Pension Benefit Guaranty Corporation issued the following "*Statement from PBGC on Bankruptcy Filing of Kodak Corporation*" (copy attached hereto as Exhibit H):

> WASHINGTON – Pension Benefit Guaranty Corporation released the following statement today on the bankruptcy filing by Kodak Corporation:
>
> "Kodak's U.S. pension plans are reasonably well funded and we want to make sure they stay that way. We will actively participate in Kodak's bankruptcy to protect Kodak's pension plans for their workers and retirees."

> Kodak sponsors two traditional pension plans that cover nearly 63,000 people. The plans are 86% funded, with about $4.9 billion to cover about $5.6 billion in benefits.

In light of management's stated goal of effectuating a business rehabilitation and, in light of the current construct of the Official Creditors' Committee (two pension representatives and four trade creditors), it now appears highly probable that Kodak's bankruptcy will culminate in a consensual plan of reorganization, with the reorganized enterprise assuming US pension liabilities going forward in accordance with historical trends ($22 million in U.S. pension contributions in each of 2010 and 2011, see Exhibit G at 46). In sum, neither UK pension nor US pension today likely presents a material obstacle for equity to realize substantial estate value.

The final sub-category is OPEB exposure. OPEB is a retiree commitment that, almost by definition, may not be legally enforced by retirees. OPEB obligations are not, in other words, protected under ERISA or by collective bargaining agreement, and are generally "terminable at will" by the employer. See In re Visteon Corp., 2010 U.S. App. LEXIS 14307 (3d Cir. July 13, 2010); In re Delphi Corp., 2009 Bankr. LEXIS 576, *19 (Bankr. S.D.N.Y. March 10, 2009). That appears to be precisely the nature of Kodak's OPEB exposure: "In addition to consistently managing reductions of its workforce, Kodak actively managed its benefit costs, including with respect to U.S. OPEB. Cost savings came from the Company *exercising its unilateral rights* to reduce or eliminate certain retiree benefits." McCorvey Declaration at ¶ 33 (emphasis added). As you may know, there is a split of authority as to whether Chapter 11 debtors are free to terminate OPEB commitments post-petition. In Visteon, the Third Circuit Court of Appeals ruled that, during the bankruptcy case, OPEB commitments may not be terminated outside a Bankruptcy Code Section 1114 process, but that such commitments may be assumed by a plan of reorganization and terminated immediately after the plan becomes effective. In Delphi, Judge Drain ruled that OPEB may be terminated during the bankruptcy case (prior to plan effectiveness) without undertaking a Section 1114 process. But, under either decisional rubric, a debtor does not incur any liability for OPEB termination following plan effectiveness (under the Visteon rule) or prior to that time (under the Delphi rule). So, here too, the law does not impose a material obstacle for equity to achieve their due value entitlement.

In the end, any market "static" surrounding this pop-culture bankruptcy must give way to hard evidence in the case record and sound legal analysis. Evidence and analysis show that equity has a very real entitlement to estate value and, in turn, a very real need for representation in these Chapter 11 cases. An appropriate showing under Bankruptcy Code Section 1102(a) has been made. An Official Equity Committee should be appointed.

B. An Official Equity Committee Should Be Appointed Because The Case Is Large And Complex And Kodak Publicly Issued A Large Amount Of Stock That Remains Widely Held As Of Today.

These are points of fact that should be readily conceded by all parties-in-interest. We venture that most adults in the United States (let alone in other advanced countries) owned, at one time or another, a Kodak camera and/or captured life-long memories on Kodak film. The Debtors were

founded 130 years ago and invented, among other things, digital photography – a feature of virtually every premium cell phone and computer mass produced today. Kodak employs 17,000 employees worldwide (9,100 in the U.S), and generated 2011 sales of approximately $6 billion. McCorvey Declaration at ¶ 5. It boasts an exceptionally large patent portfolio, including nearly 9,000 in the U.S. and more than 13,000 patents in approximately 160 foreign countries. Id. at ¶ 5. The conglomerate comprises 121 companies located throughout the world. Id. at ¶ 16. This is, to be sure, a very large and important bankruptcy case.

It is also very complicated. Pre-petition, the Debtors attempted to partially recreate itself as a producer of ink-jet computer printers and, to finance attendant capital expenditures, sell significant intellectual property. These efforts were unsuccessful. Market rumors notwithstanding, whatever the reasons behind these Chapter 11 filings, Kodak will assuredly undertake an exhaustive operational and financial reorganization while in bankruptcy. What comes out on the other end cannot now be predicted with any real precision.

Moreover, it is beyond dispute that there is quite a bit of Kodak stock in the public's hands. According to its most recent 10-Q statement (relevant portions attached hereto as Exhibit I), Kodak has 950 million shares of authorized common stock, with a par value of $2.50 per share, of which 391 million shares had been issued as of September 30, 2011. Of that amount, approximately 270 million Kodak shares were outstanding (as of October 28, 2011) and 121 million shares were held in treasury. For this reason, the Debtors filed their motion to establish stock trading restrictions (stock may not concentrate beyond 5% ownership) and, in turn, ensure preservation of tax attributes [Docket Number 8]. The Bankruptcy Court granted that motion on an interim basis. See Docket Number 56, attached hereto as Exhibit J.

Actions have already been taken against shareholder interests, which actions ensure that stock may not concentrate in the hands of a few holders that may otherwise fund their own voice in the bankruptcy case. Moreover, stockholders are widely dispersed; they may not be easily organized to voice their interests in the bankruptcy case, let alone become educated as to their rightful value entitlements under bankruptcy law. An Official Equity Committee should be appointed.

C. An Official Equity Committee Should Be Appointed Because The Costs Associated With The Requested Appointment Do Not "*Significantly* Outweigh" The Need For Stockholder Representation.

The law does not expect an Official Creditors' Committee to advocate stockholder interests; quite the contrary, the law expects an Official Creditors' Committee always will be inclined to oppose any equity value allocation. See, e.g., In re Saxon Indus., Inc., 29 B.R. 320, 321 (Bankr. S.D.N.Y. 1983); In re Evans Prods. Co., 58 B.R. 572, 575 (S.D. Fla. 1985).

While academic theory tends to hope that management will continue advocating for stockholders post-petition, bankruptcy law acknowledges the "real world" practical constraints imposed on management post-filing. See, e.g., In re Pilgrim's Pride Corporation, 407 B.R. 211, 218-219 (Bankr.N.D.Tex 2009)("The dynamics of chapter 11 are such that Debtors and their

management are likely to be constrained to accept and advocate to the court a conservative value for their business in order to obtain creditor assent to a reorganization plan. If [management] is faced with the choice of holding out for the benefit of equity and risking a failure of the reorganization or accepting a restructuring that values Debtors excessively conservatively, despite their interest in maximizing stock value, they may have little choice but to adopt the latter alternative.").

The reality of complex Chapter 11 today is that, absent the appointment of an Official Equity Committee, no one will advocate for stockholder interests. That is especially true after the debtor obtains an Order of the Bankruptcy Court – like the one already entered here on an interim basis [see Exhibit J] – preventing stock from consolidating in the hands of a relatively small number of distressed investors that have the financial wherewithal to privately fund their valuation thesis. It is perhaps for this very reason that, when a prima facie case is made for the appointment of an Official Equity Committee, the law shifts the burden to opponents to prove why the costs associated with such appointment "*substantially* outweighs" the need. See 4 Norton Bankr. L & Pract. 2d § 78:5 (2d ed. 2005)("Should the moving party be successful in showing that an additional committee is required, the burden then shifts to the opponent to demonstrate that the cost of such an additional committee notably outweighs the interest in adequate representation.")

In a small case, where corporate survival depends on a close husbanding of cash, that burden may not be too heavy. But, in extremely large cases (like this one), where the Debtors, secured lenders and the Official Creditors' Committee each hire only the most expensive of counsel, investment bankers, financial and other advisors, none can be heard to complain about cost. Here, the Debtors, the *Ad Hoc* Committee of Second Lien Noteholders, and the Official Creditors' Committee have each retained professionals at the far end of the compensation continuum now seen in the marketplace. They cannot credibly argue that the costs associated with an Official Equity Committee will inhibit this restructuring, certainly not without calling their own retention decisions into serious question. The Official Equity Committee should be appointed.

* * *

Based on the foregoing, we believe there is ample basis for the appointment of an Official Equity Committee to ensure adequate representation for Kodak shareholders. Thank you for your consideration. We would very much welcome the opportunity to meet with you to discuss the contents of this letter and its attachments more fully and to provide you with you with any additional information and/or address any questions you may have.

Very truly yours,

Robert J. Stark

Copy: Andrew Dietderich, Esq. (Counsel to the Debtors)
Dennis Dunne, Esq. (Counsel to the Official Creditors' Committee)
Michael Stamer, Esq. (Counsel to the *Ad Hoc* Committee of Second Lien Noteholders)
Marshall Huebner, Esq. (Counsel to the DIP Agent)

EXHIBIT A

Share Holder	Number of Shares
Greywolf Capital Partners II 4 Manhattanville Road, Suite 201 Purchase, NY 10577 Attn: Joe McInnis Tel: (914) 251-8240 Email: joe.mcinnis@greywolfcapital.com	3,814,400
Greywolf Capital Overseas Master Fund 4 Manhattanville Road, Suite 201 Purchase, NY 10577 Attn: Joe McInnis Tel: (914) 251-8240 Email: joe.mcinnis@greywolfcapital.com	5,485,000
Rich Katz c/o Torque Point Advisors, LLC 305 East 86th St., Apt. 9PW New York, NY 10028 Tel: (917) 363-3618 Email: rich.katz@torquepointllc.com	22,000
Kenneth S. Grossman 18 Norfolk Road Great Neck, NY 11020 Tel: (212) 201-4124 Email: kenneth.grossman@signaturecap.com	600,000
Paul Martin c/o Trysail Partners 6055 Mountain Ranch Drive Park City, UT 84098 Tel: (415)722-0986 Email: pmartin@trysailpartners.com	1,000
Total Amount of Shares Beneficially Held	**9,922,400**

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	Case No. 12-_____ (_____)
Debtors.	(Joint Administration Requested)

DECLARATION OF ANTOINETTE P. MCCORVEY PURSUANT TO RULE 1007-2 OF THE LOCAL BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT OF NEW YORK IN SUPPORT OF FIRST DAY PLEADINGS

Antoinette P. McCorvey, being duly sworn, deposes and states:

1. I am the Chief Financial Officer and Senior Vice President of Eastman Kodak Company ("**EKC**"), a publicly owned corporation organized under the laws of the State of New Jersey and a debtor and debtor in possession in the above-captioned cases of EKC and certain of its affiliates (collectively, the "**Debtors**"). In such capacity, I am generally familiar with the Debtors' businesses, day-to-day operations and financial affairs.

2. I submit this declaration (this "**Declaration**") pursuant to rule 1007-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "**Local Rules**") in support of the voluntary petitions for relief filed by each of the Debtors under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") and the motions and applications for related relief filed as of January 19, 2012 (the "**Petition Date**") or concurrently

[1] 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.

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herewith (collectively, the "**First Day Pleadings**"). I have reviewed the First Day Pleadings or have otherwise had their contents explained to me and, to the best of my knowledge, insofar as I have been able to ascertain after reasonable inquiry, I believe that approval of the relief requested therein is necessary to minimize disruption to the Debtors' business operations so as to permit an effective transition into chapter 11, preserve and maximize the value of the Debtors' estates and, ultimately, achieve a successful reorganization. I also believe that, absent immediate access to additional financing, use of cash collateral and authority to make certain essential preplan payments and otherwise continue conducting ordinary course business operations as set forth herein, and described in greater detail in the First Day Pleadings, the Debtors would suffer immediate and irreparable harm to the detriment of their estates.

3. Except as otherwise indicated, the facts set forth in this Declaration are based upon my review of relevant documents, information provided to me or verified by other executives, employees or the Debtors' professional advisors, including Sullivan & Cromwell LLP, Young Conaway Stargatt & Taylor, LLP, Lazard Frères & Co. LLC and FTI Consulting, Inc., and my experience, knowledge and information concerning the Debtors' operations, financials and the film and digital imaging industry generally. Unless otherwise indicated, the financial information contained in this Declaration is unaudited and subject to change. This financial information is presented on a consolidated basis for the Debtors and their non-Debtor affiliates, except where noted. I am authorized to submit this Declaration on behalf of the Debtors, and, if called upon to testify, I would testify competently to the facts set forth herein.

Preliminary Statement

4. The Debtors and their non-Debtor affiliates (collectively, "**Kodak**" or the "**Company**") operate a globally integrated enterprise. The Company has approximately 17,000

employees worldwide (approximately 9,100 of whom are in the U.S.), and in fiscal year 2011 had sales of approximately $6.0 billion.

5. Kodak is a materials science company with a long history of innovation and successful commercialization of proprietary technologies. The Company was once the world's leading producer of film and cameras, and today has a diverse collection of mature and growth businesses. Kodak has invested significantly in research and development ("**R&D**") for over a century, and continues to do so today. The Debtors have approximately 13,100 foreign patents and trademark registrations or pending registration in approximately 160 countries. Additionally, the Debtors have approximately 8,900 patent and trademark registrations and applications in the United States.

6. Over the past several years, the Company has been working to transform itself from a business primarily based on film and consumer photography to a smaller business with a digital growth strategy focused on the commercialization of proprietary digital imaging and printing technologies. Digital businesses generated approximately 75%, or $4.5 billion, of Kodak's revenue in fiscal year 2011. Kodak's digital products include consumer devices such as self-service photo kiosks and ink jet printers, and business-to-business products and services such as its technologically advanced PROSPER commercial inkjet printing systems, electrophotographic printing systems, digital printing plates, high-volume document scanners and new technologies related to packaging and workflow software solutions.

7. Kodak has transitioned to a digital company, as the market for film based products has declined rapidly over the past ten years. Kodak's global workforce has been reduced from approximately 63,900 employees in 2003 to approximately 17,000 employees in 2011. This transition also has led to a financially smaller Kodak, with revenues declining from

approximately $13.3 billion in 2003 to about $6.0 billion in 2011. Kodak has funded its business restructuring costs from a combination of licensing fees generated by Kodak's digital capture patents sale proceeds from the disposition of non-core assets and cash from its cash generating film and digital business.

8. Kodak innovations enabled the digital transformation that has effectively replaced film. In 1975, Kodak scientists invented the first digital camera. Kodak then went on to develop a vast collection of patented technologies to enhance digital image capture and processing, technologies that are used in virtually every modern digital camera, smartphone and tablet, as well as numerous other devices. From 2003 to 2010, the Company negotiated approximately $3.0 billion of licensing revenue from its digital capture patent portfolio; however, the company only generated $98 million in licensing revenue in 2011. The Company anticipates substantial future revenue from licensing its intellectual property for use in smartphones and tablets that employ digital cameras, as well as in next-generation products that utilize Kodak technology, or from the disposition of related patents to third parties.

9. Since initiating its digital transformation strategy in 2003, Kodak has generated approximately $4.0 billion from the sale of assets and businesses, including the Health Group, Remote Sensing Systems, HPA, Light Management Films, Image Sensor Solutions, Eastman Gel, Silver Operations, a variety of chemical operations, OLED and Kodak's ownership interest in Lucky Film.

10. Since 2008, despite Kodak's best efforts, restructuring costs and recessionary forces have continued to negatively impact the Company's liquidity position, ultimately leading to the commencement of these chapter 11 cases. In 2011, Kodak took actions to enhance its cash position, including: (i) issuing $250 million in senior secured notes due 2019; (ii) entering into a

second amended and restated credit agreement with its lenders that facilitated a draw of approximately $160 million; and (iii) selling certain non-strategic businesses and assets. Despite these actions, the Company's liquidity has been impaired further by difficulties collecting licensing fees from infringers of Kodak's intellectual property, who Kodak believes have employed a strategy of delay in light of Kodak's liquidity position, and by substantial foreign and U.S. legacy costs.

11. In order to resolve their liquidity challenges, the Debtors, with the assistance of their advisors, have evaluated strategic alternatives for new lending facilities, strategic transactions, intellectual property monetization, and asset sales. The Debtors have determined that seeking the debtor-in-possession financing described in my declaration in support of the Debtors' motion authorizing them to obtain postpetition financing (the "**Financing Declaration**"), and reorganizing under chapter 11 protection is in the long-term best interests of the Debtors, their estates and their stakeholders.

12. To familiarize the Court with the Debtors' businesses, operations, key creditor constituencies and other parties in interest in these chapter 11 cases, together with the relief sought by the Debtors in the First Day Pleadings, this Declaration is organized as follows: Part I describes Kodak's history and the Debtors' current corporate structure and prepetition indebtedness; Part II describes the Debtors' businesses and operations; Part III describes the events leading up to the commencement of these cases and the Debtors' prepetition restructuring initiatives; and Part IV sets forth the relevant facts in support of each First Day Pleading. To the extent not otherwise provided herein, the information required under Local Rule 1007-2, relating to, among other things, the Debtors' businesses, employees, assets and parties in interest in these

chapter 11 cases, is set forth on Schedules 1-12 attached hereto and incorporated by reference herein.

I.
Company Overview

A. Company History and Corporate Structure

13. Founded in 1880 by George Eastman, the Company helps businesses and consumers unleash the power of pictures and printing. The Company has been headquartered in Rochester, New York since its founding. In 1888, with the slogan "you press the button, we do the rest", George Eastman put the first film camera into the hands of a world of consumers. In April 1905, Kodak went public, offering shares of its common stock on The New York Stock Exchange. The Company was added to the Dow Jones Industrial Average index in July 1930.

14. Since its founding, Kodak has prided itself on its reputation. In April 2011, for the second year in a row, Kodak ranked among the top 20 "most reputable" American companies by the Reputation Institute, an independent consulting company. The survey was based on nearly 33,000 consumers' opinions, and measured trust, esteem, admiration and good feelings toward companies. For ten years in a row, Kodak has been named to the Dow Jones Sustainability North American Index, one of the most prestigious and well-known hallmarks of sustainability performance among leading corporations.

15. EKC is incorporated under the laws of New Jersey, which has a corporate governance statute commonly called an "Other Constituency" statute. The Other Constituency statute permits the board of directors, in discharging its duties, to consider the effects of its actions not merely on shareholders and creditors, but also on employees, suppliers, customers, and the community. It states:

> In discharging his duties to the corporation and in determining what he reasonably believes to be in the best interest of the

> corporation, a director may, in addition to considering the effects of any action on shareholders, consider any of the following: (a) the effects of the action on the corporation's employees, suppliers, creditors and customers; (b) the effects of the action on the community in which the corporation operates; and (c) the long term as well as the short term interests of the corporation and its shareholders, including the possibility that these interests may best be served by the continued independence of the corporation.

N.J. Stat. Ann § 14A:6-1. Consistent with the Other Constituency statute and George Eastman's legacy, Kodak strives to be a good corporate citizen.

16. The Company's worldwide offices operate as an integrated global enterprise. A detailed organizational chart is attached hereto as Exhibit A. The Company has approximately 120 subsidiaries. In fiscal year 2010, the Company earned approximately 57% of its revenue abroad. The percentage of the Company's revenue earned abroad had increased to 67% for the first three quarters of 2011. The Company's patents and intellectual property generally are held by EKC, and the Company's research and administrative functions are located primarily in the United States. As a result, the Debtors have been a net receiver of cash through the Company's ordinary course global intercompany netting and financing system.

17. The Company's international operations are structured for, among other things, tax and regulatory efficiencies. Business units often cross geographic borders. For example, much of the Company's Asian business involves taking semi-raw goods from other entities (*e.g.*, ink produced in New York) and adding value in China by converting them into finished products (*e.g.*, printer cartridges) for sale in other markets. The Company's non-U.S. businesses are expected to be funded primarily from non-U.S. sources and should not be affected by the filing of these chapter 11 proceedings.

18. Orderly funding of the Company's global operations involves intercompany lending and netting by Kodak International Finance Limited, a company organized under the

laws of the United Kingdom ("**KIFL**"). Intercompany netting currently occurs once a month. The Company believes that the continued operation of KIFL in the ordinary course is critical to minimize non-U.S. liquidity requirements and avoid business interruptions within and outside the U.S.

B. Prepetition Capitalization and Indebtedness

19. The Debtors have significant legacy liabilities.[2] These include $1.2 billion in non-U.S. pension liabilities (calculated in accordance with U.S. GAAP), $1.3 billion of Other Post-Employment Benefit ("**OPEB**") liabilities and approximately $100 million in environmental liabilities.[3]

20. As of the Petition Date, the Debtors have outstanding funded debt in an aggregate amount of approximately $1.6 billion, consisting primarily of approximately:[4] (a) $100 million outstanding under the first lien revolving credit facility plus an additional $96 million in face amount of outstanding letters of credit; (b) $750 million in principal amount of second lien secured notes; (c) $400 million in principal amount of convertible notes; and (d) $283 million in principal amount of other senior unsecured debt. The Debtors also have approximately $425 million in outstanding trade debt.

II.
Current Businesses and Operations

21. Research and development drives Kodak's product and service offerings, which in 2011 were organized across three business segments: (i) Graphic Communications Group, (ii) Consumer Digital Imaging Group, and (iii) Film, Photofinishing and Entertainment Group.

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[2] Contingent, unliquidated, disputed; estimate for illustrative purposes.

[3] Amounts with respect to OPEB and Pension are based on preliminary estimates as of December 31, 2011.

[4] Estimate for illustrative purposes only.

Beginning in 2012, the Company reorganized its business into a Commercial and Consumer segment. New segment-based financial reporting will begin with the first quarter 2012 results.

A. Product Offerings

22. Graphic Communications Group ("**GCG**") has a portfolio of digital products, primarily aimed at business customers, which accounted for 45% of the Company's consolidated revenue for 2011. GCG generates revenue from a traditional commercial plate and equipment printing business, innovative high-speed commercial inkjet printing (which prints on a variety of surfaces), electrophotographic printing systems, high speed document scanners, workflow software and services to business clients.

23. Consumer Digital Imaging Group ("**CDG**") offers printers, cameras and accessories to consumers, accounting for 29% of the Company's consolidated revenue for 2011. CDG generates revenues from digital cameras and accessories, the largest installed base of retail photo kiosks in the world, desktop inkjet printers and Kodak Gallery, an online merchandise and photo sharing service.

24. Film, Photofinishing and Entertainment Group ("**FPEG**") provides consumers, professionals and the entertainment industry with film and paper products and related software and services. FPEG is the industry leader in large markets, such as motion picture film, and accounted for 26% of the Company's consolidated revenue for 2011. FPEG sells color motion picture film, services for the entertainment industry, traditional photofinishing products, and specialized industrial film and chemical products.

B. Research and Development

25. Kodak's digital growth strategy is centered on exploiting its competitive advantage at the intersection of materials science and digital imaging science. Kodak's materials

science research is relevant both to innovative printing and fundamental scientific disciplines, as illustrated below:

1. Materials Science (inks, toners, coatings, paper and other media): Materials, inks, toners and papers used in Kodak systems draw upon a deep understanding of the sophisticated properties of these materials, and Kodak conducts cutting-edge research in polymer science, chemistry modeling and atomic scale assembly.

2. Nano-/Micro-Scale Devices: Research includes microfluidic systems that have a wide range of potential applications, such as inkjet printing, blood cell separation, biochemical assays, chemical synthesis, genetic analysis, drug screening, electrochromatography, surface micromachining, laser ablation and mechanical micromilling.

3. Computational Science: Research in labeling, organizing, compressing and interacting with digital data.

26. Most of the Company's R&D is performed in the U.S., with R&D taking place in Rochester, New York; Boston, Massachusetts; New Haven, Connecticut; Dayton, Ohio; and San Jose, Emeryville and San Diego, California; however, several comparatively smaller R&D operations are located outside the U.S. in Canada, England, Israel, Germany, Japan, China and Singapore. These groups work in close cooperation with manufacturing units and marketing organizations to develop new products and applications to serve both existing and new markets. Historically, the Company has spent between $300-500 million per year on R&D.

27. It has been the Company's general practice to protect its investment in R&D and its freedom to use its inventions by obtaining patents. As noted above, the Debtors have approximately 13,100 foreign patents and trademark registrations or pending registrations in approximately 160 countries. Additionally, the Debtors have approximately 8,900 patent and trademark registrations and applications in the United States. Kodak continues to produce patented technologies at a considerable pace, with 590 priority applications filed in 2011 and 482

in 2010. The ownership of these patents contributes to the Company's ability to develop and market innovative products.

28. The Company's major products are not dependent upon a single material patent. Rather, the technologies that underlie the Company's products are supported by an aggregation of patents having various remaining lives and expiration dates. There is no individual patent expiration or group of patent expirations that is expected to have a material impact on the Company's results of operations.

29. As announced publicly on July 20, 2011, the Company has been exploring, and continues to explore, strategic alternatives related to its digital capture and imaging systems and services portfolios of approximately 1,150 patents with related foreign and pending applications (the "**Imaging Portfolio**"). The Imaging Portfolio pertains to capturing, processing, storing, organizing, editing, sharing and monetizing digital images, and is fundamental to the digital imaging industry, including the cell phone, tablet and social networking markets.

30. The Imaging Portfolio comprises one of the world's richest collections of imaging-related intellectual property, reflecting decades of scientific innovation and billions of dollars of investment in R&D.

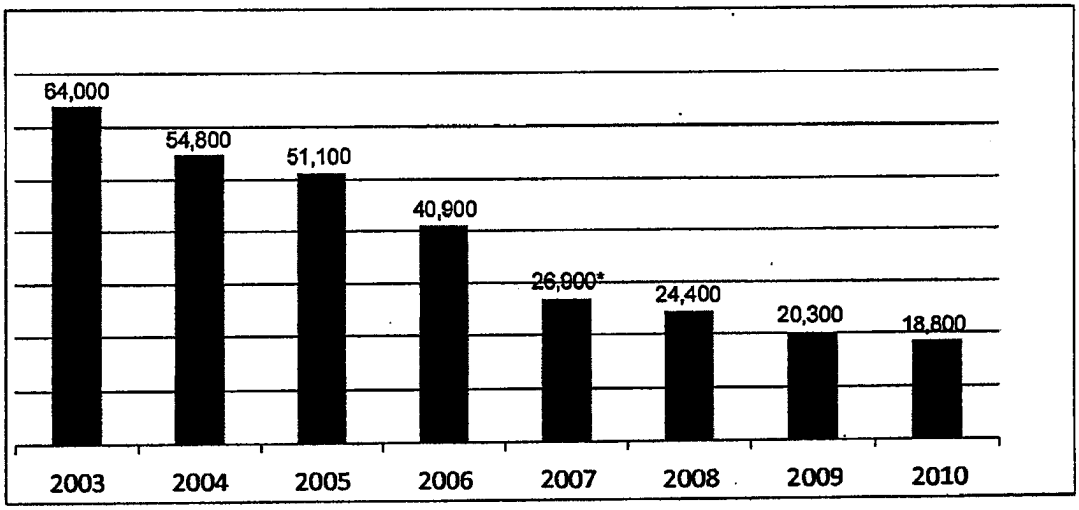
III.
Restructuring Initiatives and Events Leading to Chapter 11

31. At least ten years ago, the Company recognized the inevitable decline in its traditional film business, and began working to restructure its operations. Since 2003, the Company has actively managed its workforce and post-employment benefit costs. The Company's transition to a digital business, however, has been interrupted by a liquidity shortfall, primarily in the United States.

A. Restructuring Initiatives

32. From 2003 to 2010, Kodak reduced its workforce by 50,000 employees, and closed 13 of its 15 film plants and 130 photo labs. The following chart shows the decline in Kodak's global workforce over this eight-year period.

Worldwide Employment

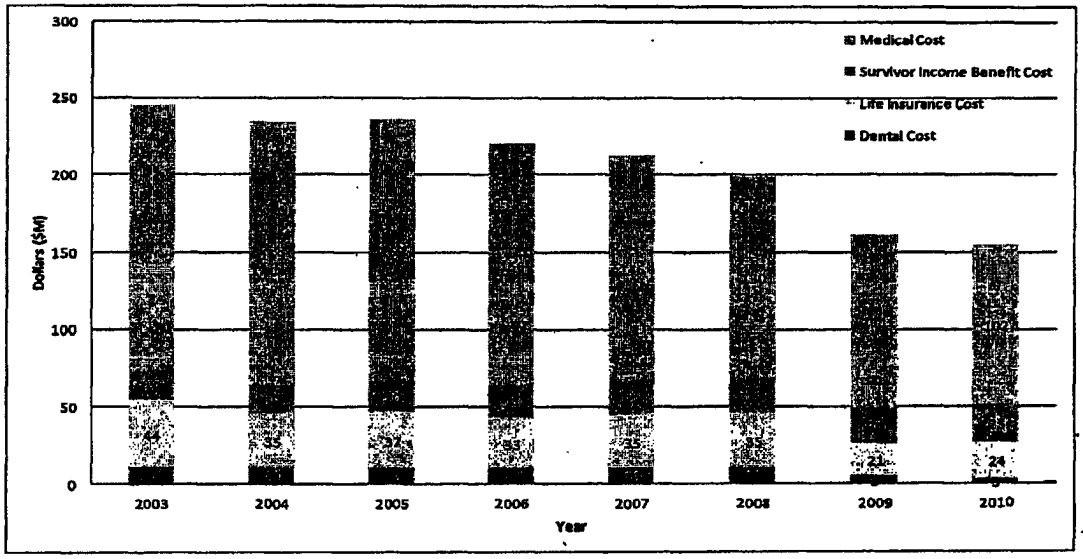


*The change between 2006 and 2007 reflects the divestiture of 8,100 Health Group employees. During the period from 2003 to 2010, 13 operations and 130 labs were closed.

33. In addition to consistently managing reductions of its workforce, Kodak actively managed its benefit costs, including with respect to U.S. OPEB.[5] Cost savings came from the Company exercising its unilateral rights to reduce or eliminate certain retiree benefits, in addition to increasing employee and retiree health care contributions. The following shows the declining cost of U.S. retiree benefits over the same eight-year period.

[5] Kodak has approximately 65,000 retirees worldwide.

Cash Cost for U.S. Retiree Benefits



As of 2010, the U.S. plan represents 93% of total other post-employment benefit plans.

B. Events Leading to Chapter 11

34. There are several key drivers for the Debtors' near-term liquidity issues. First, market conditions since 2008 have caused losses in Kodak's historically profitable traditional businesses, reduced revenue, earnings and cash from the Company's digital cash generating business and delayed revenue generation from Kodak's digital growth initiatives. Second, legacy post-employment benefits continue to consume a substantial amount of the Debtors' cash. Third, cash flow from the licensing and sale of intellectual property has been delayed due to litigation tactics employed by a small number of infringing technology companies with strong balance sheets and an awareness of Kodak's liquidity challenges. Fourth, near the end of 2011, negative publicity and other external issues caused substantial strains on trade credit.

(i) Market Conditions in 2008 to Present

35. Since 2008, the Company has been negatively impacted by market conditions. The Company has seen both a decline in profits from its traditional businesses, such as FPEG,

and slowed revenue growth in its newer initiatives due in part to reduced revenue and earnings from its digital cash generating business.

36. When it began its business transformation, Kodak planned to source funds for restructuring costs and investment in new businesses from its historically profitable film business. Even though Kodak had projected FPEG to generate less cash as film was replaced by digital imaging, the FPEG business was still anticipated to generate substantial cash flow. The rate of the decline of the market for film between 2008 and 2010, however, was significantly steeper than anticipated by nearly all observers: the industry projected a 10% decline, Kodak forecasted a 20% decline and the actual decline was approximately 40%. In addition to demand impairment, increasing commodity prices negatively impacted FPEG's cash flow. FPEG purchased approximately $300 million of silver in 2011. Silver prices have ranged between 199% and 294% higher than 2008 prices. Because of the lingering effects of the economic crisis, Kodak cannot pass through all of these price increases to its customers.

37. One of the businesses in which Kodak invested heavily was consumer inkjet. The consumer inkjet business runs on the "razor/blade" model – profits are not made on the sale of the printers, but on aftermarket sales of ink and other consumables. Kodak can only expand its market share, and create a market for the highly profitable ink, by increasing its global installed base. However, the financial crisis of 2008 resulted in slower growth in the installed base than Kodak had projected and in lower printer prices in the market, delaying the realization of profits through the sale of ink and consumables.

38. Similarly, during the financial crisis and immediately thereafter, the market for Kodak's commercial products, many of which represent significant investments for the businesses that purchase them, shrank significantly. This reduced the profitability of Kodak's

digital growth initiatives, which require establishing an installed base of Kodak products to create economies of scale and build a market for highly profitable services and consumables.

(ii) Costs of Post-employment Benefits

39. Post-employment benefit liabilities consumed approximately $245 million of the Debtors' cash in 2011. Kodak's largest single cash cost in 2011 was approximately $119 million spent on OPEB. The Debtors also made an approximately $60 million annual contribution to the U.K. pension. Despite actions taken, the Debtors have been unable to reduce the amount of cash consumed by post-employment benefit obligations to make them proportional to a financially smaller Kodak.

(iii) Delays in Licensing of Intellectual Property

40. Revenue generated through monetization of the digital capture portfolio over the past several years has been an integral part of the funding for Kodak's digital transformation. Over 30 companies have licensed the digital capture portfolio, including such leading mobile-device companies as LG, Motorola, Samsung and Nokia, all of which are royalty-bearing to Kodak.

41. When Kodak's financial condition started to deteriorate, Kodak began to experience delays in licensing negotiations with Apple Inc. ("**Apple**"), Research In Motion, Corp. ("**RIM**") and HTC Corporation ("**HTC**"), all of which owe substantial royalties for use of Kodak's digital capture portfolio. Kodak has pursued patent litigation against each of Apple, RIM and HTC to enforce its rights relating to the digital camera functionality included in their smartphone handsets and, in the cases of Apple and HTC, in their tablets. In addition, Kodak believes Apple's operating system itself, which employs object-linking capability, infringes Kodak's patents (now expired) directed to such fundamental technology. The Company expects that these lawsuits, once resolved, will benefit Kodak stakeholders substantially. As an

alternative to lengthy patent litigation, Kodak has explored the sale of the Imaging Portfolio to third parties. However, the Company has faced difficulties executing the sale due to uncertainty about its financial condition.

(iv) Trade Credit and Market Rumors

42. Persistent negative press has caused concern among many of Kodak's suppliers. In the last few weeks leading up to these chapter 11 proceedings, some vendors have stopped shipping and providing services to Kodak, making it more difficult to operate. Vendors also have been demanding shorter payment terms and/or additional guarantees. The Debtors anticipate that approval of the debtor-in-possession financing, together with vendor preplan payment authorization, will provide confidence to the supplier community that Kodak will be a reliable and long-term partner to its global vendors.

C. Discussions Concerning U.K. Pension Plan

43. Although the Debtors are reviewing documentation and reserve rights, the Debtors currently expect KPP Trustees Limited (the "**Trustee**"), the trustee for the Kodak pension plan (the "**Plan**") in the United Kingdom, to have a significant general unsecured claim against Eastman Kodak Company by virtue of the Guaranty Agreement, effective October 9, 2007 (as amended) (the "**Guarantee**"), among EKC, the Trustee and EKC's U.K. subsidiary, Kodak Limited. The Guarantee is governed by English law and on its face, among other things, and subject to certain terms and conditions, guarantees the ability of Kodak Limited to contribute to the Plan (i) the minimum amount of assets necessary such that the Plan will have sufficient assets to make member benefit payments as they are immediately due and payable if the Plan would not otherwise have sufficient assets needed to make such benefit payments; and (ii) such that the Plan will achieve a "Full Funding status" (as defined in the Guarantee) by December 31,

2022. The Debtors have not determined a valuation of the Trustee's potential claim in connection with the Guarantee.

44. As part of the preparation for these proceedings, representatives of the Debtors traveled to London to meet with the Board of Directors of the Trustee and the Pension Regulator of the United Kingdom. The meetings occurred on January 11th and 12th, 2012. At these meetings, representatives of the Debtors discussed confidentially the prospect of these proceedings and our intent that only the U.S. entities of the Kodak group file for chapter 11, and that non-U.S. companies continue to conduct operations in the ordinary course of business. The Debtors' representatives discussed their plans to ensure for adequate funding for European operations during these proceedings. The representatives also informed the Trustee and the Pension Regulator of the Debtors' view that ordinary course operations around the world, and the absence of non-U.S. insolvency proceedings, are in the best interest of the Trustee and critical to maximizing value for all stakeholders of the Debtors, including the Trustee. The Debtors intend to work collaboratively with the Trustee and have invited them to take an active role in the proceedings.

IV.

First Day Pleadings

45. Contemporaneously herewith, the Debtors have filed a number of First Day Pleadings. I believe that, among other things, the relief requested in the First Day Pleadings is necessary to enable the Debtors to operate with minimal disruption during the pendency of these chapter 11 cases. A description of the relief requested and the facts supporting each of the pleadings is set forth below.

particularly while operating in chapter 11. The Debtors must be able to assure their Customers and send a strong message to the marketplace that they are willing and able to honor their prepetition obligations to their Customers and continue to maintain and/or develop, implement and administer their Customer Programs in the ordinary course of business consistent with the same integrity and accountability for which they are well known. Therefore, I believe that maintaining the Customer Programs will help preserve the Debtors' valuable relationships with their Customers and goodwill, which will inure to the benefit of all the Debtors' creditors and benefit their estates. Accordingly, I respectfully submit that the Customer Programs Motion should be approved.

(vi) Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing, But Not Directing, Debtors to Pay Certain Prepetition Claims of Critical Vendors and Approving Related Procedures and (B) Authorizing All Financial Institutions to Honor All Related Payment Requests (the "**Critical Vendors Motion**")

86. The Debtors request entry of an order authorizing, but not directing, the Debtors to pay certain prepetition claims (the "**Critical Vendor Claims**") of their Critical Vendors (as defined below) up to an aggregate cap of $40 million (the "**Critical Vendor Cap**") in accordance with certain procedures set forth more fully in the Critical Vendors Motion, to the extent that the Debtors determine, in the exercise of their business judgment, that such payment is critical to ensure that a Critical Vendor will provide essential goods and services to the Debtors on a postpetition basis; *provided, however*, that within 21 days after the Petition Date, the Debtors only will make payments to a Critical Vendor to the extent that the Debtors determine, in the exercise of their business judgment, that such payment is necessary to avoid immediate and irreparable harm to the Debtors; *provided further*, that in no event shall the Debtors pay any Critical Vendor Claims before such amounts are due and payable.

87. In order to stabilize the Debtors' operations, and to smoothly transition into chapter 11, it is imperative that the Debtors normalize their global supply relationships. Failure to do so would result in extremely adverse business effects given the current pressure on the Debtors' already strained supply chain. The Debtors believe that the majority of their vendors will be comforted by the increased liquidity made available to them under the Debtors' anticipated debtor-in-possession financing; therefore, the Debtors are optimistic that their trade terms ultimately will stabilize over the course of these chapter 11 cases. In some limited instances, however, the Debtors anticipate that certain vendors may refuse to do business with the Debtors unless those vendors are paid their prepetition claims in full.

88. With the assistance of their professional advisors, the Debtors have spent significant time reviewing and analyzing their books and records and consulting operations management and purchasing personnel to identify certain critical business relationships and/or suppliers of goods and services, the loss of which could immediately and irreparably harm the Debtors' businesses, shrink their market share, reduce their enterprise value and/or impair going-concern viability (the "**Critical Vendors**"). The Debtors only propose to pay Critical Vendor Claims, up to the Critical Vendor Cap, where such payment is necessary to ensure that the particular Critical Vendor will provide necessary goods and services to the Debtors postpetition.

89. To ensure that the Debtors' business operations will be minimally impacted during these chapter 11 cases, the Debtors seek to condition payments to a Critical Vendor upon an agreement by such Critical Vendor to: (a) provide normal, reasonable and customary price, service, quality and payment terms ("**Customary Trade Terms**") to the Debtors on a postpetition basis; and (b) continue to extend Customary Trade Terms to the Debtors' non-debtor foreign subsidiaries (the "**Debtors' Foreign Affiliates**") and not attempt to recover from the

Debtors' Foreign Affiliates any prepetition amounts due to such vendor from the Debtors, to the extent applicable.

90. The Debtors also propose that if a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms following receipt of payment on its Critical Vendor Claim, or fails to comply with any other agreement entered into between such Critical Vendor and the Debtors, the Debtors may declare that such Critical Vendor is in breach of its agreement. To the extent that such Critical Vendor fails to cure such default or reach a more favorable alternative agreement with the Debtors, the Debtors may: (a) seek injunctive relief to compel performance pursuant to the existing agreement; (b) declare the payment of the applicable Critical Vendor Claim an avoidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code; and (c) demand that the creditor immediately return such payments in respect of the Critical Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments or setoffs of any type whatsoever.

91. Authority to satisfy the Critical Vendor Claims in the initial days of these chapter 11 cases without disrupting the Debtors' operations will send a clear signal to the marketplace that the Debtors are willing and, importantly, able to conduct business as usual. Given the highly competitive nature of the industries in which the Debtors operate and the fact that, in many instances, the Debtors' competitors are ready and willing to attempt to fill any voids created by these cases, it is imperative that the Debtors be able to pay or otherwise satisfy the Critical Vendor Claims. Doing so is necessary to ensure that the Debtors maintain their reputation and market share notwithstanding the commencement of these cases. Any loss of reputation and

market share could have a ripple effect throughout the Debtors' businesses and, in turn, jeopardize their reorganization efforts.

92. For the foregoing reasons, I believe that the relief requested in the Critical Vendors Motion is in the best interests of the Debtors, their estates and creditors. Accordingly, I respectfully submit that the Critical Vendors Motion should be approved.

(vii) Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing, But Not Directing, Debtors to Pay Prepetition Claims of Certain Foreign Vendors and Approving Related Procedures and (B) Authorizing All Financial Institutions to Honor All Related Payment Requests (the "**Foreign Vendors Motion**")

93. The Debtors request entry of an order authorizing, but not directing, the Debtors to pay certain prepetition claims (the "**Foreign Vendor Claims**") of their Foreign Vendors (as defined below) up to an aggregate cap of $60 million (the "**Foreign Vendor Cap**") in accordance with certain procedures set forth more fully in the Foreign Vendors Motion, to the extent that the Debtors determine, in the exercise of their business judgment, that such payment is critical to ensure that a Foreign Vendor will provide essential goods and services to the Debtors on a postpetition basis; *provided, however*, that within 21 days after the Petition Date, the Debtors only will make payments to a Foreign Vendor to the extent that the Debtors determine, in the exercise of their business judgment, that such payment is necessary to avoid immediate and irreparable harm to the Debtors; *provided further*, that in no event shall the Debtors pay any Foreign Vendor Claims before such amounts are due and payable.

94. Given the size, sophistication and global nature of their businesses, the Debtors regularly transact business with vendors located outside of the U.S. and its territories. Certain of these foreign vendors provide goods and services that are absolutely essential to the Debtors' operations and may refuse to continue to do business with the Debtors after the commencement of these chapter 11 cases (the "**Foreign Vendors**"). Notably, these Foreign Vendors include

vendors, service providers or other non-governmental entities that are not known to have assets within the U.S. that would be subject to the jurisdiction of the Court and that would otherwise be available to satisfy a judgment entered by the Court if such entities were to violate the automatic stay or take any actions contrary to an order of the Court. The Debtors only propose to pay Foreign Vendor Claims, up to the Foreign Vendor Cap, where such payment is necessary to ensure that particular Foreign Vendor will provide necessary goods and services to the Debtors postpetition.

95. As with Critical Vendors, the Debtors seek to condition payments to a Foreign Vendor upon an agreement by such Foreign Vendor to: (a) provide Customary Trade Terms to the Debtors and, to the extent applicable, the Debtors' Foreign Affiliates on a postpetition basis, and (b) not attempt to recover from the Debtors' Foreign Affiliates any prepetition amounts due to such vendor from the Debtors, to the extent applicable. Furthermore, the Debtors also propose that if a Foreign Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms following receipt of payment on its Foreign Vendor Claim, or fails to comply with any other agreement entered into between such Foreign Vendor and the Debtors, the Debtors may seek to exercise remedies substantially similar to those set forth immediately above in connection with the Critical Vendors Motion.

96. Any delay in payments that could cause any of the Foreign Vendors to terminate, especially suddenly, their complex relationship with the Debtors would impose significant and unnecessary administrative burdens at a critical stage of these chapter 11 cases. In addition to the concerns associated with all essential vendors, it is critical that the Debtors have the flexibility to deal with their Foreign Vendors, as they may have confused and guarded reactions to U.S. bankruptcy laws and process. The Debtors believe that many such vendors may threaten

to cease supplying the Debtors unless the Debtors make payments on account of prepetition obligations. Although the Debtors believe any such threats may in theory be actionable as a violation of the automatic stay and, in other instances, the Debtors are willing to replace one recalcitrant foreign vendor with another one willing to do business, there are certain Foreign Vendors as to which any short-term disruption could harm the Debtors' ability to receive raw materials necessary to produce numerous key products or finished goods necessary to fulfill outstanding orders, or otherwise jeopardize the Debtors' ability to operate going forward.

97. In light of the foregoing, I believe that the relief requested in the Foreign Vendors Motion is in the best interests of the Debtors, their estates and creditors. Accordingly, I respectfully submit that the Foreign Vendors Motion should be approved.

(viii) Debtors' Motion for Interim and Final Orders Authorizing the Debtors to (A) Continue Using Their Existing Cash Management System, Bank Accounts and Business Forms, (B) Maintain Existing Investment Practices, (C) Continue Intercompany Transactions and (D) Provide Postpetition Intercompany Claims Administrative Expense Priority (the "**Cash Management Motion**")

98. The Debtors request the entry of an order authorizing the Debtors to continue using their existing cash management system, bank accounts and business forms, continue intercompany transactions and providing postpetition intercompany claims administrative expense priority, and maintain their existing investment practices.

(a) The U.S. Banking System

99. In the ordinary course of business, the Debtors utilize a coordinated, centralized cash management system (the "**U.S. Banking System**") through which funds are received, aggregated and disbursed to pay various business-related expenses. The Debtors maintain current and accurate accounting records of all daily cash transactions with third parties and by and between Debtor entities.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 18, 2012
New York, New York

By: /s/ Antoinette P. McCorvey
Name: Antoinette P. McCorvey.
Title: Chief Financial Officer
and Senior Vice President

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, et al.,[1]	Case No. 12-10202 (_____)
Debtors.	(Joint Administration Requested)

DECLARATION OF MATTHEW J. HART IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E), AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364, AND (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)

Pursuant to 28 U.S.C. § 1746, I, Matthew J. Hart, hereby declare as follows:

1. I am a Director in the Restructuring Group of Lazard Frères & Co. LLC ("Lazard"), which has its principal office at 30 Rockefeller Plaza, New York, New York 10020. I am authorized to execute this affidavit on behalf of Lazard.

2. I submit this declaration in support of the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection to*

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[1] 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 Networking, 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.

proposed DIP facility are generally within the range of other large, broadly-syndicated DIP facilities in recent years.

D. The Prepetition Secured Parties are Protected by a Significant Equity Cushion

23. In addition to the Adequate Protection Liens and the Junior Adequate Protection Liens outlined by the Debtors in the Motion, I believe that the prepetition secured creditors (including holders of the Second Lien Notes) are also protected through the existence of an "equity cushion" in their collateral. Based upon certain third party appraisals, borrowing base certificates and preliminary December 31, 2011 book values of the Debtors U.S. assets as provided by the Debtors[4], I estimate the value of a portion of the prepetition secured creditors' collateral at a range of $3.4 to $4.3 billion[5]. These amounts are comprised of (a) 284 Partners, LLC's estimated value range for the digital imaging patent portfolio of $2.2 to $2.6 billion[6]; (b) the Debtors' estimated pro forma domestic cash and equivalents of $820 million; (c) U.S. accounts receivable valued at an estimated $142 to $257 million[7]; (d) U.S. inventory valued at an estimated $149 to $369 million[7]; and (e) U.S. machinery & equipment valued at an estimated $32 to 294 million[7].

24. This analysis notably does not give any credit to other prepetition collateral such as the Debtors' globally-recognized and highly reputable brand, stock of certain foreign subsidiaries, or over 9,000 other patents beyond the digital imaging patent portfolio. This

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4 In performing my analysis, I have relied upon such information without the independent verification thereof and have not conducted any appraisal.

5 See analysis attached hereto as Exhibit A.

6 The digital imaging patent portfolio valuation, conducted by 284 Partners, LLC, is explained in greater detail in the Declaration of Michael Lasinski filed in Support of the Motion.

7 Based upon certain third party appraisals and preliminary December 31, 2011 book values of the Debtors assets as provided by the Debtors.

analysis also does not represent what is likely a materially higher enterprise value for the Debtors as a going concern.

25. As explained in the First Day Declaration, the Debtors have outstanding Second Lien Note claims of approximately $777 million, inclusive of accrued and unpaid interest up to the chapter 11 filing. Pro forma for a full draw of the $925 million U.S. portion of the proposed DIP facility, total secured debt would total approximately $1.7 billion. Even at the $3.4 billion low end of the valuation range of the selected collateral, there still exists over $1.6 billion of equity cushion above the estimated $1.7 billion of pro forma secured debt, equal to 97% of the total pro forma secured debt. Even if one were to remove all of the estimated $820 million of pro forma cash from the low end of the valuation range, the equity cushion would remain at over $800 million, equal to 49% of the total pro forma secured debt. At the mid-point and high end of the valuation range the equity cushions are obviously much greater.

E. The Debtors' Request for Interim Authority is Appropriately Sized

26. The Debtors have sought the authority, in the Motion, for up to $700 million of availability under the proposed DIP facility. This would be comprised of a $450 million cash draw of the DIP term loan and full availability of the $225 million U.S. portion of the $250 million DIP ABL. Based on the Debtors' 13-Week Projections, the Debtors require this amount of liquidity during the next four weeks to meet their working capital needs, including, without limitation, to repay drawings under the prepetition revolving credit facility, cover letters of credit and secured agreements (primarily related to hedging activities), make various restructuring-related disbursements (professional fees, critical/foreign vendor payments, utility deposits, etc.), pay fees, interest and expenses related to the proposed DIP facility, and meet the minimum

liquidity covenant of the proposed DIP facility[8]. The $225 million U.S. portion of the DIP ABL is only projected to be utilized during the interim period for the unfunded letters of credits and secured agreements and to meet the minimum liquidity covenant; it is not projected to be drawn.

27. I believe that the Debtors' request for interim authority is appropriately sized and tailored to cover their projected liquidity needs pending a final hearing. Absent interim or final approval of the proposed DIP facility, the Debtors' may have to curtail or even terminate their business operations, to the material detriment of all stakeholders.

Conclusion

28. Under current market conditions and the circumstances of these chapter 11 cases, I believe the proposed DIP facility provides financing that is otherwise unavailable to the Debtors on more favorable terms and best meets the Debtors' projected financing needs during these chapter 11 cases, while adequately protecting the collateral of prepetition secured creditors.

29. I declare under penalty of perjury under the laws of the United States of America that I believe the foregoing is true and correct.

New York, New York
Dated: January 19, 2012

By: _____
Matthew J. Hart
Director, Lazard Frères & Co LLC

[8] See analysis attached hereto as Exhibit B.

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, et al.,[1]	Case No. 12-_____ (_____)
Debtors.	(Joint Administration Requested)

DECLARATION OF MICHAEL J. LASINSKI IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS(I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364, AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)

Pursuant to 28 U.S.C. § 1746, I, Michael J. Lasinski, hereby declare as follows:

1. I am a Managing Director and Chief Executive Officer of 284 Partners, LLC – a professional services firm focused on intellectual property ("IP") and business valuation, litigation consulting, IP strategy, and IP transactional services. I have personal, first-hand knowledge of each and every fact set forth in this declaration and, if called upon to testify thereto as a witness, I could and would do so competently. My curriculum vitae is attached as Exhibit 1.

2. My consulting practice has focused on financial aspects of intellectual property since 1995. I have valued IP and IP-related businesses in the contexts of bankruptcy,

[1] 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 Networking, 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.

portfolio of the size and complexity of Kodak's DC and KISS patent portfolios. Furthermore, patent buyers often assign different values to potential cash-flow streams based on their business strategy and exposure to litigation; therefore, the value that any given buyer will assign to Kodak's DC and KISS patent portfolios may vary materially from the valuation analysis conducted by 284 Partners. In addition, patents can have a strategic value to certain industry participants that is greater than cash-flow valuation implies, especially in growth industries and competitive industries with a concentrated number of participants.

The DC and KISS Patent Portfolios

9. The scope of 284 Partners' assignment in this matter was limited to the DC and KISS patent portfolios. 284 Partners understands that the DC and KISS patent portfolios represent only a portion of Kodak's total patents; however, 284 Partners has not conducted any analysis of Kodak patents other than those included in either the DC or KISS patent portfolios.

10. Kodak's DC patent portfolio includes approximately 750 U.S. and 290 foreign patents as well as 120 pending U.S. applications and 215 pending foreign applications. Kodak has historically licensed the DC patent portfolio in the digital still camera, digital video camera, and camera-phone markets. 284 Partners understands that the DC patent portfolio is also relevant to the tablet market.

11. Kodak's KISS patent portfolio includes approximately 400 U.S. patents and 290 foreign patents as well as 140 pending U.S. patent applications and 180 pending foreign patent applications. Kodak has not historically licensed the KISS patent portfolio separate from its overall portfolio; however, we understand that the KISS patent portfolio is relevant to the Social Networking & Websites, and Photo Fulfillment & Software Providers markets.

Licensing in the Relevant Markets

12. Companies operating in the relevant markets for the DC patent portfolio often purchase, license, and litigate patents. The last few years saw significant patent monetization activity in these markets including, but not limited to, the following:

- January 2012: Google bought 217 patents from IBM;[2]
- September 2011: Microsoft licensed Samsung patents covering the Android mobile operating system in return for a running royalty;[3]
- August 2011: Google acquired Motorola Mobility for $12.5 billion, in part due to its patent portfolio;[4]
- June 2011: Nortel sold its patents at auction for over $4.5 billion;[5] and
- June 2011: Apple and Nokia entered into a cross license which included an up-front payment and running royalties to be paid by Apple to Nokia.[6]

13. While patent monetization has been historically less common in the markets relevant to the KISS patent portfolio than in the markets relevant to DC patent portfolio, as the KISS markets grow, patent monetization is likely to become more common. 284 Partners has identified the following historical transactions:

- July 2011: Apple, Groupon, and others settled a patent dispute with Walker Digital for $25 million;[7] and

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2 http://www.theverge.com/2012/1/3/2680128/google-buys-217-IBM-patents

3 http://www.guardian.co.uk/technology/2011/sep/28/samsung-microsoft-android-licensing-dispute

4 http://techcrunch.com/2011/08/15/breaking-google-buys-motorola-for-12-5-billion/

5 http://www.forbes.com/sites/elizabethwoyke/2011/07/07/an-insider-on-the-nortel-patent-auction-and-its-consequences/

6 http://www.bloomberg.com/news/2011-06-14/nokia-apple-payments-to-nokia-settle-all-litigation.html

7 http://www.electronista.com/articles/11/07/25/walker.admits.to.three.recent.wrap.ups/

- August 2010: Facebook purchased seven patents and eleven patent applications from Friendster for $40 million.[8]

Kodak's Historical Licensing Efforts

14. Kodak has an established history of successfully licensing its patents. During its due diligence, 284 Partners reviewed almost 40 Kodak patent license agreements, from which Kodak has earned no less than $3 billion in royalty revenue. Kodak's historical licensees have included large electronics manufacturers operating in the relevant markets; for instance, Kodak licensed Samsung Electronics and LG Electronics for $550 million and $400 million, respectively.[9]

15. Kodak has an established patent licensing group within the company. During its work on this engagement, 284 Partners met with several members of Kodak's IP licensing team, all of whom were knowledgeable about Kodak's patent portfolio, its current monetization efforts, current patent licensing and litigation risks, and Kodak's plans for monetizing its patents in the future.

16. Combined with a high quality patent portfolio, Kodak's historical success in monetizing its patents and the quality of Kodak's patent monetization team strongly suggests that Kodak will likely have the capability to effectively monetize its patents in the future, given the necessary time and resources.

284 Partners and Reed Smith Due Diligence and Valuation Analysis

17. As a starting point for the analysis, Kodak provided 284 Partners and Reed Smith with access to a number of resources including, but not limited to:

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8 http://gigaom.com/2010/08/04/facebook-buys-friendster-patents-for-40m/

9 http://online.wsj.com/article/SB10001424053111903648204576554982192071202.html

- Listing of Patent Assets;
- Kodak Personnel;
- Licensing Plans;
- Kodak's Patent Licenses;
- Kodak's Historical Royalty Receipts;
- Claims Charts; and
- Patent Portfolio Overviews.

18. To value the DC and KISS patent portfolios and related licensing plans, 284 Partners used a cash-flow analysis that projects the expected licensing income and cash-flows from monetizing the patents ("284 Partners Model"), which is sometimes referred to as the Relief-From-Royalty Approach. This approach is based on the premise that a property's value can be measured by quantifying the amount of income the owner would generate by licensing the IP to others. This approach requires the determination of projected royalty payments, which are often derived by multiplying a royalty base times a royalty rate. This approach does not necessarily capture the entire value of an asset. For instance, in *Nestle Holdings, Inc.* v. *Commissioner of Internal Revenue*, the Court found that this approach "fails to capture the value of all of the rights of ownership . . . ."[10] This approach is therefore sometimes considered a conservative measure of the value of an IP portfolio.

DC Portfolio Due Diligence:

19. The 284 Partners Model includes DC patent portfolio licensing revenue from the following markets: Camera Phones, Tablets, Digital Cameras, Camcorders, and

[10] Nestle Holdings, Inc. v. Commissioner of Internal Revenue, 152 F.3d 83, 88 (2d Cir. 1998).

- Interviewed Kodak's management concerning their projected licensing opportunities;
- Interviewed Kodak's management concerning their projection of royalty bearing revenue;
- Interviewed Kodak's management concerning their projected royalty rate;
- Reviewed the publicly available financial information of the projected licensees;
- Reviewed publically available royalty rates for comparable technologies; and
- Reviewed selected patents in the KISS Portfolio.

284 Partners' Findings:

28. Based upon the aforementioned due diligence, 284 Partners projected potential licensees to the DC and KISS patent portfolios, potential licensees' royalty bearing revenues, potential royalty rates by market, and Kodak's licensing and litigation expenses. 284 Partners applied the potential royalty rates to the licensees' projected royalty bearing revenues to quantify Kodak's projected royalty revenue for the DC and KISS patent portfolios. When appropriate, 284 Partners adjusted the royalty revenue projections to reflect the risks inherent in Kodak's current, and expected, licensing efforts. From these royalty revenue projections, 284 Partners deducted Kodak's projected licensing and litigation expenses to arrive at projected pre-tax cash-flows.

29. 284 Partners projected pre-tax cash-flows from the DC and KISS patent portfolios of $3.07 billion during the period 2012-2020. These pre-tax cash-flows are consistent with Kodak's historical licensing revenues generated over a similar period and are very conservative relative to its current licensing opportunities and plans.

30. To determine the Net Present Value (NPV) of the pre-tax cash-flows, 284 Partners has discounted them at rates of 8%, 12%, and 16% which results in NPVs of $2.57

billion, $2.38 billion, and $2.21 billion, respectively. The mid-point of this range is consistent with the Weighted Average Cost of Capital ("WACC") for SIC Code 6794 (Patent Owners and Lessors).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 18th day of January, 2012.

New York, New York
Dated: January 18, 2012

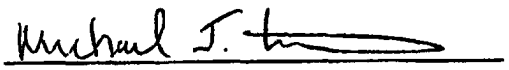
By: 
Michael J. Lasinski

EXHIBIT E

Bloomberg

Kodak Pushes Patent Value With Apple, HTC Lawsuits as It Seeks Turnaround

By Susan Decker - Jan 11, 2012

Eastman Kodak Co. (EK), seeking to sell or license a portfolio of more than 1,100 patents, sued Apple Inc. and HTC Corp. (2498) in an expansion of a legal strategy that may help boost the value of its inventions to fund a turnaround.

Two infringement lawsuits filed yesterday in federal court in Rochester, New York, accuse the smartphone makers of using without permission Kodak technology for image transmission, including a way for users to share images directly from cameras. Kodak also claims HTC is infringing an additional patent for a preview feature, which is at the center of a U.S. International Trade Commission case against Apple and Research In Motion Ltd. (RIM)

"They're trying to generate value for their patent portfolio," said Ron Epstein, chief executive officer of patent brokerage Epicenter IP Group LLC in Redwood City, California.

Kodak, predicted by analysts to report its fourth straight annual net loss Jan. 26, has put the company's digital-imaging patents up for sale to help fund changes to its business. CEO Antonio Perez, who is betting on digital printers for publishers, packagers, advertisers and households to lift Kodak, has said the Apple-RIM trade commission case may generate $1 billion in new revenue from settlements.

Kodak didn't say how much the new Apple and HTC cases could be worth. The company filed companion complaints at the trade commission yesterday in Washington, seeking to block U.S. imports of products including Apple's iPad and iPhone, and HTC's Flyer tablet and Wildfire S phone that are made overseas.

Bankruptcy Risk

"This is an important part of ongoing operations to get them through the transition," said Erin-Michael Gill, chief intellectual property officer for MDB Capital Group LLC, a Santa Monica, California-based investment bank. "A bad sign would be them sitting on their hands and waiting for these to sell."

Kodak rose 22 cents, or 36 percent, to 82 cents at 4:15 p.m. in New York Stock Exchange trading. That follows a 50 percent jump in shares yesterday after the company reported a restructuring of its management.

Kodak said last year it hired Lazard Ltd. to help it sell the patents and retained Jones Day among advisers helping on strategic options.

The civil suits may be put on hold while the ITC conducts its investigations. The agency seeks to complete investigations in 16 to 18 months, though it's been forced to extend that target in many cases because of the deluge of litigation over mobile devices.

Portfolio Perceptions

The Apple-RIM trade commission case filed in 2010, involving the single image-preview patent, has met with delays including the retirement of the judge handling the case, and a final decision isn't scheduled until September.

Moody's Investors Service on Jan. 5 cut ratings on about $1 billion of Kodak debt with a negative outlook, citing "a heightened probability of a bankruptcy over the near-term" as liquidity deteriorates, making a patent sale more challenging.

Adding four new patents into the mix "helps, even without litigating any of the issues, to counteract the impression that there's only one good patent" in the portfolio, said Ron Laurie, managing director of Inflexion Point Strategy LLC in Palo Alto, California, which counsels companies on intellectual property purchases. Kodak "wanted to defuse that impression."

The four patents asserted against Apple and HTC have as co-inventor Kodak researcher Kenneth Parulski, who has more than 190 patents and is "recognized as a pioneer in numerous digital camera technologies," according to the complaints.

Infringement Claims

Kodak claims infringement by Apple's iPad 2, iPhone and iPod Touch, and by HTC's tablets and phones, including the Flyer, EVO View 4G, Jetstream, Vivid, Amaze 4g, Desire, Hero S, Rezound, Rhyme, Sensation 4G and Wildfire S.

"We've had numerous discussions with both companies in an attempt to resolve this issue, and we have not been able to reach a satisfactory agreement," Laura Quatela, Kodak's chief operating officer and a president, said in a statement. "Our primary interest is not to disrupt the availability of any product but to obtain fair compensation for the unauthorized use of our technology."

HTC, based in Taoyuan, Taiwan, had no comment on the complaints. Officials with Cupertino, California-based Apple didn't reply to a request for comment.

Selling patents and debt will help determine "the company's ability to continue its operations" in the next 12 months, Kodak said in a quarterly regulatory filing in November. Kodak said then it would pursue licensing opportunities for the patents if unable to sell them at "an appropriate price."

Kodak, which lost 88 percent of its stock market value last year, has struggled since demand for photographic film began evaporating as the world embraced digital cameras. Kodak's cash and equivalents fell to $862 million at the end of its third quarter from $1.4 billion a year earlier.

Management Changes

Kodak said yesterday it was adjusting its management structure and creating a chief operating office to reduce costs as its sales decline and cash reserves dwindle.

The chief operating office will be led by Quatela and Philip Faraci, both presidents at Kodak. Faraci will focus on the commercial segment and sales and regional operations, and Quatela, who had been the company's chief intellectual property officer, will lead the consumer segment and certain corporate functions, Kodak said.

The company's $162 million market value at yesterday's close "is lower than the potential damages" the company could generate from litigation, Epstein said.

"They're looking at the mobile device companies and saying, 'The brilliance of your user interface and product integration does not detract from the fact that you have integrated my innovation into your product and you owe me something for it,'" Epstein said.

The new case against Apple is Eastman Kodak Co. v. Apple Inc. (AAPL), 12cv6020, and the case against HTC is Eastman Kodak Co. v. HTC, 12cv6021, both U.S. District Court for the Western District of New York (Rochester).

The ITC case is In the Matter of Electronic Devices for Capturing and Transmitting Images, Complaint No. 2869, U.S. International Trade Commission (Washington).

To contact the reporter on this story: Susan Decker in Washington at sdecker1@bloomberg.net

To contact the editors responsible for this story: Michael Shepard at mshepard7@bloomberg.net

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EXHIBIT F

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Proposed Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	Case No. 12-_____ (____)
Debtors.	(Joint Administration Requested)

DEBTORS' MOTION FOR AN ORDER AUTHORIZING RESTRICTIONS ON CERTAIN TRANSFERS OF INTERESTS IN THE DEBTORS AND ESTABLISHING NOTIFICATION PROCEDURES RELATING THERETO PURSUANT TO SECTIONS 105(a) AND 362 OF THE BANKRUPTCY CODE

Eastman Kodak Company ("**Kodak**"), on behalf of itself and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), hereby submits this motion (the "**Motion**") for entry of an order, substantially in the form attached hereto as Exhibit A (the "**Proposed Order**"), authorizing the Debtors to establish procedures to protect the potential

[1] 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.

Facts Specific to the Relief Requested

A. The Tax Attributes

4. The Debtors have recently incurred, and are currently incurring, significant net operating losses ("**NOLs**") for U.S. federal income tax purposes. For tax periods through the 2010 tax year, the Debtors have reported on their federal income tax returns, as adjusted to account for certain settlements, (i) approximately $1.1 billion of consolidated NOLs, and the Debtors estimate that as of December 31, 2011, they have incurred additional NOLs of approximately $800 million; (ii) approximately $592 million of foreign tax credits ("**FTCs**"), and the Debtors estimate that as of December 31, 2011, they have incurred additional FTCs of approximately $64 million; and (iii) approximately $17 million of Federal Research and Development Credits ("**R&D Credits**"), and the Debtors estimate that as of December 31, 2011, they have incurred additional R&D Credits of approximately $1.5 million. The Debtors also have additional state, local and foreign tax attributes, and may have net unrealized built-in tax losses (collectively, the "**Tax Attributes**").

B. Use of the Tax Attributes during the Pendency of these Cases

5. Kodak expects to sell significant assets during the pendency of these chapter 11 cases. Kodak may recognize substantial gain or other income in connection with certain of these transactions and may, depending on market conditions, recognize significant additional income or gain in connection with certain other events. As explained below, the Tax Attributes would contribute substantial value to the estate by offsetting such gains.

6. The Tax Attributes may be valuable assets of the estates because title 26 of the United States Code (the "**Tax Code**") generally permits corporations to carry forward their losses and tax credits to offset future income. *See, e.g.*, I.R.C. § 172 (NOLs), § 904(c) (FTCs),

EXHIBIT G

10-K 1 ek2010_10k.htm EASTMAN KODAK COMPANY 10-K FILING

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

X Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the year ended December 31, 2010 or

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from to

Commission File Number 1-87

EASTMAN KODAK COMPANY
(Exact name of registrant as specified in its charter)

NEW JERSEY (State of incorporation)	**16-0417150** (IRS Employer Identification No.)
343 STATE STREET, ROCHESTER, NEW YORK (Address of principal executive offices)	**14650** (Zip Code)
Registrant's telephone number, including area code:	**585-724-4000**

Securities registered pursuant to Section 12(b) of the Act:

Title of each Class	Name of each exchange on which registered
Common Stock, $2.50 par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes [X] No [ ]

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes [ ] No [X]

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days.
Yes [X] No [ ]

Contractual Obligations

The impact that contractual obligations are expected to have on the Company's cash flow in future periods is as follows:

		As of December 31, 2010					
(in millions)	Total	2011	2012	2013	2014	2015	2016+
Long-term debt (1)	$ 1,363	$ 50	$ 50	$ 350	$ -	$ -	$ 913
Interest payments on debt	600	100	100	97	78	78	147
Operating lease obligations	292	75	66	45	27	21	58
Purchase obligations (2)	717	340	271	40	18	16	32
Total (3) (4) (5) (6)	$ 2,972	$ 565	$ 487	$ 532	$ 123	$ 115	$ 1,150

(1) Represents the maturity values of the Company's long-term debt obligations. See Note 8, "Short-Term Borrowings and Long-Term Debt," in the Notes to Financial Statements.

(2) Purchase obligations include agreements related to raw materials, supplies, production and administrative services, as well as marketing and advertising, that are enforceable and legally binding on the Company and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. Purchase obligations exclude agreements that are cancelable without penalty. The terms of these agreements cover the next one to eleven years.

(3) Due to uncertainty regarding the completion of tax audits and possible outcomes, the remaining estimate of the timing of payments related to uncertain tax positions and interest cannot be made. See Note 15, "Income Taxes," in the Notes to Financial Statements for additional information regarding the Company's uncertain tax positions.

(4) Kodak Limited, a wholly owned subsidiary of the Company, has agreed with the Trustees of the Kodak Pension Plan of the United Kingdom (the "Plan" or "KPP") to make certain contributions to the Plan. Under the terms of this agreement, Kodak Limited is obligated to pay a minimum amount of $50 million to the KPP in each of the years 2011 through 2014, and a minimum amount of $90 million to the KPP in each of the years 2015 through 2022. The payment amounts for the years 2015 through 2022 could be lower, and the payment amounts for 2011 through 2022 could be higher by up to $5 million per year, based on the exchange rate between the U.S. dollar and British pound. The minimum amounts do not include certain potential contributions which could be required if Kodak Limited received a cash tax benefit as a result of the minimum contributed amount. These amounts of future contributions have not been included in the table above, as in total they are dependent on the funded status of the KPP as it fluctuates over the term of the agreement.

(5) In addition to the pension contributions related to the KPP noted in (4) above, funding requirements for the Company's other major defined benefit retirement plans and other postretirement benefit plans have not been determined, therefore, they have not been included. In 2010, the Company made contributions to its major defined benefit retirement plans and benefit payments for its other postretirement benefit plans including the KPP of $112 million ($22 million relating to its U.S. defined benefit plans) and $159 million ($154 million relating to its U.S. other postretirement benefits plan), respectively. The Company expects to contribute approximately $110 million ($21 million relating to its U.S. defined benefit plans) and $133 million ($127 million relating to its U.S. other postretirement benefits plan), respectively, to its defined benefit plans and other postretirement benefit plans in 2011, including KPP contributions noted in (4) above.

(6) Because their future cash outflows are uncertain, the other long-term liabilities presented in Note 9, "Other Long-Term Liabilities," in the Notes to Financial Statements are excluded from this table.

In 2008, the Company recorded a contingency accrual of approximately $21 million related to employment litigation matters in the U.S. The employment litigation matters related to a number of cases, which had similar fact patterns related to legacy equal employment opportunity issues. On April 27, 2009, the plaintiffs filed an unopposed motion for preliminary approval of a settlement in this action pursuant to which the Company established a settlement fund in the amount of $21 million that will be used for payments to plaintiffs and class members, as well as attorney's fees, litigation costs, and claims administration costs. The settlement has been approved by the court, and as of January 2011, all amounts related to these matters have been paid.

The Company and its subsidiaries are involved in various lawsuits, claims, investigations and proceedings, including commercial, customs, employment, environmental, and health and safety matters, which are being handled and defended in the ordinary course of business. In addition, the Company is subject to various assertions, claims, proceedings and requests for indemnification concerning intellectual property, including patent infringement suits involving technologies that are incorporated in a broad spectrum of the Company's products. These matters are in various stages of investigation and litigation and are being vigorously defended. Although the Company does not expect that the outcome in any of these matters, individually or collectively, will have a material adverse effect on its financial condition or results of operations, litigation is inherently unpredictable. Therefore, judgments could be rendered or settlements entered that could adversely affect the Company's operating results or cash flow in a particular period. The Company routinely assesses all its litigation and threatened litigation as to the probability of ultimately incurring a liability, and records its best estimate of the ultimate loss in situations where it assesses the likelihood of loss as probable.

NOTE 11: GUARANTEES

The Company guarantees debt and other obligations of certain customers. The debt and other obligations are primarily due to banks and leasing companies in connection with financing of customers' purchases of equipment and product from the Company. At December 31, 2010, the maximum potential amount of future payments (undiscounted) that the Company could be required to make under these customer-related guarantees was $47 million. At December 31, 2010, the carrying amount of any liability related to these customer guarantees was not material.

The customer financing agreements and related guarantees, which mature between 2011 and 2016, typically have a term of 90 days for product and short-term equipment financing arrangements, and up to five years for long-term equipment financing arrangements. These guarantees would require payment from the Company only in the event of default on payment by the respective debtor. In some cases, particularly for guarantees related to equipment financing, the Company has collateral or recourse provisions to recover and sell the equipment to reduce any losses that might be incurred in connection with the guarantees. However, any proceeds received from the liquidation of these assets may not cover the maximum potential loss under these guarantees.

Eastman Kodak Company ("EKC") also guarantees potential indebtedness to banks and other third parties for some of its consolidated subsidiaries. The maximum amount guaranteed is $261 million, and the outstanding amount for those guarantees is $238 million with $109 million recorded within the Short-term borrowings and current portion of long-term debt, and Long-term debt, net of current portion components in the accompanying Consolidated Statement of Financial Position. These guarantees expire in 2010 through 2019. Pursuant to the terms of the Company's Amended Credit Agreement, obligations of the Borrowers to the Lenders under the Amended Credit Agreement, as well as secured agreements in an amount not to exceed $100 million, are guaranteed by the Company and the Company's U.S. subsidiaries and included in the above amounts. These secured agreements totaled $90 million as of December 31, 2010.

During the fourth quarter of 2007, EKC issued a guarantee to Kodak Limited (the "Subsidiary") and the Trustees (the "Trustees") of the Kodak Pension Plan of the United Kingdom (the "Plan"). Under that arrangement, EKC guaranteed to the Subsidiary and the Trustees the ability of the Subsidiary, only to the extent it becomes necessary to do so, to (1) make contributions to the Plan to ensure sufficient assets exist to make plan benefit payments, and (2) make contributions to the Plan such that it will achieve full funded status by the funding valuation for the period ending December 31, 2015. On October 12, 2010, the 2007 guarantee was replaced by a new guarantee from EKC to the Subsidiary and the Trustees. The new guarantee continues to guarantee the Subsidiary's ability to make contributions as set forth in the 2007 guarantee but extends the full funding date to December 31, 2022. The new guarantee expires (a) upon the conclusion of the funding valuation for the period ending December 31, 2022 if the Plan achieves full funded status or on payment of the balance if the Plan is underfunded by no more than

60 million British pounds by that date, (b) earlier in the event that the Plan achieves full funded status for two consecutive funding valuation cycles which are typically performed at least every three years, or (c) June 30, 2024 on payment of the balance in the event that the Plan is underfunded by more than 60 million British pounds upon conclusion of the funding valuation for the period ending December 31, 2022. The amount of potential future contributions is dependent on the funding status of the Plan as it fluctuates over the term of the guarantee and the United Kingdom Pension Regulator's approval of a funding plan agreed to by the Subsidiary and the Trustees to close the funding gap identified by the Plan's most recent local statutory funding valuation agreed to in March 2009. The funded status of the Plan (calculated in accordance with U.S. GAAP) is included in Pension and other postretirement liabilities presented in the Consolidated Statement of Financial Position.

Indemnifications

The Company issues indemnifications in certain instances when it sells businesses and real estate, and in the ordinary course of business with its customers, suppliers, service providers and business partners. Further, the Company indemnifies its directors and officers who are, or were, serving at the Company's request in such capacities. Historically, costs incurred to settle claims related to these indemnifications have not been material to the Company's financial position, results of operations or cash flows. Additionally, the fair value of the indemnifications that the Company issued during the year ended December 31, 2010 was not material to the Company's financial position, results of operations or cash flows.

Warranty Costs

The Company has warranty obligations in connection with the sale of its products and equipment. The original warranty period is generally one year or less. The costs incurred to provide for these warranty obligations are estimated and recorded as an accrued liability at the time of sale. The Company estimates its warranty cost at the point of sale for a given product based on historical failure rates and related costs to repair. The change in the Company's accrued warranty obligations balance, which is reflected in Other current liabilities in the accompanying Consolidated Statement of Financial Position, was as follows:

(in millions)

Accrued warranty obligations as of December 31, 2008	$ 65
Actual warranty experience during 2009	(92)
2009 warranty provisions	88
Accrued warranty obligations as of December 31, 2009	$ 61
Actual warranty experience during 2010	(72)
2010 warranty provisions	54
Accrued warranty obligations as of December 31, 2010	$ 43

for 2009, but resumed it in 2010.

The Company also sponsors unfunded defined benefit plans for certain U.S. employees, primarily executives. The benefits of these plans are obtained by applying KRIP provisions to all compensation, including amounts being deferred, and without regard to the legislated qualified plan maximums, reduced by benefits under KRIP. Employees covered by the Cash Balance plan also receive an additional benefit equal to 3% of their annual pensionable earnings. The Company suspended this additional benefit for 2009, but resumed it in 2010.

Many subsidiaries and branches operating outside the U.S. have defined benefit retirement plans covering substantially all employees. Contributions by the Company for these plans are typically deposited under government or other fiduciary-type arrangements. Retirement benefits are generally based on contractual agreements that provide for benefit formulas using years of service and/or compensation prior to retirement. The actuarial assumptions used for these plans reflect the diverse economic environments within the various countries in which the Company operates.

The measurement date used to determine the pension obligation for all funded and unfunded U.S. and Non-U.S. defined benefit plans is December 31.

Information regarding the major funded and unfunded U.S. and Non-U.S. defined benefit plans follows:

(in millions)	2010		2009	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Change in Benefit Obligation				
Projected benefit obligation at January 1	$ 4,842	$ 3,527	$ 4,602	$ 2,958
Acquisitions/divestitures/other transfers	-	-	(1)	2
Service cost	48	14	52	14
Interest cost	263	177	293	178
Participant contributions	-	3	-	9
Plan amendments	-	45	-	3
Benefit payments	(511)	(218)	(663)	(235)
Actuarial loss	402	181	500	374
Curtailments	-	(5)	(19)	(3)
Settlements	-	(2)	-	(1)
Special termination benefits	27	1	78	5
Currency adjustments	-	(87)	-	223
Projected benefit obligation at December 31	$ 5,071	$ 3,636	$ 4,842	$ 3,527
Change in Plan Assets				
Fair value of plan assets at January 1	$ 4,758	$ 2,502	$ 5,098	$ 2,317
Acquisitions/divestitures	-	-	-	4
Actual gain on plan assets	592	320	292	151
Employer contributions	22	90	31	88
Participant contributions	-	3	-	9
Settlements	-	(2)	-	(1)
Benefit payments	(511)	(218)	(663)	(235)
Currency adjustments	-	(61)	-	169
Fair value of plan assets at December 31	$ 4,861	$ 2,634	$ 4,758	$ 2,502
Under Funded Status at December 31	$ (210)	$ (1,002)	$ (84)	$ (1,025)
Accumulated benefit obligation at December 31	$ 4,881	$ 3,545	$ 4,683	$ 3,436

EXHIBIT H

Pension Benefit Guaranty Corporation
A U.S. Government Agency

Statement from PBGC on Bankruptcy Filing of Kodak Corporation

FOR IMMEDIATE RELEASE
January 19, 2012

WASHINGTON—Pension Benefit Guaranty Corporation released the following statement today on the bankruptcy filing by Kodak Corporation:

"Kodak's U.S. pension plans are reasonably well funded and we want to make sure they stay that way. We will actively participate in Kodak's bankruptcy to protect Kodak's pension plans for their workers and retirees."

Kodak sponsors two traditional pension plans that cover nearly 63,000 people. The plans are 86% funded, with about $4.9 billion in assets to cover about $5.6 billion in benefits.

NOTE TO KODAK WORKERS AND RETIREES:

Your pension plan is ongoing, under the sponsorship of Kodak. PBGC cannot answer specific questions about your individual benefit. For information on the status of your benefit, contact your Kodak plan administrator.

UPDATE:

On January 25, the bankruptcy court appointed PBGC to the Kodak creditors' committee, where the agency will work to protect Kodak's pension plans.
Read full story at Bloomberg.com.

About PBGC

PBGC protects the pension benefits of 44 million Americans in 27,500 private-sector pension plans. The agency is directly responsible for paying the benefits of more than 1.5 million people in failed pension plans. PBGC receives no taxpayer dollars and never has. Its operations are financed by insurance premiums and with assets and recoveries from failed plans.

—###—

PBGC No. 12-13

EXHIBIT I

10-Q 1 ekq32011_10q.htm EASTMAN KODAK COMPANY 10-Q FILING

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

[X] Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended September 30, 2011
or
[ ] Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from ___ to ___

Commission File Number 1-87

EASTMAN KODAK COMPANY
(Exact name of registrant as specified in its charter)

NEW JERSEY	**16-0417150**
(State of incorporation)	(IRS Employer Identification No.)
343 STATE STREET, ROCHESTER, NEW YORK	**14650**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: 585-724-4000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days.
Yes [X] No [ ]

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months.
Yes [X] No [ ]

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.
Large accelerated filer [X] Accelerated filer [ ] Non-accelerated filer [ ] Smaller reporting company [ ]

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes [ ] No [X]

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Title of each Class	**Number of shares Outstanding at October 28, 2011**
Common Stock, $2.50 par value	**269,954,791**

(1) approximately 17.3 million outstanding employee stock options, (2) approximately 40.0 million outstanding detachable warrants to purchase common shares, and (3) approximately $313 million of convertible senior notes due 2017 would still have been excluded from the computation of diluted earnings per share, as these securities were anti-dilutive.

If the Company had reported earnings from continuing operations for the quarter ended September 30, 2010, approximately 2.0 million potential shares of the Company's common stock from unvested share-based awards would have been included in the computation of diluted earnings per share. However, potential shares of the Company's common stock related to the assumed conversion of (1) approximately 18.7 million outstanding employee stock options, (2) approximately 40.0 million outstanding detachable warrants to purchase common shares, and (3) approximately $313 million of convertible senior notes due 2017 would still have been excluded from the computation of diluted earnings per share, as these securities were anti-dilutive.

NOTE 13: SHAREHOLDERS' EQUITY

The Company has 950 million shares of authorized common stock with a par value of $2.50 per share, of which 391 million shares had been issued as of September 30, 2011 and December 31, 2010. Treasury stock at cost consisted of approximately 121 million and 122 million shares as of September 30, 2011 and December 31, 2010, respectively.

Net Operating Loss Rights Agreement

On August 1, 2011, the Company entered into a Net Operating Loss (NOL) Rights Agreement (NOL Rights Agreement) designed to preserve stockholder value and tax assets. The Company's ability to use its tax attributes to offset tax on U.S. taxable income would be substantially limited if there were an "ownership change" as defined under Section 382 of the U.S. Internal Revenue Code. In general, an ownership change would occur if "5-percent shareholders," as defined under Section 382, collectively increase their ownership in the Company by more than 50 percentage points over a rolling three-year period.

In connection with the adoption of the NOL Rights Agreement, the Company's Board of Directors declared a dividend of one preferred share purchase right for each outstanding share of the Company's common stock. The preferred share purchase rights were distributed to stockholders of record as of August 11, 2011, but would only be activated if triggered by the NOL Rights Agreement.

Under the NOL Rights Agreement, preferred share purchase rights will work to impose significant dilution upon any person or group which acquires beneficial ownership of 4.9% or more of the outstanding common stock, without the approval of the Company's Board of Directors, from and after August 1, 2011. Stockholders that own 4.9% or more of the outstanding common stock as of the opening of business on August 1, 2011, will not trigger the preferred share purchase rights so long as they do not (i) acquire additional shares of common stock representing one one-thousandth of one percent (0.001%) or more of the shares of common stock then outstanding or (ii) fall under 4.9% ownership of common stock and then re-acquire shares that in the aggregate equal 4.9% or more of the common stock.

The NOL Rights Agreement has a three-year term, although the Company's Board of Directors will review the plan periodically.

EXHIBIT J

Docket #0056 Date Filed: 1/20/2012

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	Case No. 12-10202 (ALG)
Debtors.	Jointly Administered

INTERIM ORDER AUTHORIZING RESTRICTIONS ON CERTAIN TRANSFERS OF INTERESTS IN THE DEBTORS AND ESTABLISHING NOTIFICATION PROCEDURES RELATING THERETO PURSUANT TO SECTIONS 105(A) AND 362 OF THE BANKRUPTCY CODE

Upon the motion (the "**Motion**")[2] of Eastman Kodak Company ("**Kodak**"), on behalf of itself and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), for interim and final orders authorizing restrictions on certain transfers of interests in the Debtors and establishing notification procedures relating thereto pursuant to sections 105(a) and 362 of the Bankruptcy Code; and upon consideration of the First Day Declaration; and 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 it

[1] 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.

[2] All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Motion.

appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS FOUND THAT:

1. Kodak's consolidated net operating loss tax carryforwards ("**NOLs**") and certain other tax attributes described in the Motion (together with NOLs, the "**Tax Attributes**") are property of the Debtors' estates and are protected by the automatic stay prescribed in section 362 of the Bankruptcy Code;

2. Unrestricted trading of certain equity interests in Kodak during the pendency of the bankruptcy could severely limit the Debtors' ability to utilize the Tax Attributes for purposes of title 26 of the United States Code (the "**Tax Code**");

3. Under certain circumstances, the accumulation of Debt Securities prior to the Debtors' (or their successors') potential emergence of the Debtors from chapter 11 could, following any such emergence, severely limit the Debtors' (or successors') ability to use the Tax Attributes;

4. The notification procedures and restrictions on transfers of Kodak common stock and options to acquire such stock (including securities convertible into such stock) are necessary and proper to preserve the Tax Attributes and therefore are in the best interests of the Debtors, their estates, and their creditors;

5. The restrictions and procedures applicable to the accumulation of Debt Securities are necessary and proper to preserve the availability of the Tax Attributes following the Debtor's (or their successors') emergence, and are therefore in the best interests of the Debtors, their estates, and their creditors; and

6. The relief requested in the Motion is authorized under sections 105(a) and 362 of the Bankruptcy Code.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Final Hearing shall be held on **February 15, 2012 at 11:00 a.m.** prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before **February 8, 2012 at 4:00 p.m (the "Objection Deadline")** and served on parties in interest as required by the Local Rules. An objection shall be considered timely if it is (a) filed with the United States Bankruptcy Court for the Southern District of New York, and (b) served upon (i) the Debtors, c/o Eastman Kodak Company, 343 State Street, Rochester, New York 14650 (Attn: Patrick M. Sheller, Esq.); (ii) Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 (Attn: Michael H. Torkin, Esq. and Noam B. Katz, Esq.), attorneys for the Debtors; and (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 before the Objection Deadline. This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

3. The provisions of this Order shall be effective, *nunc pro tunc*, to the date of the Motion.

4. Any acquisition, disposition or other transfer in violation of the restrictions set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay prescribed in section 362 of the Bankruptcy Code and pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code. For purposes of this Order, any trades made before the filing of the Motion shall not be subject to this Order.

5. The following procedures and restrictions shall apply to trading in Kodak Stock and are approved:

(1) Acquisition of Kodak Stock or Options. At least 20 calendar days prior to the proposed date of any transfer of equity securities (including Options, as defined below, to acquire such securities) that would result in an increase in the amount of Kodak Stock beneficially owned by any person or Entity (as defined below) who currently is or becomes a Substantial Equityholder (as defined below) or that would result in a person or Entity becoming a Substantial Equityholder (a **"Proposed Equity Acquisition Transaction"**), such person, Entity or Substantial Equityholder (a **"Proposed Equity Transferee"**) shall file with the Court, and serve upon the Debtors and Debtors' counsel, and upon Davis Polk & Wardwell LLP, counsel to the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a Notice of Intent to Purchase, Acquire or Otherwise Accumulate Kodak Stock (an **"Equity Acquisition Notice"**), in the form attached to the Motion as Exhibit C, specifically and in detail describing the proposed transaction in which Kodak Stock would be acquired. At the holder's election, the Equity Acquisition Notice to be filed with the Court may be redacted to exclude such holder's taxpayer identification number and the number of shares of Kodak Stock that such holder beneficially owns and proposes to purchase or otherwise acquire.

(2) Disposition of Kodak Stock or Options. At least 20 calendar days prior to the proposed date of any transfer of equity securities (including Options to acquire such securities) that would result in a decrease in the amount of Kodak Stock beneficially owned by a Substantial Equityholder or that would result in a person or Entity ceasing to be a Substantial Equityholder (a **"Proposed Equity Disposition Transaction"** and, together with a Proposed Equity Acquisition Transaction, a **"Proposed Equity Transaction"**), such person, Entity or Substantial Equityholder (a **"Proposed Equity Transferor"**) shall file with the Court, and serve upon the Debtors and Debtors' counsel, and upon Davis Polk & Wardwell LLP, counsel to the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a Notice of Intent to Sell, Trade or Otherwise Transfer Kodak Stock (an **"Equity Disposition Notice"**, and together with an Equity Acquisition Notice, an **"Equity Trading Notice"**), in the form attached to the Motion as Exhibit D, specifically and in detail describing the proposed transaction in which Kodak Stock would be transferred. At the holder's election, the Equity Disposition Notice to be filed with the Court may be redacted to exclude such holder's taxpayer identification number and the number of shares of Kodak Stock that such holder beneficially owns and proposes to sell or otherwise transfer.

(3) Objection Procedures. The Debtors shall have 15 calendar days after the filing of an Equity Trading Notice (the **"Equity Objection Deadline"**) to file with the

Court and serve on a Proposed Equity Transferee or a Proposed Equity Transferor, as the case may be, and upon Davis Polk & Wardwell LLP, counsel to the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, an objection to any proposed transfer of Kodak Stock described in such Equity Trading Notice on the grounds that such transfer may adversely affect the Debtors' ability to utilize the Tax Attributes (an "**Equity Objection**") as a result of an ownership change under section 382 or section 383 of the Tax Code.

a) If the Debtors file an Equity Objection by the Equity Objection Deadline, then the Proposed Equity Acquisition Transaction or the Proposed Equity Disposition Transaction shall not be effective unless approved by a final and nonappealable order of this Court.

b) If the Debtors do not file an Equity Objection by the Equity Objection Deadline, or if the Debtors provide written authorization to the Proposed Equity Transferor approving the Proposed Equity Acquisition Transaction or the Proposed Equity Disposition Transaction, as the case may be, prior to the Equity Objection Deadline, then such Proposed Equity Acquisition Transaction or the Proposed Equity Disposition Transaction, as the case may be, may proceed solely as specifically described in the Equity Trading Notice. Any further Proposed Equity Transaction must be the subject of additional notices as set forth herein, with an additional 20 calendar day waiting period.

(4) Unauthorized Transactions in Kodak Stock or Options. Effective as of the filing of the Motion and until further order of the Court to the contrary, any acquisition, disposition or other transfer of Kodak Stock, including Options to acquire Kodak Stock, in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under sections 362 and 105(a) of the Bankruptcy Code.

(5) Definitions. For purposes of the Order:

a) Substantial Equityholder. Means any person or entity that beneficially owns at least:

(i) 4.50% of all outstanding shares of Kodak common stock, as defined for federal income tax purposes;

(ii) 4.50% of the outstanding shares of any class of Kodak securities convertible into Kodak common stock, as defined for federal income tax purposes.

b) Entity. Has the meaning given to such term under Treasury Regulation section 1.382-3(a), including a group of persons who have a formal or

informal understanding among themselves to make a coordinated acquisition.

c) Beneficial Ownership. Beneficial ownership (or any variation thereof of Kodak Stock and Options to acquire Kodak Stock) shall be determined in accordance with applicable rules under section 382 of the Tax Code, the U.S. Department of Treasury regulations ("**Treasury Regulations**") promulgated thereunder and rulings issued by the Internal Revenue Service (the "**IRS**"), and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (i) direct and indirect ownership (*e.g.*, a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (ii) ownership by a holder's family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock and (iii) in certain cases, the ownership of an Option to acquire Kodak Stock.

d) Option. An Option to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.

e) Kodak Stock. Means Kodak common stock. For the avoidance of doubt, by operation of the definition of beneficial ownership, an owner of an Option to acquire Kodak Stock may be treated as the owner of such Kodak Stock.

(6) The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in the Order.

7. The following restrictions and procedures applicable to certain transfers of Debt Securities are approved:

(1) Notice of 382(l)(5) Plan; Amended Notice of 382(l)(5) Plan.[3]

a) Notice of 382(l)(5) Plan. Upon filing a chapter 11 plan and disclosure statement that contemplates the potential utilization of section 382(l)(5) of the Tax Code (a "**382(l)(5) Plan**"), the Debtors may, if, after consultation with their counsel and advisors and counsel and advisors for the Creditors' Committee and the agent for the Debtors' postpetition secured debtor-in-possession financing, they determine that the application of section

[3] Capitalized terms used in Paragraphs 1-9 have the meaning ascribed in Paragraph 7, if not otherwise defined herein.

382(l)(5) of the Tax Code is reasonably likely to be beneficial to the reorganized Debtors (or any successors thereto), (i) publish (or arrange for publication of) a notice and provide a written notice to the Debt Notice Parties, disclosing the filing of such 382(l)(5) Plan and the potential issuance of a Sell-Down Notice (as defined in Paragraph 3(a) below) in connection therewith on the website established by Debtors' claims agent: http://www.kccllc.com/kodak and in the national editions of *The Wall Street Journal* and *The New York Times* (a **"Notice of 382(l)(5) Plan"**), (ii) identify the classes of Debt Securities that are potentially subject to a Sell-Down Notice and (iii) identify the applicable Threshold Amounts (by class or other applicable breakdown) for status as a Substantial Securityholder.

b) Amended Notice of 382(l)(5) Plan. The Debtors may determine subsequent to the date of the Notice of 382(l)(5) Plan or an Amended Notice of 382(l)(5) Plan (as defined below), to (i) adjust the Threshold Amount or (ii) identify additional classes of Debt Securities that are potentially subject to a Sell-Down Notice. In that case, the Debtors shall publish and provide notice of such additional amount and/or such additional class of Debt Securities in the same manner as the Notice of 382(l)(5) Plan and such notice shall be an **"Amended Notice of 382(l)(5) Plan."** The Amended Notice of 382(l)(5) Plan shall require (x) any person or Entity that previously served a Notice of Substantial Securityholder Status to update information regarding such Substantial Securityholder's Beneficial Ownership of Debt Securities and (y) any person or Entity that is a Substantial Securityholder as of the date of the most recent Amended Notice of 382(l)(5) Plan, but that was not previously required to serve a Notice of Substantial Securityholder Status (an **"Additional Substantial Securityholder"**), to serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a notice of such status in the manner prescribed in Paragraph 2 below within fifteen calendar days of the date of the Amended Notice of 382(l)(5) Plan.

c) Early Notice. The Debtors reserve the right, in order to assist in determining their eligibility for section 382(l)(5) of the Tax Code, to request in a manner consistent with the publication of the Notice of 382(l)(5) Plan described above, information regarding the Beneficial Ownership of Debt Securities prior to the filing of the Notice of 382(l)(5) Plan.

(2) Notice of Substantial Securityholder Status. Following a request for Beneficial Ownership information pursuant to (i) a Notice of 382(l)(5) Plan, (ii) an Amended Notice of 382(l)(5) Plan or (iii) Paragraph 1(c) above, any person or Entity that as

of the date such request is made (the "**Request Date**") is or becomes a Substantial Securityholder shall serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a notice of such status (a "**Notice of Substantial Securityholder Status**"), in the form attached to the Motion as Exhibit E, within 15 calendar days of the later of (i) the Request Date and (ii) the date such person becomes a Substantial Securityholder.

(3) Sell-Down Notices.

a) Sell-Down Notices. Following the issuance of a Notice of 382(l)(5) Plan, but no earlier than 60 days prior to the then-scheduled hearing with respect to the 382(l)(5) Plan, if the Debtors determine it to be reasonably necessary to require the sale or transfer of all or a portion of the Beneficial Ownership of Debt Securities held by a Substantial Securityholder on the basis that such sale or transfer is appropriate to reasonably ensure that the requirements of section 382(l)(5) of the Tax Code will be satisfied, and either the Creditors' Committee or the Court similarly so determines, the Debtors may file a motion (the "**Sell-Down Motion**") requesting that the Court enter an order (the "**Sell-Down Order**") approving the issuance of a notice (the "**Sell-Down Notice**") that such Substantial Securityholder must sell, cause to sell or otherwise transfer all or a portion of its Beneficial Ownership of Debt Securities (by class or other applicable breakdown) in excess of the Maximum Amount for such Substantial Securityholder (such excess amount, an "**Excess Amount**") to Permitted Transferees. The Debtors shall provide a copy of the Sell-Down Motion to each person described in clause (h) of the definition of "Notice Parties." If the Court enters a Sell- Down Order approving the Debtors' issuance of a Sell-Down Notice, the Debtors shall provide a copy of such Sell-Down Order to each person described in clause (h) of the definition of "Notice Parties."

b) Requirement to Sell Down. Prior to (i) the effective date of the 382(l)(5) Plan or (ii) such earlier date set forth in the Sell-Down Order, which shall not be earlier than the day after the entry of the order confirming the 382(l)(5) Plan as may be specified by the Debtors (the "**Sell-Down Date**"), each Substantial Securityholder shall sell, cause to sell or otherwise transfer an amount of the Beneficial Ownership of Debt Securities (if any) necessary to comply with the Sell-Down Notice (the "**Sell-Down**"); *provided, however*, that notwithstanding anything to the contrary in the Order and for the avoidance of doubt, no Substantial Securityholder shall be required to sell, cause to sell or otherwise transfer any Beneficial Ownership of Debt Securities if such sale would result in such holder having Beneficial Ownership of an aggregate amount of Debt Securities (by class or other applicable breakdown) that is less than such

holder's Protected Amount (as hereinafter defined). Each Substantial Securityholder shall sell, cause to sell or otherwise transfer its Beneficial Ownership of Debt Securities subject to the Sell-Down to Permitted Transferees; *provided, however*, that such Substantial Securityholder shall not have a reasonable basis to believe that any such Permitted Transferee would own, immediately after the contemplated transfer, an Excess Amount of Debt Securities.

c) Notice of Compliance. A Substantial Securityholder subject to the Sell-Down shall, within seven calendar days after the later of (i) entry of an order approving the 382(l)(5) Plan, (ii) the Sell-Down Date, and (iii) such other date specified in the Sell-Down Notice, as applicable, but in all events before the effective date of the 382(l)(5) Plan, and as a condition to receiving Affected Equity, serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a notice substantially in the form attached to the Motion as Exhibit F that such Substantial Securityholder has complied with the terms and conditions set forth in this Paragraph 3 and that such Substantial Securityholder does not and will not hold an Excess Amount of Debt Securities as of the Sell-Down Date and at all times through the effective date of the 382(l)(5) Plan (the "**Notice of Compliance**"); *provided, however*, that if the Substantial Securityholder has complied but for the fact that the Substantial Securityholder still holds an Excess Amount of Debt Securities as of the Sell-Down Date, the Notice of Compliance shall disclose such Excess Amount. Any Substantial Securityholder who fails to comply with this provision shall not receive Affected Equity with respect to the entirety of its Excess Amount of Debt Securities as determined under Paragraph 3(a), regardless of any sales made in accordance with this Paragraph 3.

(4) Advance Approval of Acquisitions. Any proposed transfer or acquisition of Debt Securities from and after the date of the Sell-Down Order shall be subject to the following advance approval procedures:

a) Acquisition of Securities. At least 20 calendar days prior to the proposed date of any transfer of Debt Securities that would result in (i) an increase in the dollar amount of Debt Securities Beneficially Owned by a Substantial Securityholder or (ii) any person or Entity becoming a Substantial Securityholder (a "**Proposed Securities Acquisition Transaction**"), such person, Entity, or Substantial Securityholder (each a "**Proposed Securities Transferee**") must serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a Notice of Request

to Purchase, Acquire, or Otherwise Accumulate a Security (a "**Securities Acquisition Request**"), in the form attached to the Motion as Exhibit G, which describes specifically and in detail the intended acquisition of Debt Securities, regardless of whether such transfer would be subject to the filing, notice, and hearing requirements of Bankruptcy Rule 3001.

b) Approval Procedures. The Debtors may determine, in furtherance of the purposes of the provisions herein and after consultation with the attorneys for the Creditors' Committee, whether or not to approve a Securities Acquisition Request. A Securities Acquisition Request that is not approved in writing by the Debtors within 15 calendar days after the filing of a Securities Acquisition Request shall be deemed rejected.

(5) Equity Forfeiture Provision.

a) Equity Forfeiture Provision. Any Substantial Securityholder that violates its obligations under the Sell-Down Notice shall, pursuant to the Order, be precluded from receiving, directly or indirectly, any consideration consisting of a beneficial ownership of equity (as determined in accordance with the applicable rules of section 382 of the Tax Code, including Options, whether or not treated as exercised under Treasury Regulation section 1.382-4) of the Debtors (or any successor to the Debtors, including as determined for U.S. federal income tax purposes) that is attributable to the Excess Amount of Debt Securities for such Substantial Securityholder as of the Sell-Down Date, including any consideration in lieu thereof, *provided, however*, that the forfeiture shall only apply to any Excess Amount of Debt Securities still owned as of the Sell-Down Date if the holder has complied with Paragraph 3(c); *provided further* that such Substantial Securityholder may be entitled to receive any other consideration to which such holder may be entitled by virtue of holding Debt Securities (the "**Equity Forfeiture Provision**"). Any purported acquisition of, or other increase in the Beneficial Ownership of, equity of the Debtors (or any successor) that is precluded by the Equity Forfeiture Provision will be an acquisition of "**Forfeited Equity.**" Any acquirer of Forfeited Equity shall, immediately upon becoming aware of such fact, return or cause to return the Forfeited Equity to the Debtors (or any successor to the Debtors) or, if all of the equity consideration properly issued to such acquirer and all or any portion of such Forfeited Equity shall have been sold prior to the time such acquirer becomes aware of such fact, such acquirer shall return or cause to return to the Debtors (or any successor to the Debtors) (i) any Forfeited Equity still held by such acquirer and (ii) the proceeds attributable to the sale of Forfeited Equity, calculated by treating the most recently sold equity as Forfeited Equity. Any acquirer that receives Forfeited Equity and deliberately fails to comply with the preceding sentence shall be subject to such additional

sanctions as the Court may determine. Any Forfeited Equity returned to the Debtors shall be distributed (including a transfer to charity) or extinguished, in the Debtors' sole discretion, in furtherance of the 382(l)(5) Plan.

b) Notification Requirement. In effecting any sale or other transfer of Debt Securities pursuant to a Sell-Down Notice, a Substantial Securityholder shall, to the extent that it is reasonably feasible to do so within the normal constraints of the market in which such sale takes place, notify the acquirer of such Debt Securities of the existence of the Order and the Equity Forfeiture Provision (it being understood that, in all cases in which there is direct communication between a salesperson and a customer, including, without limitation, communication via telephone, e-mail, and instant messaging, the existence of the Order and the Equity Forfeiture Provision shall be included in such salesperson's summary of the transaction).

(6) Miscellaneous.

a) No Disclosure of Participation. To permit reliance by the Debtors on Treasury Regulation section 1.382-9(d)(3), any person or Entity that participates in formulating any chapter 11 plan of or on behalf of the Debtors (which shall include, without limitation, making any suggestions or proposals to the Debtors or their advisors with regard to such a plan), shall not, and shall not be asked to, disclose (or otherwise make evident unless compelled to do so by an order of a court of competent jurisdiction or some other applicable legal requirement) to the Debtors that any Debt Securities in which such person or Entity has a Beneficial Ownership are Newly Traded Securities. For this purpose, the Debtors acknowledge and agree that the following activities shall not constitute participation in formulating a chapter 11 plan if, in pursuing such activities, the relevant person or Entity does not disclose (or otherwise make evident) to the Debtors that such person or Entity has Beneficial Ownership of Newly Traded Securities: filing an objection to a proposed disclosure statement or to confirmation of a proposed chapter 11 plan; voting to accept or reject a proposed chapter 11 plan; reviewing or commenting on a proposed business plan; providing information on a confidential basis to the attorneys for the Debtors or attorneys for the Creditors' Committee unconnected with the formulation of the chapter 11 plan; general membership on an official committee or an *ad hoc* committee; or taking any action required by the order of the Court.

b) Confidentiality. Except to the extent necessary to demonstrate to the Court the need for the issuance of a Sell-Down Notice, other than information contained in the Notice of Substantial Securityholder Status

that is public or in connection with an audit or other investigation by the IRS or other taxing authority, the Debtors and the Creditors' Committee shall keep such notices and any additional information provided by a Substantial Securityholder pursuant to the Order strictly confidential and shall not disclose the identity of the Substantial Securityholder to any other person or Entity; *provided, however*, that the Debtors and the Creditors Committee may disclose the identity of the Substantial Securityholder to their respective counsel and professional advisors and those of any other person(s) that are subject to a nondisclosure agreement with the Debtors or the Creditors' Committee (as applicable), each of whom shall keep all such notices strictly confidential and shall not disclose the identity of the Substantial Securityholder to any other person or Entity subject to further order of the Court; and *provided, further*, that to the extent the Debtors reasonably determine such confidential information is necessary to demonstrate to the Court the need for the issuance of a Sell-Down Notice, the Debtors shall seek to file such confidential information (determined by, among other things, whether such information was redacted in any public filing) under seal.

c) Exception. No person or Entity shall be subject to the aforementioned provisions with respect to any transfer described in Treasury Regulation section 1.382-9(d)(5)(ii), *provided* that such transfer is not for a principal purpose of obtaining stock in the reorganized Debtors (or any successor) or permitting the transferee to benefit from the losses of the Debtors within the meaning of Treasury Regulation section 1.382-9(d)(5)(iii) (a "**Qualified Transfer**"); *provided, further*, that any such transferee who becomes a Substantial Securityholder shall serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a statement that the transfer is a Qualified Transfer and a notice of such Substantial Securityholder status in the manner prescribed in Paragraph 2 above within 20 calendar days of the later of (i) the day of the entry of the Order by the Court and (ii) the date on which such person or Entity becomes a Substantial Securityholder.

(7) Definitions. For purposes of the Order, the following terms have the following meanings:

a) Affected Equity. Means the stock or other equity of the reorganized Debtors (or their successors), including Options, to be issued and distributed pursuant to the 382(l)(5) Plan but shall not include stock described in section 1504(a)(4) of the Tax Code.

b) Applicable Percentage. Means, if only one class of Affected Equity is to be issued pursuant to the terms of the 382(l)(5) Plan and holders within any class of Debt Securities will receive a pro-rata distribution of the Affected Equity, 4.5% of the number of such shares or equity interests that the Debtors reasonably estimate will be issued at the effective date of such 382(l)(5) Plan, as determined for U.S. federal income tax purposes. If more than one class of Affected Equity is to be distributed pursuant to the terms of the 382(l)(5) Plan or holders with a class of Debt Securities may receive a disproportionate distribution of such Affected Equity relative to other holders in the same class, the Applicable Percentage shall be determined by the Debtors in their reasonable judgment in a manner consistent with the estimated range of values for the equity to be distributed reflected in the valuation analysis set forth in the 382(l)(5) Plan and disclosure statement, and shall be expressed in a manner that makes clear the number of shares or other equity interests in each class of Affected Equity that would constitute the Applicable Percentage.

c) Beneficial Ownership of a Security. Means:

(x) the beneficial ownership of a Debt Security as determined in accordance with applicable rules under section 382 of the Tax Code (for such purpose, treating a Debt Security as if it is stock), and, to the extent provided in those rules from time to time, shall include (A) direct and indirect ownership (determined without regard to the rule that treats stock of an Entity to which the constructive ownership rules apply as no longer owned by that Entity); and (B) ownership by a holder's family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of Debt Securities and/or stock; and

(y) the beneficial ownership of an Option (irrespective of the purpose for which such option was issued, created or acquired).

For the avoidance of doubt, beneficial ownership of a Debt Security also includes the beneficial ownership of any right to receive any equity consideration to be distributed in respect of a Debt Security pursuant to a chapter 11 plan or applicable bankruptcy court order. Variations of the term "Beneficial Ownership" shall have correlative meanings.

d) Creditors' Committee. Means any official committee of holders of unsecured Debt Securities appointed pursuant to section 1102 of the Bankruptcy Code in the Debtors' chapter 11 cases.

e) Debt Notice Parties. Means (a) the United States Trustee for the Southern District of New York; (b) the indenture trustee for the prepetition 9.2%

Senior Notes due June 1, 2021; (c) the indenture trustee for the prepetition 10.625% Senior Secured Notes due March 15, 2019; (d) the indenture trustee for the prepetition 9.95% Senior Notes due July 1, 2018; (e) the indenture trustee for the prepetition 9.75% Senior Secured Notes due March 1, 2018; (f) the indenture trustee for the prepetition 7.00% Convertible Senior Notes due April 1, 2017; (g) any Substantial Securityholder or Additional Substantial Securityholder who has properly given notice of such status; and (h) the agent for the Debtors' proposed postpetition secured debtor-in-possession financing.

f) Entity. Has the meaning given to such term under Treasury Regulation section 1.382-3(a), including a group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition.

g) Maximum Amount. Means for each person or Entity and by class or other applicable breakdown of Securities, the greater of (A) the applicable Threshold Amount and (B) the Protected Amount (if any) for such Substantial Securityholder.

h) Newly Traded Securities. Means Debt Securities (i) with respect to which an Entity acquired Beneficial Ownership after the date that was 18 months before the Commencement Date; and (ii) that are not "ordinary course" claims, within the meaning of Treasury Regulations section 1.382-9(d)(2)(iv), of which the same Entity has always had Beneficial Ownership.

i) Option. Has the meaning given to such term under Treasury Regulation section 1.382-4(d)(9)(i), with respect to the acquisition of a Debt Security or any consideration (including equity) distributed in respect of any Debt Security pursuant to a chapter 11 plan or applicable bankruptcy court order.

j) Permitted Transferee. Means with respect to a Substantial Securityholder is a person that is not a Related Person and whose holding of a Security would not result in such Substantial Securityholder having Beneficial Ownership of such Security.

k) Protected Amount. Means the amount of Debt Securities (by class or other applicable breakdown) of which a holder had Beneficial Ownership on the Motion Date, increased by the amount of Debt Securities of which such holder acquires, directly or indirectly, Beneficial Ownership pursuant to trades entered into before the Motion Date that had not yet closed as of the Motion Date minus the amount of Debt Securities of which such holder sells, directly or indirectly, Beneficial Ownership pursuant to trades

entered into before the Motion Date that had not yet closed as of the Motion Date.

l) Related Person. Persons (including Entities) are "Related Persons" if: (A) the person bears a relationship to the other person described in section 267(b) or 707(b) of the Tax Code, or (B) the persons are members of a group acting in concert with respect to the acquisition of Debt Securities or equity in the reorganized Debtors.

m) Security or Debt Security. Means any claim against any of the Debtors, including, without limitation any claim against any of the Debtors as a guarantor by any party with respect to Debt Securities of the Debtors.

n) Substantial Securityholder. Means any person or Entity that Beneficially Owns an aggregate dollar amount of Securities, or any Entity controlled by such person or Entity through which such person or Entity Beneficially Owns Securities, of more than the Threshold Amount.

For the avoidance of doubt, section 382 of the Tax Code, the Treasury Regulations promulgated thereunder, and all relevant IRS and judicial authority shall apply in determining whether the Debt Securities of several persons and/or Entities must be aggregated when testing for Substantial Securityholder status, treating Debt Securities as if they were stock.

o) Threshold Amount. Means the amount of Securities, as set forth in the Notice of 382(l)(5) Plan (as revised by any Amended Notice of 382(l)(5) Plan, as applicable) sufficient, in the determination of the Debtors, to entitle the Beneficial Owner thereof to the Applicable Percentage of the Affected Equity. The amount determined in the preceding sentence shall be disclosed in the Notice of 382(l)(5) Plan and may be adjusted thereafter as contemplated by this Order or any future order of the Court.

p) Treasury Regulations. Means the U.S. Department of Treasury regulations promulgated under the Tax Code, as amended from time to time.

(8) Noncompliance with the Trading Procedures. Any purchase, sale, or other transfer of Debt Securities in violation of the procedures set forth herein shall be null and void *ab initio* and shall confer no rights on the transferee.

(9) Debtors' Right to Waive. The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in this Motion.

8. Any person or Entity acquiring, disposing of or transferring Kodak Stock in violation of the restrictions set forth herein, or failing to comply with the "Equity Acquisition

Notice" or "Equity Disposition Notice" requirements, as may be the case, shall be subject to such sanctions as the Court may consider appropriate pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code.

9. Any person or Entity acquiring and/or failing to dispose of Debt Securities in violation of the restrictions set forth herein, or failing to comply with the "Notice of Substantial Securityholder Status," "Securities Acquisition Request," and/or "Notice of Compliance" requirements, as may be the case, shall be subject to such sanctions as the Court may consider appropriate pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code.

10. The notices substantially in the form attached to the Motion as Exhibit C, Exhibit D, Exhibit E, Exhibit F and Exhibit G are approved.

11. The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in this Order.

12. The Debtors shall serve notice of the entry of this Order substantially in the form attached to the Motion as Exhibit B (the "**Procedures Notice**") describing the authorized trading restrictions and notification requirements on the Notice Parties to the extent such parties have not previously been served with the Procedures Notice. Upon receipt of Procedures Notice, any transfer agents or indenture trustees shall send the Procedures Notice to all holders of Kodak Stock or Debt Securities registered with the transfer agent or indenture trustee. Any registered holder shall, in turn, provide the Procedures Notice to any holder for whose account the registered holder holds Kodak Stock or Debt Securities. Any holder shall, in turn, provide the Procedures Notice to any person or entity for whom the holder holds Kodak Stock or Debt Securities.

13. Any transfer agent or indenture trustee that executes a transfer as instructed, in its capacity as transfer agent or indenture trustee, shall not incur liability to any party in the event such transfer is determined to be in violation of this Order.

14. The Debtors are hereby authorized to pay, within five (5) business days of receipt of a detailed invoice from a transfer agent or indenture trustee, such transfer agent's or indenture trustee's reasonable and documented costs, fees and expenses incurred at the request of the Debtors in furtherance of the Motion or this Order, including, but not limited to, costs, fees and expenses arising from and related to the distribution of the documents specified in this Order.

15. The Debtors shall post the Procedures Notice on the Bloomberg newswire service, in the national editions of The Wall Street Journal and The New York Times, and on the website established by the Debtors' claims agent: www.kccllc.com/kodak.

16. Nothing herein shall preclude any person or entity that desires to purchase or transfer any Kodak Stock or Debt Securities from requesting relief from this Order in this Court subject to the Debtors' rights to oppose such relief.

17. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e), applicable securities, corporate, and other laws, and do not excuse compliance therewith.

18. The relief granted in this Order is intended solely to permit the Debtors to protect, preserve and maximize the value of the Tax Attributes. Accordingly, except to the extent the Order expressly conditions or restricts trading in Kodak Stock or Debt Securities, nothing in this Order or in the Motion shall or shall be deemed to prejudice, impair or otherwise

alter or affect the rights of any holders of interests in the Debtors, including in connection with the treatment of any such interests during the pendency of the Debtors' bankruptcy cases.

19. The requirements set forth in Local Rule 9013-1(b) are satisfied.

20. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: January 20, 2012
New York, New York

/s/Allan L. Gropper
United States Bankruptcy Judge

U.S. Department of Justice

Office of the United States Trustee
Southern District of New York

33 Whitehall Street
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New York, New York 10004

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February 9, 2012

BY EMAIL

Andrew G. Dietderich, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004

Dennis F. Dunne, Esq.
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005

Re: In re Eastman Kodak Company, et al.
Case No. 12-10202 (ALG)

Gentlemen:

Attached, please find the letter dated February 9, 2012 from Robert J. Stark, Esq. of Brown Rudnick LLP requesting the formation of an official committee of equity security holders (the "Equity Committee") in the above-referenced case (the "Request").

Although the decision of whether to appoint an equity committee is within the discretion of the United States Trustee, this Office would appreciate your respective client's view, if any, regarding the Request.

Reference is made to the request by Stephen G. Grygiel, Esq. of Keefe Bartels for the appointment of an Equity Committee (the "First Request"), initially referred by this Office to the Debtors and the Official Committee of Unsecured Creditors (the "Creditors Committee") on February 3, 2012. While your responses to the First Request is due on Friday February 10, 2012, given that the current Request contains significant factual allegations not contained in the First Request, this Office would appreciate your response to the Request by close of business on Friday February 17, 2012. Please feel free to email or telecopy your response.

Thank you for your attention to this matter.

Very truly yours,
TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By: /s/ Brian S. Masumoto
Brian S. Masumoto
Trial Attorney

cc: Robert J. Startk, Esq. (by email)

MILBANK, TWEED, HADLEY & McCLOY LLP

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TOKYO
813-5410-2801
FAX: 813-5410-2891

SÃO PAULO
55-11-3927-7700
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DENNIS F. DUNNE
PARTNER
DIRECT DIAL NUMBER
212-530-5770

February 17, 2012

BY ELECTRONIC MAIL

Tracy Hope Davis, Esq.
United States Trustee
U.S. Department of Justice
Office of the United States Trustee
Southern District of New York
33 Whitehall Street, 21st Floor
New York, New York 10004

Re: In Eastman Kodak Company, et al., 12-10202 (ALG)
Response to Request for Appointment of Equity Committee

Dear Ms. Davis:

On behalf of the Official Committee of Unsecured Creditors (the "Creditors' Committee") appointed in the above-referenced chapter 11 cases (the "Chapter 11 Cases") of Eastman Kodak Company ("Kodak") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), we hereby respond to the letters requesting the formation of an official committee of equity security holders in the Chapter 11 Cases (collectively, the "Letters") from (i) Stephen G. Grygiel, Esq. of Keefe Bartels, dated February 2-3, 2012, (ii) Frank E. Williams, Jr., dated January 23-24, 2012, (iii) Gregg Abella, dated January 27, 2012, (iv) William M. Stern, dated January 23, 2012, (v) Andrew Gregor, dated January 31, 2012, (vi) Mark L. Kaufman, dated February 7, 2012 (addressed to Mr. Grygiel), (vii) Robert J. Stark, Esq., dated February 9, 2012, on behalf of five Kodak shareholders, (viii) Lance Laifer, dated February 8, 2012, and (ix) Luis E. Diaz, dated February 10, 2012 (collectively, the "Requesting Parties").

The Creditors' Committee strongly opposes the appointment of an equity committee in these Chapter 11 Cases. The appointment of an equity committee is not only unwarranted

under applicable law at this time, but would serve to delay the efficient administration of these cases and unnecessarily increase costs – costs that will ultimately be borne by (and reduce the recoveries for) unsecured creditors. As a threshold matter, the Letters fail to establish a substantial likelihood of a meaningful distribution to equityholders and, as such, their request for the appointment of an equity committee must fail as a matter of law. In addition, the Requesting Parties include sophisticated investors who can adequately represent their own interests and fund their own participation in the Chapter 11 Cases (including two law firms and a financial advisor that appear motivated to serve as retained professionals for the would-be equity committee). Finally, the Letters fail to show that equityholders' interests are not, or will not be, adequately represented by the Debtors and the Creditors' Committee, both of whom are economically and statutorily impelled to maximize the value of the assets of the Debtors' estates, including the intellectual property portfolio.

Applicable Legal Standard. Section 1102(a)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), provides that an additional statutory committee *may* be appointed when appropriate. See 11 U.S.C. § 1102(a)(1). As the language of the statute is permissive, the appointment of an additional committee is not mandatory, and the U.S. Trustee has discretion to deny such a request. See In re Williams Communications Group, Inc., 281 B.R. 216, 219 (Bankr. S.D.N.Y. 2002) ("permissive language ('may') of the statute indicates that the [U.S. Trustee's] authority to appoint [an equity] committee is discretionary").

In addition, it is well settled that "[t]he appointment of official equity committees should be the rare exception" and "[s]uch committees should not be appointed unless equity holders establish that (i) there is a substantial likelihood that they will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) they are unable to represent their interests in the bankruptcy case without an official committee." In re Williams, 281 B.R. at 223; see also In re Dana Corp., 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006) ("The appointment of an additional committee under section 1102(a)(2) is considered 'extraordinary relief.'"). Neither of such conditions has been established here.

No Substantial Likelihood of Meaningful Distributions to Equityholders. Few of the Letters even touch on the threshold question of whether there is a "substantial likelihood" of a "meaningful distribution" to equityholders. Mr. Gregor merely states that "Kodak's extensive patent portfolio, Kodak's new printing technology and other factors strongly suggest the substantial likelihood of a meaningful distribution to equityholders." 1/31/12 Gregor Letter. Similarly, Mr. Diaz merely states he is "convinced that Kodak's stock holders should receive a meaningful distribution in this case. Kodak's commercial printing business, patent portfolio, its real estate, and other assets all strongly reflect that equity should receive substantial value." 2/10/12 Diaz Letter. Mr. Gregor's and Mr. Diaz's conclusory statements are unpersuasive. Moreover, Mr. Grygiel – who appears seasoned in pitching employment for equity committees – only speculates that there is "value that appears reasonably available" to Kodak's equityholders. 2/3/12 Grygiel Letter at 2. Mr. Grygiel cites various reports and analyses to postulate a potential distribution to equity. Certain of these reports, however, are dated and contain mere superficial, optimistic projections. See id. at 2 (quoting transcript of

March 11, 2011 conference call where Kodak CEO Antonio Perez discusses the growth and superiority of Kodak's printing products). Mr. Laifer references similar overly positive commentary in the press release issued by his own firm, Wapiti Partners, L.P., dated February 2, 2012 (the "Wapiti Press Release"), to attempt to support certain of his own valuation estimates. See http://www.prleap.com/pr/185060/ (quoting statements of Mr. Perez during various conference calls in 2011).

Mr. Grygiel also cites a catchy statement from a Rafferty Company FLASH report authored by Mr. Kaufman, dated January 5, 2012 (the "Rafferty Report"), which provides: "If Kodak were to realize full value for its patent portfolio later this year, which we continue to estimate at $2.4 billion, it should have sufficient cash to repay any outstanding DIP loan balances, retire its second lien notes, and reinstate it [sic] remaining creditors and exit bankruptcy leaving the equity intact." Rafferty Report at 1. In the Rafferty Report, however, Mr. Kaufman only speculates about this result, and does not provide any comprehensive analysis of the myriad claims against, and liabilities of, the Debtors that must be satisfied in full before equity could receive any value or be left intact. Similarly, in his February 7, 2012 letter – in which he seeks retention as a financial advisor to any appointed equity committee – Mr. Kaufman only speculates that the "sum of Kodak's businesses have value in excess of its liabilities" and that certain issues may impact recoveries for equityholders.[1] 2/7/12 Kaufman Letter at 2-3. This type of speculation has been consistently rejected by courts considering requests for equity or other additional committee appointments. See, e.g., Williams, 281 B.R. at 222 (rejecting as "rank speculation" argument seeking to establish solvency predicated on the subordination of certain claims); In re Hills Stores Co., 137 B.R. 4, 6-7 (Bankr. S.D.N.Y. 1992) (denying appointment of separate committee based on "rank speculation").

Notably, another quoted source in Mr. Grygiel's letter, which calculates "at least $979 million ($3.63 per share) of value (net of all debt and legacy liabilities) available for common shareholders," is conveniently attributed to Wapiti Partners, L.P., which has now joined the campaign to launch an official equity committee in the Chapter 11 Cases. See 2/3/12 Grygiel Letter at 3 (quoting from Wapiti Press Release).[2] The Rafferty Report similarly discloses that

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1 "Aside from Kodak's fundamental operating results and the ITC ruling set for May 21, 2012," Mr. Kaufman "foresee[s] several issues that could possibly impact the outcome for Kodak's equity holders in the future," including: "1) Delaying the payment claims to critical vendors at this juncture and the impact it would have on Kodak's operations, 2) Second lien debt holders seeking to be repaid their claim under the 'make whole' provision of the second lien bond indenture, 3) Current low interest rate environment likely overstates Kodak's pension liability, 4) Negotiations between Kodak and its retirees concerning post-retirement benefits and 5) Unsecured creditors, who do not seem organized as yet, but should Kodak's outcomes improve 'vulture investors' could buy up those claims and propose a reorganization plan to 'cram down' the equity." 2/7/12 Kaufman Letter at 2. Mr. Kaufman provides no analysis as to how these issues may impact recoveries for stakeholders of the Debtors.

2 PRLeap.com reported on February 2, 2012 that "Wapiti Partners, L.P.[,] beneficial owner of more than 1,000,000 common shares of Eastman Kodak[,] announced today that it formed an ad-hoc equity committee of common shareholders. The committee was formed to protect the substantial interests of common shareholders and will seek to organize an effort to ask the United States Trustee to appoint an official equity committee." http://www.prleap.com/pr/185060/; see also http://www.streetinsider.com/Trader+Talk/Is+Bankrupt+Eastman+Kodak+(EKDKQ)+Worth+8-Fold+More%3F/713501+4.html.

the analyst creating the report, Mr. Kaufman, holds a long position in Kodak's equity and, thus, would directly benefit if an overly optimistic report caused an increase in Kodak's stock price. See 1/5/12 Rafferty Report at 2.

It cannot be overstated that, as of the January 19, 2012 petition date, the Debtors disclosed an overwhelming amount of liabilities, including approximately: (i) $100 million in outstanding indebtedness under their first lien revolving credit facility, plus $96 million of outstanding letters of credit and $34 million in other related secured obligations; (ii) $750 million in principal amount of second lien secured notes; (iii) $400 million in principal amount of convertible notes; (iv) $283 million in principal amount of other senior unsecured debt; (v) $425 million in outstanding trade debt; (vi) $1.2 billion in non-U.S. pension liabilities; (vii) $1.3 billion of Other Post-Employment Benefit liabilities; and (viii) approximately $100 million in environmental liabilities. See Declaration of Antoinette P. McCorvey in Support of First Day Pleadings at 8. Moreover, the Debtors project a need to use an **additional** $364 million in cash in the first thirteen weeks of the Chapter 11 Cases (which will take the form of borrowings under the Debtors' postpetition financing facility (the "DIP Financing")). See Exhibit A to Declaration of Antoinette P. McCorvey in Support of DIP Financing Motion (Docket No. 16). In all, the Debtors' liabilities increased by more than an additional $700 million in connection with the approved DIP Financing. Mr. Laifer's and Mr. Stark's estimates of the Debtors' outstanding liabilities fail to recognize the gravity of these debt levels.

Moreover, the Debtors' unsecured notes are trading at levels which imply that the market believes unsecured creditors in this case will not come close to realizing a full recovery, which is a predicate for equity receiving *any* distribution. According to Dow Jones' Daily Bankruptcy Review, dated February 15, 2012, the trading price for the Debtors' various series of unsecured bonds currently range from a high of $0.305 to a low of $0.25. This trading price implies a deficit of more than $460 million with respect to the Debtors' bond debt alone. Extrapolated to a hypothetical claims pool of $3,000,000,000, this deficit would reach over $2,100,000,000. Thus, the market believes that the value of Kodak's assets will fall short of the amount needed to satisfy the face amount of its unsecured claims by $2,100,000,000. See Williams, 281 B.R. at 221 (fact that debtor's publicly held bonds were trading at steep discount on the market was useful indicator of insolvency); In re Euro-Swiss Intern. Corp., 33 B.R. 872, 885 (Bankr. S.D.N.Y. 1983) ("Assets are to be valued at market value, not book value.") (citing Rubin v. Manufacturers Hanover Trust Co., 661 F.2d 979, 995 (2d Cir. 1981)). The Requesting Parties have failed to produce evidence sufficient to overcome the strong market indications that the Debtors' equityholders will not receive a distribution.

In his letter, dated February 9, 2012, Mr. Stark wildly pronounces his views on the potential buckets of value available to the Debtors' estates, and how "stockholder value ... probably substantially exceed[s] ... $570 million to $1.53 billion." 2/9/12 Stark Letter at 4. In calculating such numbers, however, Mr. Stark entirely ignores and discounts the Debtors' $2.5 billion in pension and retiree liabilities. Mr. Stark argues – while engaging in a premature, *quasi* claims allowance process – that such liabilities are immaterial for a variety of reasons set forth in his letter. See id. at 5-6.

Mr. Stark, however, can only speculate as to these outcomes, and it is incredible for him to conclude at this time that the whopping $2.5 billion in pension and retiree liabilities will not impose a "material obstacle for equity to realize substantial estate value." Id. at 6. Upon information and belief, the Debtors' pension and retiree obligations may even surpass the above-referenced figure. See, e.g., 1/19/12 Hr'g Tr. at 136 (Counsel for KPP Trustees Ltd.: "The trustee, in respect to the plan, asserts claims against EKC ... on a self-sufficiency basis in excess of £1.5 billion and on a buyout basis in excess of £1.9 billion."). In addition, the foregoing amounts do not include the numerous other employee-related obligations detailed in the Debtors' Motion For Entry Of Interim And Final Orders Authorizing, But Not Directing, Debtors To (A) Pay Certain Prepetition Wages And Reimbursable Employee Expenses, (B) Pay And Honor Employee Medical And Other Benefits And (C) Continue Employee Benefit Programs, dated January 19, 2012 (Docket No. 10).

Mr. Stark also cherry picks and misinterprets various sources to reach his calculations. For example, Mr. Stark's letter states that there is only $325 million in unsecured trade debt (rather than the disclosed $425 million) because the Debtors anticipate using $100 million from the DIP Financing to satisfy critical vendor claims. Id. at 6, fn. 2. The Debtors, however, effectively withdrew their motion seeking approval to pay up to $40 million for U.S. critical vendor obligations. See Notice of Adjournment, dated January 25, 2012 (Docket No. 102). As it stands, the Debtors only received approval to pay up to $60 million in foreign critical vendor obligations, which they may, or may not, decide to pay in their discretion. See Final Order (A) Authorizing, But Not Directing, The Debtors To Pay Certain Prepetition Claims Of Foreign Vendors, (B) Approving Related Procedures And (C) Authorizing, But Not Directing, All Financial Institutions To Honor All Related Payment Requests, dated January 19, 2012 (Docket No. 360). Mr. Stark's attempts to alter the Debtors' disclosed obligations serve only to demonstrate how ill-founded his position is.

Lastly, Mr. Laifer's valuation calculations of the Debtors' assets set forth in the Wapiti Press Release – which total $6.2 billion – are self-serving and appear overly optimistic, as highlighted by the fact that they value certain assets at a level almost *two billion dollars* above other public valuations. Cf. 2/9/12 Stark Letter at 3; Declaration of Matthew J. Hart in Support of DIP Financing Motion (Docket No. 17).

In light of the foregoing, and given that unsecured creditors are not expected to receive payment in full on account of their claims, the Requesting Parties have not come close to meeting their burden of establishing value for equityholders. See In re Ampex Corp., No. 08-11094, 2008 WL 2051128, at *1 (Bankr. S.D.N.Y. May 14, 2008) (When a debtor is insolvent and "there is no expected recovery for equity then the appointment of an equity committee (and the imposition of the costs of such committee on the debtor) is unwarranted."); Williams, 281 B.R. at 220. As such, denial of the request for appointment of an equity committee is appropriate on this basis alone.

Adequacy of Representation of Equityholders. The Requesting Parties have also failed to establish that the Debtors' equityholders are disenfranchised from the chapter 11 process. To the contrary, they have ample opportunity to participate in these Chapter 11 Cases

and object to any proposed relief. See 11 U.S.C.§ 1109(b)(2) (providing that parties in interest, such as equity security holders, may appear and be heard on any issue). In particular, these parties appear to be sophisticated investors with the ability to protect their parochial interests in the Chapter 11 Cases. Mr. Abella is a co-principal and investment manager of Investment Partners Asset Management, managing certain client accounts owning common shares of Kodak. See 1/27/12 Abella Letter and Curriculum Vitae. Mr. Williams is a chairman, owner and director of various companies in the steel industry, and has sat on numerous official committees in prior chapter 11 cases. See 1/23-1/24/12 Williams Letter and Curriculum Vitae. Mr. Gregor, who appears to be affiliated with Putnam Capital Services, has served as a senior financial and development officer of large public and private corporations. See 1/31/12 Gregor Letter and Curriculum Vitae. Mr. Stern, of Stern Brothers & Co., has served on a number of equity committees. See 1/23/12 Stern Letter. Mr. Laifer, of Wapiti Partners, L.P., also appears to be a highly sophisticated investor and analyst based on the technical analyses provided in the Wapiti Press Release. See http://www.prleap.com/pr/185060/. Mr. Stark's clients include sophisticated investors such as Greywolf Capital Partners II, Greywolf Capital Overseas Master Fund, Torque Point Advisors, LLC, and Trysail Partners. See 2/9/12 Stark Letter, Exhibit A. In addition to the detailed resumes submitted with various Letters, the websites of the above-referenced companies reflect the sophistication of the Requesting Parties. See http://www.investmentpartners.com; http://www.putnamcapitalservices.com; http://www.greywolfcapital.com; www.trysailpartners.com/; www.sternbrothers.com.

These sophisticated investors are already represented by counsel – Mr. Grygiel and his law firm Keefe Bartels, and Mr. Stark and his law firm Brown Rudnick LLP.[3] Mr. Grygiel devotes a large portion of his February 3, 2012 letter to offering his law firm's services as legal counsel for any appointed equity committee and describing the attractiveness of his firm's low rates. See 2/3/12 Grygiel Letter at 3-4. Mr. Kaufman similarly focuses his February 7, 2012 letter on pitching his services as financial advisor for an equity committee. See 2/7/12 Kaufman Letter at 1-2.

Factors such as the sophistication of shareholders and their representation by competent counsel may be considered in finding that equityholders are adequately represented. See Ampex, No. 08-11094, 2008 WL 2051128, at *1 ("Factors related to the issue of 'adequate representation' include the role of the board and management acting on behalf of shareholders, the role of a creditors committee, the sophistication of shareholders and their ability to retain counsel, and the right of shareholders to be compensated under 11 U.S.C. § 503(b) of the Bankruptcy Code if they effect a 'substantial contribution' in the case."). Here, the Requesting Parties are well-equipped to form and fund their own robust *ad hoc* group or groups to actively participate in the Chapter 11 Cases (and seek compensation later in the cases if they are found

[3] It is unclear whether Mr. Laifer or Mr. Diaz are represented by counsel. Both parties, however, reference in their letters their approval of Mr. Grygiel of Keefe Bartels and Lou Modugno and Tom Scrivo of McElroy Deutsch Mulvaney & Carpenter, LLP as attorneys for any appointed equity committee. 2/8/12 Laifer Letter; 2/10/12 Diaz Letter. Therefore, it appears that Mr. Laifer and Mr. Diaz are in contact with these professionals and able to utilize their services.

to have made a substantial contribution under section 503(b) of the Bankruptcy Code).[4] Further, the Chapter 11 Cases and the Debtors' capital structure are not so overly complex that the equityholders will not be able to represent and advance their own interests.[5]

Moreover, the Debtors' management and board of directors has, and will continue to, represent equity's interests in the Chapter 11 Cases. In the chapter 11 process, a company's board of directors acts for the shareholders, and the insolvency of a company does not absolve the board of its fiduciary duty to such shareholders. See Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 352 (1985) ("if a debtor remains in possession ... the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would the trustee for a debtor out of possession"); Unofficial Comm. Of Equity Holders of Penick Pharm., Inc. v. McManigle (In re Penick Pharm., Inc.), 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (finding that managers of debtors in possession had same duties as chapter 11 trustee, i.e., to maximize value).

Similarly, the interests of equityholders will be more than adequately represented by virtue of the Creditors' Committee discharging its duties to maximize value for the Debtors' estates and creditors. See Ampex Corp., No. 08-11094, 2008 WL 2051128, at *2 ("The Creditors Committee will not only be seeking to ascertain the bona fides of the Debtors' future pension obligations but also is incentivized to seek maximum recoveries generally."); In re Leap Wireless Int'l, Inc., 295 B.R. 135, 139-40 (Bankr. S.D. Cal. 2003) (stating that the motivation of the official committee of unsecured creditors was similar to the movant shareholders – each sought to achieve the highest valuation possible for the debtor); Williams, 281 B.R. at 222-23 ("the Creditors' Committee has sufficiently aligned or parallel interests with the Shareholders to preclude the need for an additional committee"). Mr. Kaufman's assertion that unsecured creditors "do not seem organized as yet" is mistaken as the Creditors' Committee, since its appointment, has been actively promoting the interests of unsecured creditors, which interests are aligned with equityholders to seek maximum value for the estates. 2/7/12 Kaufman Letter.

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4 See In re Enron Corp., 279 B.R. 671, 693 (Bankr. S.D.N.Y. 2002) ("[E]ach of the Movants is represented by competent counsel. Furthermore, their voices have been heard and have provided an impetus to several actions taken in these cases. Clearly the Movants have taken and can continue to take an active role in these cases."); Williams, 281 B.R. at 223 ("in most cases, even those equity holders who do expect a distribution in the case can adequately represent their interest without an official committee and can seek compensation if they make a substantial contribution in the case"); Hills Stores Co., 137 B.R. at 8 ("[I]f the subordinated bondholders believe that the cases would be advanced by their taking a more active role, they are not precluded from forming an unofficial committee, retaining counsel and a financial advisor and seeking reimbursement of their expenses to the extent that they make a substantial contribution to the case, as permitted and even envisioned by § 503(b) of the Code. ... This is not then a dispute about adequate representation, but about adequate assurance of alternative compensation.").

5 See In re Edison Bros. Stores, Inc., 1996 WL 534853, at *4-5 (D. Del. Sept. 17, 1996) (affirming bankruptcy court's findings of, among other things, that the debtor's capital structure was not complex); Ampex, No. 08-11094, 2008 WL 2051128, at *2; Leap Wireless, 295 B.R. at 139 ("the debt structure is not overly complex"); Hills Stores Co., 137 B.R. at 6 ("Albeit that Hills has a complicated capital structure, these cases are not nearly so complex as those multi-debtor, multi-business cases where more than one committee may be appointed.").

Mr. Stark also reveals his clients' intentions when griping about the order entered in the Chapter 11 Cases establishing certain stock trading restrictions, and how such order prevents "stock from consolidating in the hands of a relatively small number of distressed investors that have the financial wherewithal to privately fund their valuation thesis." See 2/9/12 Stark Letter at 8; Interim Order Authorizing Restrictions On Certain Transfers Of Interests In The Debtors And Establishing Notification Procedures Relating Thereto Pursuant To Sections 105(A) And 362 Of The Bankruptcy Code, dated January 20, 2012 (Docket No. 56, the "Equity Trading Order"). Based on these statements, it is evident that Mr. Stark's clients' goal is to profit from these cases by buying up equity, and they are less concerned with the adequacy of stockholders' representation. In addition, the Equity Trading Order does not present a bar to equity acquisitions, but rather establishes a procedure under which the Debtors may approve or reject such acquisitions in order to preserve valuable tax attributes for their estates. Upon information and belief, the Debtors have received no requests under the Equity Trading Order from individual shareholders. Similarly, Mr. Stark is wrong to suggest that stockholders "may not be easily organized to voice their interests in the bankruptcy case," 2/9/12 Stark Letter at 7, when his and Mr. Grygiel's clients have already convened to form robust *ad hoc* groups. Further, the Equity Trading Order is a continuation of historic company practice and congruent with myriad similar orders entered in other large chapter 11 cases to preserve valuable tax attributes. The purpose of the Equity Trading Order is not to chill the ability for equityholders to form their own *ad hoc* groups and actively participate in the Chapter 11 Cases.

Ultimately, the Letters fail to provide any evidence that the Debtors will forgo protecting equity within the parameters of the absolute priority rule, or that the Creditors' Committee will not promote and preserve equity's interests to maximize returns. See In re Edison Bros. Stores, Inc., 1996 WL 534853, at *5 (D. Del. Sept. 17, 1996) (affirming denial of motion to appoint separate committee based on "pure speculation" that management would not protect equity interests); In re Enron Corp., 279 B.R. 671, 693 (Bankr. S.D.N.Y. 2002) (denying motions to appoint additional committees, *inter alia*, because "there has been no evidence of an inability of the Creditors' Committee to function, no evidence of a breach of fiduciary duty and no evidence of a debilitating division among its members"). Indeed, while the Letters are replete with conclusory statements as to why equityholders' interests will not be adequately represented, they are completely lacking any facts that support such a conclusion. The Letters present no evidence that the Debtors and the Creditors' Committee will not continue to abide by the statutory and fiduciary duties imposed, and the failure to establish otherwise dooms the request for an equity committee.

Unnecessary Costs and Delay. Even if other factors militated in favor of appointment, an equity committee should not be appointed if the costs, in terms of delay and administrative burdens, outweigh the purported increase in the level of representation. See Albero v. Johns-Manville Corp. (In re Johns-Manville Corp.), 68 B.R. 155, 159-60 (S.D.N.Y. 1986) (U.S. Trustee and/or bankruptcy court must determine whether "the cost of the additional committee significantly outweighs the concern for adequate representation") (internal citation and modification omitted); see also Enron Corp., 279 B.R. at 685 ("[T]he

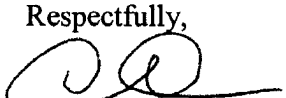
court must decide whether it should exercise its discretion and order the appointment . . . even once inadequate representation is found.").

At this stage of the Chapter 11 Cases, the appointment of an equity committee would impose an unfair burden on the Debtors and their estates. The Creditors' Committee will undertake extensive work with the Debtors to achieve maximum value for the estates, including considering potential sales of the Debtors' valuable intellectual property and other assets. Adding another statutory committee at this juncture would serve only to delay the Debtors' and Creditors' Committee's efforts, and prove an unnecessary distraction for the sole benefit of shareholders that are almost certainly out of the money. See In re Emons Indus., 50 B.R. 692, 694 (Bankr. S.D.N.Y. 1985) ("[N]o equity committee should be appointed when it appears that a debtor is hopelessly insolvent because neither the debtor nor the creditors should have to bear the expense of negotiating over the terms of what is in essence a gift."). The fees associated with newly retained professionals would also impose significant additional expenses on the Debtors' estates.

Under these circumstances, bankruptcy courts are generally reluctant to appoint additional statutory committees because they add to the complexity of the cases and saddle the debtor with the significant burden of additional professional fees without sufficient justification. As one bankruptcy court noted, "separate committees impose additional administrative expenses on the debtor's estate which adversely affect the debtor's ability to reorganize ... and ... separate teams of professionals rarely contribute to the spirit of compromise that is intended as the guiding star of chapter 11." In re Sharon Steel Corp., 100 B.R. 767, 779 (Bankr. W.D. Pa. 1989). In the instant case, one official committee – the Creditors' Committee – is sufficient to "adequately represent" all relevant constituencies as (i) there does not appear to be a substantial likelihood of a meaningful distribution to equityholders consistent with the absolute priority rule and (ii) a successful outcome turns on this "spirit of compromise" fostering agreement on asset sales and a plan of reorganization. The Creditors' Committee's pursuit of its aligned and parallel interests compels the denial of the instant request, and no equity committee should be appointed.

Under the circumstances, the Creditors' Committee respectfully submits that the appointment of an equity committee in these Chapter 11 Cases is not inappropriate, and the U.S. Trustee's denial of such requests is a sound exercise of her discretion. Please feel free to call me at 212-530-5770 if you have any questions.

Respectfully,



Dennis F. Dunne

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February 17, 2012

Via Hand Delivery

CONFIDENTIAL

Tracy Hope Davis, Esq., United States Trustee
Brian S. Masumoto, Esq., Trial Attorney
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004

Re: In re Eastman Kodak Company, Case No. 12-10202 (ALG)

Dear Ms. Davis and Mr. Masumoto:

As counsel to Eastman Kodak Company ("Kodak" or the "Company") and its affiliated debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the "Debtors"), I write in response to your request dated February 3, 2012 (and subsequent correspondence dated February 3, 2012, February 7, 2012, and February 14, 2012) for the Debtors' position regarding written requests for the Office of the United States Trustee (the "U.S. Trustee") to form an official committee of equity security holders (an "Equity Committee") in the Debtors' chapter 11 cases under section 1102(a)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").[1]

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[1] We have reviewed the following letters: (a) Frank E. Williams, Jr., dated January 23-24, 2012 (the "Williams Ltr."); (b) William M. Stern, dated January 23, 2012 (the "Stern Ltr."); (c) Gregg Abella, dated January 27, 2012 (the "Abella Ltr."); (d) Andrew Gregor, dated January 31, 2012 (the "Gregor Ltr."); (e) Stephen G. Grygiel, Esq. of Keefe Bartels, dated February 2-3, 2012 (the "Grygiel Ltr."); (f) Mark L. Kaufman, dated February 7, 2012 (the "Kaufman Ltr."); (g) Robert J. Stark, Esq. of Brown Rudnick, dated February 9, 2012 (the "Stark Ltr."); (h) Lance Laifer, of Wapiti Partners, L.P., dated February 8, 2012 (the "Laifer Ltr."); and (i) Luis Diaz, dated February 10, 2012 (the "Diaz Ltr."). Mr. Williams and Mr. Gregor have represented themselves to be prepetition equity holders, and Mr. Abella has represented himself to be an investment manager

The Debtors have considered carefully the Equity Holders' requests in light of the appropriate legal standard related to equity committee formation, and the current facts and circumstances of these chapter 11 cases. Based on that review, the Debtors urge the U.S. Trustee not to seek to appoint an Equity Committee in these chapter 11 cases at this time.

Contrary to the central premise of virtually all these letters, whether a company is large or well-known is not, in and of itself, a reason to appoint an equity committee. Indeed, appointment of an equity committee is considered extraordinary relief, and courts in this district have held that formation of equity committees "should be the rare exception". In re Williams Commc'ns Group, Inc., 281 B.R. 216, 223 (Bankr. S.D.N.Y. 2002); see also In re Dana Corp., 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006). The equity holders bear the burden of establishing the need for this extraordinary relief and must show: (a) "a substantial likelihood that they will receive a meaningful distribution in the [chapter 11] case under a strict application of the absolute priority rule"; and (b) that they are unable to adequately represent their interests in the bankruptcy case without such a committee.[2] In re Williams, 281 B.R. at 223; see also In re Spansion, Inc., 421 B.R. 151, 156 (Bankr. D. Del. 2009). If the equity holders fail to meet their burden, formation of a committee to represent their interests is inappropriate. See, e.g., In re Spansion, 421 B.R. at 164 (denying equity holders' motion for appointment of a committee under 11 U.S.C. § 1102(a)(2) because the equity holders failed to meet their burden of establishing both that (a) there is a substantial likelihood that they will receive a distribution from the estate, and (b) absent a committee, their interests would not be adequately represented).

(footnote continued)

for clients that purport to own Kodak equity securities (collectively, the "Equity Holders"). We note that both Mr. Gyrgiel's and Mr. Kaufman's letter not only advocate for the formation of a committee, but also advocate for their retention such by a committee, and therefore, their letters must be viewed with that in mind.

2 In his letter to the U.S. Trustee, Mr. Stark seems to place on Kodak the burden of proving that it is "hopelessly insolvent." (See Stark Ltr. at 3.) Quite to the contrary, the inquiry is, in part, whether after strict application of the absolute priority rule, equity holders have established that they are likely to receive a distribution from the estate. Moreover, requiring debtors to prove their own insolvency for the sake of preventing the unnecessary appointment of an equity committee would undermine the nature and purpose of reorganization proceedings. See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380, 389 (1993) ("Chapter 11 provides for reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors. In overseeing this latter process, the bankruptcy courts are necessarily entrusted with broad equitable powers to balance the interests of the affected parties guided by the overriding goal of ensuring the success of the reorganization.") (citations omitted).

In this case, the Equity Holders have failed to satisfy either prong of the applicable standard. They neither have provided a factual basis for concluding that there is a substantial likelihood that equity holders will receive a meaningful recovery, nor have they demonstrated that an Equity Committee is necessary to ensure that the interests of equity holders will be adequately represented in these chapter 11 cases. As discussed below, the Debtors believe that the appointment of an Equity Committee would not only result in the incurrence of undue cost to their estates to the detriment of all stakeholders, but also could have the unintended consequence of misleading public equity investors as to the value of Kodak stock. Moreover, Kodak's board of directors is duty bound to maximize the value of the Debtors' estates, including for the benefit of equity holders and, therefore, equity holders' interests will be adequately represented during the case.

I. Likelihood of a Meaningful Recovery for Equity Holders

The Equity Holders' purely speculative assertions regarding the likelihood of an equity recovery do not adequately account for the Debtors' overwhelming prepetition liabilities, or the cost to implement the Debtors' business transformation while operating in chapter 11 and, therefore, do not justify a conclusion that a meaningful distribution to equity holders is likely.

As set forth in the Declaration of Antoinette P. McCorvey Pursuant to Rule 1007-2 of the Local Bankruptcy Rules For the Southern District of New York In Support of First Day Pleadings filed January 19, 2012 [Docket No. 2] (the "McCorvey Declaration"), the Debtors disclosed substantial prepetition liabilities, including approximately: (a) $100 million in outstanding indebtedness under their first lien revolving credit facility, plus $96 million of outstanding letters of credit; (b) $750 million in principal amount of second lien secured notes; (c) $400 million in principal amount of convertible notes; (d) $283 million in principal amount of other senior unsecured debt; (e) $425 million in outstanding trade debt; (f) $1.2 billion in non-U.S. pension liabilities; (g) $1.3 billion of Other Post-Employment Benefit liabilities; and (h) approximately $100 million in environmental liabilities. (See McCorvey Decl. at ¶ 8.) Moreover, the foregoing excludes any incremental postpetition indebtedness incurred by the Debtors under its finally approved $950 million secured Debtor-in-Possession Credit Agreement, and additional prepetition claims that likely are to be incurred in connection with the implementation of the Debtors' business transformation during the pendency of the chapter 11 cases.

Under the absolute priority rule, unsecured creditors must obtain a full recovery before distributions to equity. 11 U.S.C. § 1129(b)(2)(B); see also Computer Task Group, Inc. v. Brotby, 303 B.R. 177, 195 (B.A.P. 9th Cir. 2003) ([T]he 'absolute priority rule' generally requires that all unsecured creditors be paid in full before equity security holders are allowed to retain any ownership interest in the debtor."). In this case, the public market believes that the likelihood of such a recovery is remote, as evidenced

by the recent trading prices of the Debtors' unsecured notes, which are trading at severely discounted prices: as reported by Bloomberg on February 14, 2012, unsecured notes issued by Kodak have been trading at ask prices of between 30 and 31 percent of their principal amount. See Feb. 14, 2012 Bloomberg Pricing for 2013 7.25% Unsecured and 2017 7.0% Convertible Notes, attached hereto as Exhibit 1. In fact, the Debtors' unsecured debt has been trading at distressed prices since well before the commencement of these chapter 11 cases. This pricing indicates that sophisticated market participants believe that the prospect of a full recovery by unsecured creditors is remote, thus seriously undermining the Equity Holders' speculative assertions that their entitlement to estate value will likely be realized in this case. Indeed, independent market analysts, such as R.W. Pressprich & Co., have declined to assign a rating to Kodak's unsecured notes because they "may only recover a small portion of their face value." See R.W. Pressprich & Co., Eastman Kodak Company Speculative Buy Recommendations, dated Oct. 17, 2011 and Feb. 1, 2012, attached hereto as Exhibit 2. It simply cannot be the case that a strict application of the absolute priority rule supports the contention that equity holders are likely to receive a meaningful recovery from the estate when the market itself indicates that unsecured creditors may only receive a fraction of the face value of the notes.

Some of the Equity Holders contend that a meaningful distribution to equity is likely based on speculation about future events. For example, Mr. Grygiel's letter cites to a statement from a Rafferty Company FLASH report dated January 5, 2012, which states: "[i]f Kodak were to realize full value for its patent portfolio later this year, which we continue to estimate at $2.4 billion, it should have sufficient cash to repay any outstanding DIP loan balances, retire its second lien notes, and reinstate it [sic] remaining creditors and exit bankruptcy leaving the equity intact." (See Grygiel Ltr. at 2-3.) While clearly an ideal outcome, there is no support in the record for these statements. Even if this value were obtained from the patent portfolio, the statement simply ignores the amount of liabilities of the Company, which greatly exceed $2.4 billion.

One of the Equity Holders attempts to demonstrate equity value by making certain unsecured liabilities disappear, urging the U.S. Trustee to ignore $2.5 billion of pension legacy liabilities. (See Stark Ltr. at 4-6.) Without providing any legal basis to justify effectively ignoring these liabilities, the Equity Holders claim that a "reasonable extrapolation" in turn leads to a "healthy skepticism" that such claims will be triggered and that, therefore, the $2.5 billion of legacy liabilities are not likely to be an obstacle to the Equity Holders' recovery. (See id. at 5.) Noticeably missing from Equity Holder's argument is the fact that other post employment benefit liabilities constituted the largest single cash cost for Debtors in 2011 (see McCorvey Decl. at ¶ 39) or that the trustee for the Company's UK pension plan asserts a multi-billion dollar claim of such sufficient seriousness that the trustee has been appointed chairperson of the Unsecured Creditors Committee.

What all the Equity Holders fail to acknowledge is that the mere possibility of – or hopeful recovery from – the estate is insufficient to justify the extraordinary relief of appointing an official committee. The law is clear on this. Section 1102 of the Bankruptcy Code requires more than "healthy skepticism" and "reasonable extrapolation." Cf. In re Spansion, 421 B.R. at 163 (holding that in light of uncertain and speculative valuations, equity holders failed to meet their burden of showing a substantial likelihood of distribution from the debtors' estate); In re Williams, 281 B.R. at 222 (finding it insufficient to merely assert the "possibility of solvency" without supporting facts).

Accordingly, the Debtors respectfully submit that the Equity Holders have failed to satisfy their burden of showing that there is a substantial likelihood that they will receive a meaningful distribution in these chapter 11cases under a strict application of the absolute priority rule.

II. The Equity Holders' Interests Are Adequately Represented

Even assuming that the Equity Holders have made a sufficient showing that they are likely to receive a meaningful distribution from the Debtors' estates, (which the Debtors contend they have not) appointing an Equity Committee is unwarranted because the Equity Holders have failed to establish that their interests are not adequately represented. As a prerequisite to the formation of an equity committee, Williams requires that equity holders must first establish that "they are unable to represent their interests in the bankruptcy case without an official committee." In re Williams, 281 B.R. at 223. Section 1102(a) of the Bankruptcy Code requires only "adequate representation," not exclusive representation, of equity holders' interests. In re Spansion, 421 B.R. at 163 (citing In re Edison Bros. Stores, Inc., 1996 WL 534853, at *4 (D. Del. Sept. 17, 1996)). A "well organized" group of equity holders that is "well represented by counsel" may be "adequate to the task of representing its interests without 'official' status." Id. Establishing that the Equity Holders require an official committee to protect their interests "is critical because, in most cases, even those equity holders who do expect a distribution in the case can adequately represent their interest without an official committee and can seek compensation if they make a substantial contribution in the case." In re Williams, 281 B.R. at 223; see also In re Spansion, 421 B.R. at 163; In re Ampex Corp., 2008 WL 2051128, at *1 (Bankr. S.D.N.Y. May 14, 2008).

Under the facts and circumstances of these chapter 11 cases, there is no basis to conclude that Kodak's board of directors, together with the official committee of unsecured creditors (the "Creditors Committee"), will not adequately represent the interests of Kodak's equity holders. Kodak is organized under the laws of the State of New Jersey. Under New Jersey law, Kodak's board of directors has a fiduciary duty to consider and protect the interests of its stakeholders, including equity holders. Although New Jersey law expects directors of an insolvent corporation to consider the interests of

creditors, equity holders remain a recognized constituency as well. VFB v. Campbell Soup Co., 482 F.3d 624 (3rd Cir. 2007). However, the fact that a debtor is in the midst of a chapter 11 proceeding and remains in possession does not in turn create a legal or factual presumption that debtor's board will not fulfill its fiduciary duty to stakeholders. See Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 352 (1985) ("[I]f a debtor remains in possession . . . the debtor's directors bear essentially the same fiduciary obligations to creditors and shareholders as would the trustee for a debtor out of possession. Indeed, the willingness of courts to leave debtors in possession 'is premised upon an assurance that the officers and managing employees can be depended upon to carry out the fiduciary duties of a trustee.'") (quoting Wolf v. Weinstein, 372 U.S. 633, 649-652 (1963) (emphasis added)); see also In re Penick Pharm., Inc., 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (noting that in cases where debtor in possession is a corporation, the fiduciary duties normally borne to a trustee fall on the shoulders of the officers and managing employees).

Moreover, certain of Debtors' non-employee directors and officers own a substantial amount of Kodak's common stock – approximately 10,864,373 shares – which is approximately 660,000 more shares than the largest group of Equity Holders currently requesting appointment of an official committee. (See McCorvey Decl. Sch. 4.) Under these circumstances, and without supporting facts, it is "pure speculation that management [will] not protect its . . . equity interest." In re Edison Bros., 1996 WL 534853, at *5 (citation omitted).

The Debtors have been and will continue to work collaboratively with the Creditors' Committee and its professionals during the pendency of these chapter 11 cases to maximize the value of their estates for the benefit of all stakeholders. Given the current facts and circumstances, the interests of Kodak's equity holders and unsecured creditors are fully aligned. Such alignment alone has been held to "to preclude the need for an additional committee." In re Williams, 281 B.R. at 222-23.

The Equity Holders also argue that appointment of an official committee is warranted because the case is "large" and "complex" and a "large amount of stock . . . remains widely held as of today." (Stark Ltr. at 6-7.) The Debtors neither dispute the size and complexity of these chapter 11 cases nor disagree that a large number of shares remain widely held. However, that alone cannot justify appointment of an official committee. See In re Williams, 281 B.R. at 223 ("[W]hile there are a large number of shareholders, not every case with such a large number will require an official equity committee"). Indeed, if it was sufficient, then an official committee would be required in a majority, if not all, corporate restructuring cases. See id. (explaining that if the size and number of shareholders was dispositive on the issue of whether an official committee should be appointed then "Congress would have mandated the appointment of equity committees instead of leaving it within the discretion of the [U.S. Trustee] and the Court").

Finally, any assertion that without appointment of an Equity Committee, Kodak's equity holders will be unable to adequately represent themselves is belied by the fact that certain of the Equity Holders have retained competent counsel, well known not only for its specialization in bankruptcy but also for its representation of ad-hoc creditor and equity committees. Moreover, based on the Equity Holders' correspondence with your office, they appear to be well-organized and appropriately situated to participate effectively in these chapter 11 cases without the need for the formation of an official committee. Even if it was necessary at this early stage for equity holders to actively participate in these chapter 11 cases, which Debtors contend is not the case, there is every reason to believe that the interests of all equity holders will be zealously and effectively represented without establishing an Equity Committee. In re Ampex, 2008 WL 2051128, at *2 (finding that sophistication of the parties requesting recognition of a committee and their representation by counsel are factors that weigh against recognizing the committee). If the Equity Holders are concerned about bearing the upfront costs of their efforts, then they can, in addition to seeking recoupment for costs under section 503(b)(3)(D) of the Bankruptcy Code, recruit additional holders to disperse this risk. See In re Northwestern Corp., 2004 WL 1077913, at *3 (Bankr. D. Del. May 13, 2004).

Accordingly, the Debtors respectfully submit that the formation of an Equity Committee is not necessary to ensure that the interests of all equity holders are adequately represented.

III. The Costs of an Equity Committee Would Be Substantial and Unwarranted, and the Appointment of an Equity Committee May Mislead Investors

Finally, when considering the appointment of an equity committee, courts have engaged in a balancing test, weighing the costs of an equity committee against concerns about adequate representation. See In re Williams, 281 B.R. at 220. As discussed below, appointing an Equity Committee would result in significant costs, both tangible, for additional counsel and professionals, and intangible, due to the likely negative impact on public equity investors. Accordingly, the Debtors believe that the balance of factors is overwhelmingly against the appointment of an Equity Committee at this time.

Significant additional costs would result from the appointment of an Equity Committee because the committee would seek to retain another set of lawyers and financial advisors. See id. (recognizing that the appointment of a committee raises cost concerns because "such appointments are 'closely followed by applications to retain attorneys and accountants'") (quoting In re Saxon Indus., Inc., 39 B.R. 945, 947 (Bankr. S.D.N.Y. 1984)). The Debtors currently operate in a highly constrained liquidity environment. The appointment of an Equity Committee, and the corresponding need to

pay its professionals' fees and expenses currently, would put additional strain on the Debtors' ability to effectively pursue its restructuring objectives.

In a thinly veiled attempt to avoid addressing the issue of added costs, the Equity Holders make unfounded and frankly irrelevant characterizations regarding fees incurred by professionals currently retained by Debtors. (See Stark Ltr. at 8.) The relevant inquiry is not costs currently incurred by debtor but rather whether the estate can bear the additional costs that would result if an equity committee were appointed. See In re Kalvar Microfilm Inc., 195 B.R. 599, 601 (Bankr. D. Del. 1996). Undoubtedly, additional costs would be incurred if the Equity Holders' request is granted. Not only would legal counsel need to be retained, but the committee would likely employ a financial advisor and possibly other advisors. See id. Given the fact that the Equity Holders' interests are adequately represented without the appointment of an Equity Committee, the costs associated with the requested appointment significantly outweigh the need for stockholder representation.[3]

Beyond the financial cost to the estates, there also are intangible costs of appointing an Equity Committee in this case without a bona fide expectation of a significant return to equity holders and, therefore, a constituency meaningfully affected by its work. Specifically, the Debtors are concerned that the appointment of an Equity Committee may send a misleading message to public equity investors, particularly small investors, that they should hold or purchase stock because the U.S. Trustee or the Court has determined that there is equity value sufficient to warrant appointment of a committee. Kodak has many small stockholders. The Debtors believe that the "false positive" of an early Equity Committee risks sending a Court-sanctioned wrong signal to the markets, regardless of precautionary disclosures.

* * * * *

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3 In his letter to the Trustee, Mr. Stark asserts that "when a prima facie case is made for the appointment of an Official Equity Committee, the law shifts the burden to opponents to prove why the costs associated with such appointment 'substantially outweighs' the need." (See Stark Ltr. 8.) As an initial matter, Mr. Stark cites no case law to support this contention. Nor does he indicate whether such burden-shifting analysis has been accepted by bankruptcy courts within this circuit, or any circuit for that matter. Moreover, accepting Mr. Stark's view that section 1102 of the Bankruptcy Code shifts the burden of showing unwarranted cost to the Debtor would, in effect, imply a presumption in favor of appointing an equity committee. This assertion flies in the face of the case law within this circuit – as clearly stated by the Williams court, "[t]he appointment of an equity committee should be the rare exception" and such relief is not granted "unless equity holders establish" their entitlement to such relief. In re Williams, 281 B.R. at 223 (emphasis added).

In sum, when examined in its entirety, the Equity Holders' request is premised on mere speculation regarding the likelihood of recovery in these chapter 11 cases and unfounded assertions regarding the adequacy of their representation and the costs that would or would not be incurred if their request were granted. Section 1102 demands more. Accordingly, the Debtors respectfully submit that the Equity Holders' request be denied because they have failed to meet their burden of showing that an additional committee is needed for adequate representation of their interests.

The Debtors appreciate the opportunity to respond to the Equity Holders' letters and welcome any questions, comments, concerns or thoughts the U.S. Trustee may have regarding this issue or the information contained in this letter. The Debtors note that the information and views expressed in this letter are highly confidential. As such, the Debtors respectfully request that this letter, and all information contained herein, be kept in strict confidence.

Sincerely,

Michael H. Torkin

cc: Patrick Sheller, Esq.
(Eastman Kodak Company)

Dennis F. Dunne, Esq.
Tyson M. Lomazow, Esq.
(Milbank, Tweed, Hadley & McCloy LLP)

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EXHIBIT 1

EK 7 04/01/17 $ ↑ 30.500 -.250 Corp QRD

At 11:21 Vol 4,000 Op 30.000 Hi 30.500 Lo 30.000 Prev 30.750 TRAC

Definitions | QR/QRM Options | Multi-Day Quote Recap | Page 1

Time 08:00:00 To 17:30:00 Min Vol(M) Source TRAC

Date 2/ 7 To 2/14 Price Range To Sprd To B Benchmark

EASTMAN KODAK CO EK 7 04/01/17 DEFAULTED

Date	Time	Act	Price	Ind	Yield	RPS	Sprd	Benchmark	Size(M)	CC	Trd Time	Date
02/14	11:21:05		↑30.500		N.A.	S	3808.7	T0 7⅛ 01/31/17	1000+ e		11:16:05	2/14/12
02/14	09:53:58		↑30.375		N.A.	S	3821.3	T0 7⅛ 01/31/17	1000+ e		09:43:56	2/14/12
02/14	09:28:17		30.000		N.A.	S	3862.1	T0 7⅛ 01/31/17	1000+ e	SD	09:12:26	2/14/12
02/14	09:12:15		↓30.000		N.A.	S	3862.0	T0 7⅛ 01/31/17	1000+ e		09:12:00	2/14/12
02/13	17:24:45		↑30.750		N.A.		3778.0	T0 7⅛ 01/31/17		OC	17:24:45	2/13/12
02/13	17:24:29		↓30.500		N.A.		3804.0	T0 7⅛ 01/31/17		OC	17:24:29	2/13/12
02/13	15:32:30		↑30.750		N.A.	S	3777.4	T0 7⅛ 01/31/17	1000+ e		15:30:43	2/13/12
02/13	11:20:08		30.500		N.A.		3806.6	T0 7⅛ 01/31/17		OC	11:20:08	2/13/12
02/13	10:49:14	A/O	31.250		N.A.	S	3713.3	T0 7⅛ 01/31/17	1000+ e	SD	10:00:00	2/7/12
02/13	10:47:27		↓30.500		N.A.	B	3806.8	T0 7⅛ 01/31/17	1000+ e		10:46:08	2/13/12
02/13	09:57:42		↑30.750		N.A.	S	3779.8	T0 7⅛ 01/31/17	1000+ e		09:56:51	2/13/12
02/13	09:32:38		↑30.500		N.A.	B	3804.7	T0 7⅛ 01/31/17	1000+ e		09:32:05	2/13/12
02/13	09:19:50	A/O	29.100		N.A.	B	3954.3	T0 7⅛ 01/31/17	15	SD	12:46:40	2/10/12
02/13	09:18:41	A/O	29.100		N.A.	B	3954.3	T0 7⅛ 01/31/17	10	SD	12:46:33	2/10/12
02/13	09:18:06	A/O	29.100		N.A.	B	3954.8	T0 7⅛ 01/31/17	15	SD	14:54:40	2/10/12
02/13	09:16:46	A/O	29.100		N.A.	B	3954.3	T0 7⅛ 01/31/17	20	SD	12:47:53	2/10/12
02/13	09:16:12	A/O	29.100		N.A.	B	3955.3	T0 7⅛ 01/31/17	10	SD	15:06:55	2/10/12
02/13	09:14:43	A/O	28.615		N.A.	B	4009.9	T0 7⅛ 01/31/17	15	SD	15:40:32	2/10/12

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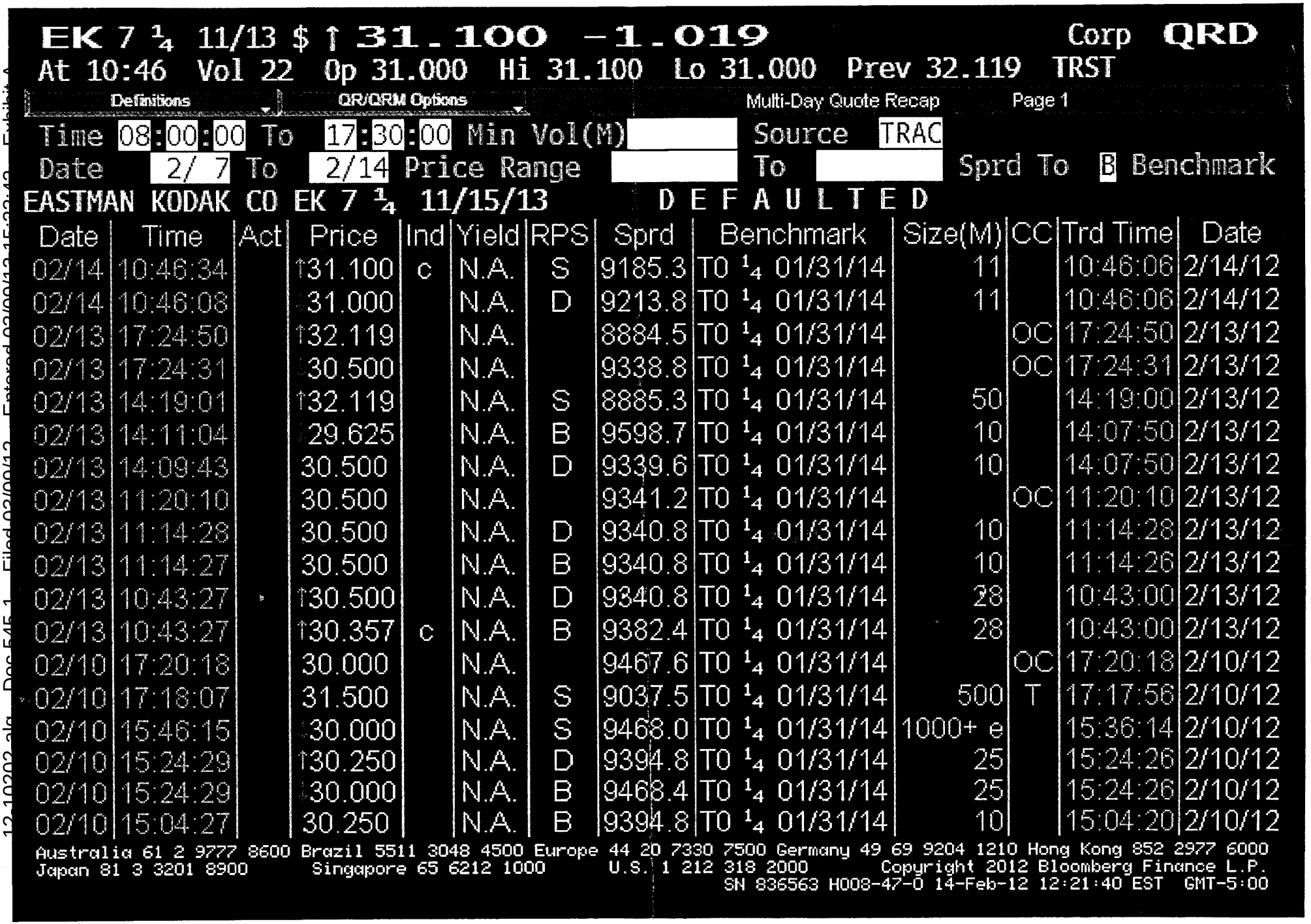

EK 7 ¼ 11/13 $ ↑ 31.100 −1.019 Corp QRD
At 10:46 Vol 22 Op 31.000 Hi 31.100 Lo 31.000 Prev 32.119 TRST
Definitions | QR/QRM Options | Multi-Day Quote Recap | Page 1
Time 08:00:00 To 17:30:00 Min Vol(M) Source TRAC
Date 2/ 7 To 2/14 Price Range To Sprd To B Benchmark
EASTMAN KODAK CO EK 7 ¼ 11/15/13 D E F A U L T E D

Date	Time	Act	Price	Ind	Yield	RPS	Sprd	Benchmark	Size(M)	CC	Trd Time	Date
02/14	10:46:34		↑31.100	c	N.A.	S	9185.3	T0 ¼ 01/31/14	11		10:46:06	2/14/12
02/14	10:46:08		↓31.000		N.A.	D	9213.8	T0 ¼ 01/31/14	11		10:46:06	2/14/12
02/13	17:24:50		↑32.119		N.A.		8884.5	T0 ¼ 01/31/14		OC	17:24:50	2/13/12
02/13	17:24:31		↓30.500		N.A.		9338.8	T0 ¼ 01/31/14		OC	17:24:31	2/13/12
02/13	14:19:01		↑32.119		N.A.	S	8885.3	T0 ¼ 01/31/14	50		14:19:00	2/13/12
02/13	14:11:04		↓29.625		N.A.	B	9598.7	T0 ¼ 01/31/14	10		14:07:50	2/13/12
02/13	14:09:43		30.500		N.A.	D	9339.6	T0 ¼ 01/31/14	10		14:07:50	2/13/12
02/13	11:20:10		30.500		N.A.		9341.2	T0 ¼ 01/31/14		OC	11:20:10	2/13/12
02/13	11:14:28		30.500		N.A.	D	9340.8	T0 ¼ 01/31/14	10		11:14:28	2/13/12
02/13	11:14:27		30.500		N.A.	B	9340.8	T0 ¼ 01/31/14	10		11:14:26	2/13/12
02/13	10:43:27		↑30.500		N.A.	D	9340.8	T0 ¼ 01/31/14	28		10:43:00	2/13/12
02/13	10:43:27		↑30.357	c	N.A.	B	9382.4	T0 ¼ 01/31/14	28		10:43:00	2/13/12
02/10	17:20:18		30.000		N.A.		9467.6	T0 ¼ 01/31/14		OC	17:20:18	2/10/12
02/10	17:18:07		31.500		N.A.	S	9037.5	T0 ¼ 01/31/14	500	T	17:17:56	2/10/12
02/10	15:46:15		↓30.000		N.A.	S	9468.0	T0 ¼ 01/31/14	1000+ e		15:36:14	2/10/12
02/10	15:24:29		↑30.250		N.A.	D	9394.8	T0 ¼ 01/31/14	25		15:24:26	2/10/12
02/10	15:24:29		↓30.000		N.A.	B	9468.4	T0 ¼ 01/31/14	25		15:24:26	2/10/12
02/10	15:04:27		30.250		N.A.	B	9394.8	T0 ¼ 01/31/14	10		15:04:20	2/10/12

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12-10202-alg - Doc 545-1 - Filed 02/09/13 - Entered 02/09/13 15:32:43 - Exhibit A

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EXHIBIT 2

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10/17/2011

CORPORATE RESEARCH — SPECULATIVE BUY RECOMMENDATION

Eastman Kodak Company

Ticker	Coupon	Maturity	Description	Ratings	Outstd	Market	YTW	RWP Recovery Chapter 7	RWP Recovery Chapter 11
EK			ABS Revolver		$160			100%	100%
EK			Germany TN		$112			100%	100%
EK			US Term Notes		$28			100%	100%
EK	9.75	03/01/18	2nd-Lien Secured	B3/CCC	$500	$73 - $74	16.65%	100%	100%
EK	10.625	03/15/19	2nd-Lien Secured	B3/CCC	$250	$73 - $74	17.05%	100%	100%
EK	7.25	11/15/13	Senior Unsecured	Caa3/CC	$250	$40 - $42	61.18%	19%-35%	42%
EK	7	04/01/17	Convertible Notes	NA/C	$400	$32 - $35	35.25%	19%-35%	42%
EK	9.95	07/01/18	Senior Unsecured	Caa3/CC	$3	$30 - $40		19%-35%	42%
EK	9.2	06/01/21	Senior Unsecured	Caa3/CC	$10	$30 - $40		19%-35%	42%
EK			Common Stock			$1.30			

Summary

In this report, we present our analysis on two critical issues with respect to Kodak: (a) the value of Kodak's Intellectual Property (IP), and (b) the recovery values of Kodak's debt and non-debt obligations should Kodak file for bankruptcy protection. We want to emphasize that we are not experts in either of the topics and are only providing our thoughts on these two issues based on limited financial information and the recent court cases in both the US and the UK.

As presented throughout the report, our calculation indicates that Kodak's 2nd-lien secured debt are fully covered under various bankruptcy scenarios while its senior unsecured notes may only recover a portion of their face value. As such, **we rate Kodak's 2nd-lien debt Speculative Buy** but assign no rating to Kodak's unsecured notes due to a wide range valuation.

Also, our analysis is based on Kodak's financial information as of June 30, 2011. Kodak is expected to report its third quarter financials on November 3, 2011. At that time, the Company may provide more information regarding its IP sale process, current cash position and cash drains at its business operations.

IP Portfolio

On July 20, 2011, Kodak announced that it had retained Lazard as its adviser in exploring strategic alternatives related to its digital imaging patent portfolio. The portfolio includes more than 1,100 US patents pertaining to capturing, processing, storing, organizing, editing and sharing digital images. Kodak also indicated that it would continue to pursue its patent licensing program as well as all litigations related to its digital imaging technology.

We provide two valuation approaches for the IP portfolio: (a) Cash Flow Approach, and (b) Deal Comparables Approach. As we are not the experts in the valuation of IP portfolios, we are not sure whether our approaches are appropriate. Nevertheless, given the limited information available, we feel these exercises provide reasonable ballpark estimates for the value of the IP portfolio.

(A) Cash Flow Approach

Kodak expects royalty payments of $250 million to $300 million a year between 2011 and 2013. That would translate into $1,000 million to $1,500 million value for the IP portfolio if it is valued as an annuity at a large 20% - 30% rate.

(B) Comparable of Recent Deals

Nortel sold 6,000 patents for $4,500 million	=>	$750,000 per patent
Motorola sold 17,000 patents for $12,500 million	=>	$735,000 per patent
Kodak has 1,100 patents for sale	=>	@$750,000 per patent, IP Value = $825 million

FOR IMPORTANT DISCLOSURE INFORMATION relating to analyst certification and the recommendations and references herein, please refer to the Disclosure Appendix included as the last page of this document. The information contained herein was obtained from sources we believe to be reliable but we do not guarantee its accuracy or completeness. Investors should consider this document as only a single factor in making their investment decision. R.W. Pressprich and associated individuals may hold positions in securities discussed herein and make purchases and sales of such securities from time to time. Copyright 2011.

If Kodak's estimate of royalty payments of $250 million to $300 million resembles any reality, it would suggest that the estimate of $825 million in our second approach may be too low. In the following section, we use the IP portfolio values of $825 million, $1,000 million and $1,500 million for recovery calculations.

Recovery Value Calculation

In this section, we present our recovery value estimates for Kodak's secured and unsecured debt obligations should Kodak file for bankruptcy. Our valuation exercises provided below are for both Chapter 7 (liquidation) and Chapter 11 (reorganization) cases. Given the complex nature of Kodak's business operations, we assume the Substantive Consolidation principle would apply in a Chapter 11 scenario. Under this assumption, we calculate debt recovery values on a consolidated asset base. In the Chapter 7 scenario, however, we otherwise assume separate liquidation processes in Kodak's US and non-US assets but allow for cross-border deficiency claims. Under this scenario, even though the 2nd-lien is secured only by Kodak's US assets, the 2nd-lien holders should have legitimate deficiency claims against Kodak's non-US assets if there is a security deficiency in the US assets. Another issue dealt with differently in our Chapter 7 and Chapter 11 scenarios is Kodak's UK pension liabilities. Namely, we treat the UK pension liabilities as general unsecured claims in the Chapter 11 scenario but assign them superior claim status in the Chapter 7 scenario.

In our opinion, Kodak's foreign (especially UK) pension and OPEB liabilities could be a thorny issue in a bankruptcy proceeding. Under the Pensions Act 2004, the UK Pension Regulator (TPR) has been given powers to prevent companies from avoiding their pension liabilities, often referred to as "moral hazard" powers. TPR has two key moral hazard powers under the Pension Act:

(a) Financial Support Directions (FSDs): TPR may issue an FSD to a UK pension plan sponsor if the sponsor is insufficiently resourced to allow it to meet its pension obligations. The recipient of an FSD is required to put in place financial support for the pension plan; and

(b) Contribution Notices (CNs): TPR can issue a CN to a UK pension plan sponsor to deal with instances where there has been activity engaged in with the intension of avoiding pension liabilities. A CN is effectively a demand for a specific sum of money to be paid to the relevant pension plan within a specified period of time. Under the Pension Act, such amount could constitute an enforceable debt owed by the target of CN to the UK pension trustee.

Should Kodak file for bankruptcy (either Chapter 7 or Chapter 11), TPR is likely to issue FSDs to Kodak requiring it to provide continued financial support to Kodak's UK pension plan.

Recent court cases provide mixed views to the enforceability of FSDs in the US bankruptcy proceedings. In the Sea Containers case (see reference [1] on page 7), the US court ruled that the issue of FSDs by TPR did not violate the automatic stay under Chapter 11 as TPR was acting in accordance with its statutory functions and that, although the FSDs did not amount to an attempt to assert claims, they did provide guidance on the needs of the pension plans and were pertinent in valuing the pension claims. Accordingly, the US court approved a settlement which recognized the pension plans as creditors, thereby acknowledging the reach of TPR's FSD power. However, in the Nortel case ([2], [3]), the US court took a different view that, since the claims of the trustees of the pension plans arose prepetition, the police powers exception did not apply and the public policy and pecuniary purpose test for an exception to the automatic stay were not met. The Delaware Courts distinguished the Sea Containers case on the basis that Sea Containers involved approval of a settlement, whereas the Nortel case arose from a motion to enforce the automatic stay.

Besides the enforceability, claim status of FSDs or CNs is another critical issue. In a ground-breaking judgment that may fundamentally change the restructuring industry, the UK Court of Appeal ruled (on October 14, 2011 in the Nortel case) that ***the obligations arising from FSDs and CNs rank as expenses of an administration or liquidation, and that the FSD or CN claims must be honored ahead of payments to the insolvent company's unsecured creditors.***

In following sub-sections, we use different priority schedules in recovery calculations for "Liquidation Recovery" and "Going-Concern Recovery". In the "Going-Concern Recovery", we treat the UK pension liabilities as general unsecured claims. In the "Liquidation Recovery" scenario, to be conservative, we assume potential CN claims from TPR would be junior to the 2nd-lien claims but senior to the general unsecured claims.

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(A) Liquidation Recovery

Although we don't think liquidation is a likely scenario, we present the recovery calculations below as a worst case scenario. To be conservative, we assume that UK's TPR would ultimately issue a FSD or a CN which would qualify as an "administration expense". In addition, we use Kodak's non-US pension liability as a proxy for potential CN claims.

To reach the liquidation value, we start with Kodak's June quarter balance sheet, for which we made certain adjustments including liquidation cost (assuming at 10% prepetition asset value) and discount schedules for various assets (as shown in the table). Since Kodak does not break out its guarantor/non-guarantor, US/non-US assets and liabilities, we use a 40-60 US/non-US breakout as only 40% of the Company's sales are from the US.

($ in mm)			Pro Forma Adjustments					Adjusted Book Value		
				Liquidation Cost						
Assets	Book	US Book @ 40%	Revolver	US	Non-US	IP Value	Discount	US	Non-US	Total
Cash	$957	$383	$160	($213)	($320)		100%	$329	$254	$584
A/R	$1,110	$444					90%	$400	$599	$999
Net Inventory	$837	$335					50%	$167	$251	$419
IP Portfolio	$0	$0				$1,000	100%	$1,000	$0	$1,000
PPE	$997	$399					10%	$40	$60	$100
Other	$1,433	$573					0%	$0	$0	$0
Total Asset Value	$5,334	$2,134						$1,936	$1,164	$3,101

		Pro Forma Adjustments	
Liabilities	Book	Revolver	Adj BV
A/P	$628		$628
ABS Revolver		$160	$160
Secured Notes - 2nd Lien (Claim Value)			
9.75% 03/2018	$500		$500
10.625% 03/2019	$250		$250
Germany Notes	$112		$112
US Term Notes	$28		$28
Unsecured Debt (Claim Value)			
7.0% 04/2017	$400		$400
7.25% 11/2013	$250		$250
9.2% 06/2021	$10		$10
9.95% 07/2018	$3		$3
Pension Liabilities (as of December 31, 2010)			
US Funding Gap	$210		$210
Non-US Gap	$1,002		$1,002
OPEB Liabilities (as of December 31, 2010)			
Treated as Current	$133		$133
Non-Current	$1,253		$1,253
Other Liabilities	$1,974		$1,974
Total Liabilities	$6,753		$6,913

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Liquidation Recovery - *Continued*

The table below presents our recovery value calculations for Kodak's liabilities including secured, non-secured debt obligations, pension and OPEB liabilities, etc. As shown, we have assigned different priority ranks for the debt and non-debt liabilities with respect to Kodak's US and non-US assets.

In the "Assets available without Cross-Border Adjustments" section of the table, we simply flow down the asset value according to the priority rank assigned separately for the US assets and the non-US assets. In the next section, "Deficiency Claims for Cross-Border Assets", we show potential claims for assets from cross-border liabilities if the claims are not covered by the assets within the border. For example, since the non-US pension liability of $1,002 million appears fully covered by the non-US assets, we assume it would have no deficiency claims on the US (cross-border) assets. The next two columns, "Assets available with Cross-Border Adjustments", show the US and the non-US asset pools with respect to the relevant claims after the cross-border deficiency adjustments.

The last section of the table shows our calculated recovery future value.

				Assets available without Cross Border Adjustment		Deficiency Claims for Cross-Border Assets		Assets with Cross Border Deficiency Adjustments		Value of Recovery
		Priority Rank		US	Non-US	US	Non-US	US	Non-US	
Claims ($ in mm)		US	Non-US	Assets	Assets	Assets	Assets	Assets	Assets	FV
ABS Revolver	$160	1	1.5	$1,936	$162		$0	$1,936	$162	100%
US & Germany Notes	$140	1.5	2	$1,776	$2	$138		$1,776	$162	100%
2nd-Lien Claims	$750	2	2.5	$1,636	$0		$0	$1,639	$22	100%
Non-US Pension	$1,002	2.5	1	$886	$1,164	$0		$889	$1,164	100%
A/P Claims										
US (RWP est.)	$251	3	3	$0	$0		$251	$889	$22	19%
Non-US (est.)	$377	3	3	$0	$0	$377		$889	$22	19%
Unsecured Debt	$663	3	3	$0	$0		$663	$889	$22	19%
Pension Liabilities										
US	$210	3	3	$0	$0		$210	$889	$22	19%
OPEB Liabilities										
US (RWP est.)	$554	3	3	$0	$0		$554	$889	$22	19%
Non-US (est.)	$832	3	3	$0	$0	$832		$889	$22	19%
Other Liabilities										
US (RWP est.)	$790	3	3	$0	$0		$790	$889	$22	19%
Non-US (est.)	$1,184	3	3	$0	$0	$1,184		$889	$22	19%

The calculations presented in the table above show that Kodak's senior secured 2nd-lien notes appear fully covered by the Company's asset base. However, Kodak's unsecured notes would have limited recovery value. Much of the recovery value for the unsecured notes would depend on the potential IP proceeds, as shown in the table below. In reaching present value of the recovery, we assume a 18-month liquidation process and a 25% discount rate.

	Recovery Value of Kodak's Secured and Unsecured Debt under Various IP Proceeds					
	$825 million		$1,000 million		$1,500 million	
	FV	PV	FV	PV	FV	PV
Secured Claims	100%	71%	100%	71%	100%	71%
Unsecured & GUC Claims	15%	11%	19%	14%	29%	21%

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Liquidation Recovery - *Continued*

Please note, the analysis provided in the previous page is under an extreme scenario assumption, i.e., Kodak's non-US (especially UK) pension liabilities would have superior claims on the Company's assets. However, as we discussed, the legitimacy for such extreme assumption is still unclear, and the relevant case (Nortel) is still in the UK Court of Appeal. As an exercise, we also calculate the recovery values should the UK pension liabilities be treated as general unsecured claims.

				Assets available without Cross Border Adjustment		Deficiency Claims for Cross-Border Assets		Assets with Cross Border Deficiency Adjustments		Value of Recovery
		Priority Rank		US	Non-US	US	Non-US	US	Non-US	
Claims ($ in mm)		US	Non-US	Assets	Assets	Assets	Assets	Assets	Assets	FV
ABS Revolver	$160	1	1	$1,936	$1,164		$0	$1,936	$1,164	100%
US & Germany Notes	$140	1.5	1.5	$1,776	$1,004	$0	$0	$1,776	$1,164	100%
2nd-Lien Claims	$750	2	2	$1,636	$864		$0	$1,776	$1,024	100%
A/P Claims										
US (RWP est.)	$251	3	3	$886	$114		$161	$1,026	$1,024	35%
Non-US (est.)	$377	3	3	$886	$114	$359		$1,026	$1,024	35%
Unsecured Debt	$663	3	3	$886	$114		$425	$1,026	$1,024	35%
Pension Liabilities										
US	$210	3	3	$886	$114		$135	$1,026	$1,024	35%
Non-US Pension	$1,002	3	3	$886	$114	$954				
OPEB Liabilities										
US (RWP est.)	$554	3	3	$886	$114		$355	$1,026	$1,024	35%
Non-US (est.)	$832	3	3	$886	$114	$792		$1,026	$1,024	35%
Other Liabilities										
US (RWP est.)	$790	3	3	$886	$114		$506	$1,026	$1,024	35%
Non-US (est.)	$1,184	3	3	$886	$114	$1,128		$1,026	$1,024	35%

Clearly, the unsecured notes and other GUC claims would have much better recovery value if Kodak's UK pension liabilities are treated as general credit claims, as shown in the table below.

	Recovery Value of Kodak's Secured and Unsecured Debt under Various IP Proceeds					
	$825 million		$1,000 million		$1,500 million	
	FV	PV	FV	PV	FV	PV
Secured Claims	100%	71%	100%	71%	100%	71%
Unsecured & GUC Claims	32%	23%	35%	25%	44%	31%

(B) Going-Concern Recovery

A more reasonable assumption for Kodak is for it to close its money losing businesses and to keep "cash generation" businesses (likely through the bankruptcy court). In this section, we identify two of Kodak's businesses which we believe are EBITDA positive. In calculating the recovery value for general unsecured obligations, we assume cash on hand and potential IP proceeds are enough to pay off all the secured debt, and the unsecured holders will get the whole reorganized Kodak. Again, we use IP values of $825 million, $1,000 million and $1,500 million to estimate the recovery value. The calculation shows that general unsecured obligations have a higher recovery value when compared to the liquidation case.

In this going-concern scenario, we assume Kodak would be able to reach an agreement with trustees of its UK pension plans with or without FSDs from TPR. Potential resolutions may include (a) continued funding agreement between Kodak and the UK pension trust (as illustrated in the Chemtura case, [4]), or (b) certain asset transfers from Kodak's UK operations to the UK pension trust (as the case of Readers Digest, [5]). In general, from a recovery valuation point of view, we feel it appropriate to treat the UK pension liabilities as general unsecured claims in a going-concern scenario. In addition, we exclude A/P claims of $628 million from the claim pool as they are part of working capital for a going-concern business.

Selective Going-Concern	EBITDA	Multiple		EV
Prepress Solutions	$320	5.0 x	=>	$1,600
Film & Photofinishing	$100	3.0 x	=>	$300
Selective Total				$1,900
Cash on Hand				$957
IP Proceeds				$1,000
Cash Usage during Bankruptcy ($60,000 x 10,000)			=>	($600)
Total Enterprise Value			=>	$3,257

	US / Non-US Claims		US / Non-US	Recovery
Claims ($ in mm)	Amt	Priority	EV	FV
ABS Revolver	$160	1	$3,257	100%
US & Germany Notes	$140	1.5	$3,097	100%
2nd-Lien Claims	$750	2	$2,957	100%
Unsecured Debt	$663	3	$2,207	42%
Pension Liabilities	$1,212	3	$2,207	42%
OPEB Liabilities	$1,386	3	$2,207	42%
Other Liabilities	$1,974	3	$2,207	42%
Total GUC	$5,235	3	$2,207	42%

As shown in the table below, Kodak's senior secured notes appear fully covered under our going-concern assumption. Recoveries for the unsecured notes range between 39% and 52% in the future value, or between 28% and 37% in the present value, assuming a 18-month Chapter 11 process and a 25% annual discount rate.

	Recovery Value of Kodak's Secured and Unsecured Debt under Various IP Proceeds					
	$825 million		$1,000 million		$1,500 million	
	FV	PV	FV	PV	FV	PV
Secured Claims	100%	71%	100%	71%	100%	71%
Unsecured & GUC Claims	39%	28%	42%	30%	52%	37%

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Court Case Reference

[1] In re Sea Containers Ltd., *et al.*, No. 06-11156 (KJC), District of Delaware, September 19, 2008.

[2] In re Nortel Networks Inc, *et al.*, No. 09-10138 (KG), District of Delaware, March 29, 2011.

[3] In re Nortel Networks Inc., *et al.*, Ontario Superior Court of Justice, Monitor's Report No. 65, April 28, 2011, Ernst Young.

[4] In re Chemtura Corporation, *et al.*, No. 09-11233 (REG), Southern District of New York, November 30, 2010.

[5] In re Reader's Digest Association, Inc., *et al.*, No. 09-23529 (RDD), Southern District of New York, January 19, 2010.

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Disclosure Appendix

Explanation of Rating Recommendations:

BUY RECOMMENDATION – For paying bonds and equities, we consider that the potential total return, from capital appreciation, yield, or both, will be greater than that of comparable indices or benchmarks. For defaulted / distressed securities, we consider the potential total return attractive relative to the possible downside risk.

SPECULATIVE BUY RECOMMENDATION – A Speculative Buy Recommendation differs from a Buy Recommendation in that it carries the highest level of risk and is only suitable for investors that can withstand significant capital losses if events or circumstances differ from our expectations.

MARKET PERFORM RECOMMENDATION – For paying bonds and equities, we consider that the potential total return, from capital appreciation, yield, or both, will match that of comparable indices or benchmarks. For defaulted / distressed securities, we consider the security fairly valued based on the potential total return relative to the possible downside risk.

SELL RECOMMENDATION – For paying bonds and equities, we consider that the potential total return, from capital appreciation/loss and yield, or both, will be lower than that of comparable indices or benchmarks. For defaulted / distressed securities, we consider the security overvalued based on the potential total return relative to the possible downside risk.

NEUTRAL – After careful examination, we either do not have a strong opinion as to the potential return of a security or we consider that there is no reasonably quantifiable basis for estimating the potential return with any degree of certainty.

We generally consider the time horizon for Recommendations to be six to twelve months, though the analyst may specify a particular and possibly different time horizon when instituting his or her rating. Our rating recommendations may not directly address risk, but the analyst may, in the pertinent report, qualify his or her recommendation with comments regarding risk. All Recommendations are subject to investors' own portfolio guidelines. R.W. Pressprich is under no obligation to prepare successive reports regarding a subject issuer.

Separately from our rating methodology, we may issue Comments which do not rate a security but provide background information or comments on certain issuers or events.

The following is our Fixed Income Distribution Table as of October 12, 2011.

Fixed Income Recommendations						
	Buy	Speculative Buy	Mkt. Perform	Sell	Neutral	Total
# of Current Ratings	16	7	8	6	2	39
% Current Total	41%	18%	20%	16%	5%	100%

The following is our Equity Rating Distribution Table as of October 12, 2011. Please note that our "Corporate Re-Org Equity" reports may not contain recommendations and are not included in the following table. "Corporate Re-Org Equity" reports often elaborate on various valuation methodologies, letting the reader decide upon the most appropriate methodology for their investment decision.

Equity Recommendations						
	Buy	Speculative Buy	Mkt. Perform	Sell	Neutral	Total
# of Current Ratings	7	9	5	1	2	24
% Current Total	29%	37%	20%	4.5%	8.5%	100%

Analyst Certification: I certify that the views expressed in this report accurately reflect my personal views about the subject companies and their securities, and that no part of my compensation was, is, or will be directly or indirectly related to the specific recommendation(s) or view(s) in this report.

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October 17, 2011

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CORPORATE RESEARCH — SPECULATIVE BUY RECOMMENDATION

Eastman Kodak Company

Ticker	Coupon	Maturity	Description	Ratings	Outstd	Market	RWP Recovery Chapter 7	RWP Recovery Chapter 11
EK			DIP Loan		$685		100%	100%
EK			ABS Revolver		$100		100%	100%
EK			Germany TN		$80		100%	100%
EK			US Term Notes		$20		100%	100%
EK	9.75	03/01/18	2nd-Lien Secured	B3/CCC	$500	$87 - $89	100%	100%
EK	10.625	03/15/19	2nd-Lien Secured	B3/CCC	$250	$88 - $89	100%	100%
EK	7.25	11/15/13	Senior Unsecured	Caa3/CC	$250	$28 - $29	0% - 30%	10% - 30%
EK	7	04/01/17	Convertible Notes	NA/C	$400	$28 - $29	0% - 30%	10% - 30%
EK	9.95	07/01/18	Senior Unsecured	Caa3/CC	$3		0% - 30%	10% - 30%
EK	9.2	06/01/21	Senior Unsecured	Caa3/CC	$10		0% - 30%	10% - 30%
EK			Common Stock			$0.3815		

Summary

In this follow-up report, we provide our updated valuation opinion on Kodak's debt obligations. We continue to believe that Kodak's 2nd-lien secured debt (EK 9.75 and EK 10.625) has adequate coverage under various bankruptcy scenarios, and thus should allow its holders to realize the Redemption Value (defined in the Indentures and discussed later in the report). We see approximately 26 - 27 points of upside before potential make-whole premium for an investment of $87 - $89 in either of the two notes. On the other hand, Kodak's senior unsecured notes may only recover a small portion of their face value. As such, ***we continue to rate Kodak's 2nd-lien debt Speculative Buy but assign no rating to Kodak's unsecured notes.***

As shown throughout the report, our calculations are based on the following assumptions:

(a) Confirmation Date: March 31, 2013;
(b) Total DIP drawdown of $950 million;
(c) IP proceeds between $825 million and $1,500 million; and
(d) U.S. portion of cash consumption of $600 million - $800 million between September 30, 2011 (the latest financials available) and March 31, 2013 (confirmation date).

The Bankruptcy Filing

On January 19, 2012, Eastman Kodak Company (EKC or Kodak) and its U.S. subsidiaries filed voluntary petitions for Chapter 11 business reorganization in the U.S. Bankruptcy Court for the Southern District of New York. The cases are pending administration under Case No. 12-10202 before judge Allan Gropper.

Related to the bankruptcy filing, Kodak has obtained a fully-committed, $950 million DIP credit facility with an 18-month maturity from Citigroup to allow it to operate through the reorganization.

In various motions filed during the first day of the bankruptcy, Kodak provided certain information regarding DIP milestones, IP valuation, the UK pension, NOLs and a 13-week cash flow projections, etc., as summarized below:

- DIP Milestones

  The DIP Agreement provides for certain milestones or deadlines, including: (a) not later than June 30, 2012, the filing of a bidding procedures motion under Section 363 of the Bankruptcy Code relating to the sale of the Digital Imaging Patent Portfolio, (b) not later than January 15, 2013, delivery to the Administration Agent drafts of a Plan of Reorganization and a Disclosure Statement.

FOR IMPORTANT DISCLOSURE INFORMATION relating to analyst certification and the recommendations and references herein, please refer to the Disclosure Appendix included as the last page of this document. The information contained herein was obtained from sources we believe to be reliable but we do not guarantee its accuracy or completeness. Investors should consider this document as only a single factor in making their investment decision. R.W. Pressprich and associated individuals may hold positions in securities discussed herein and make purchases and sales of such securities from time to time. Copyright 2012.

The Bankruptcy Filing - *Continued*

- IP Valuation

  Among the first day filings, Kodak provided a valuation by a third party consultant, Michael Lasinski, for its IP portfolio. Based on cash flow (royalty revenue) projections between 2012 and 2020, the third party consultant reached a net present value between $2.21 billion and $2.57 billion for the IP portfolio.

- UK Pension

  In her first day affidavit, the Kodak CFO indicated that the Trustee for the Kodak Pension Plan in the United Kingdom (the UK Plan) will have a significant general unsecured claim against Kodak by virtue of the Guaranty Agreement, effective October 9, 2007, among Kodak, the Trustee and Kodak's UK subsidiary, Kodak Limited. According to the CFO's statement, "*the Guarantee is governed by English law and on its face, among other things, and subject to certain terms and conditions, guarantees the ability of Kodak Limited to contribute to the UK Plan (a) the minimum amount of assets necessary such that the UK Plan will have sufficient assets to make member benefit payments as they are immediately due and payable if the UK Plan would not otherwise have sufficient assets needed to make such benefit payments; and (b) such that the UK Plan will achieve a 'Full Funding status' by December 31, 2022.*" At the filing, Kodak has not determined the amount of the Trustee's potential claim in connection with the Guarantee.

- NOLs

  Also stated in the first day affidavit, Kodak CFO stated that Kodak has approximately $1.9 billion in net operating losses for U.S. federal income tax purposes, as well as $592 million of foreign tax credits. According to Kodak's filing, there is no U.S. Tax Code Section 382 ownership change as of November 30, 2011.

- 13-Week Cash Flow Projections

($ in million)	5 Weeks Ended 02/12/12	4 Weeks Ended 03/09/12	4 Weeks Ended 04/06/12	13 Weeks Ended 04/06/12
Cash Receipts				
Operating Receipts	$172.2	$117.4	$144.4	$434.0
Net Inter-Company Trade Receipts	$35.0	$35.0	$35.0	$105.0
Other Receipts	$0.4	$3.4	$45.4	$49.2
Total Receipts	$207.6	$155.8	$224.8	$588.2
Cash Disbursements				
General Disbursements	($197.2)	($127.2)	($117.7)	($442.1)
Payroll / Benefits	($75.5)	($65.5)	($64.3)	($205.3)
Other Disbursements	($38.9)	($31.3)	($26.9)	($97.1)
Total Disbursements	($311.6)	($224.0)	($208.9)	($744.5)
Restructuring / DIP Related				
Restructuring Related, Fees and Interest Exp.	($148.0)	($53.1)	($7.1)	($208.2)
DIP Term Loan Draw (Repay)	$450.0	$250.0	($15.0)	$685.0
Repayment of Pre-Petition Revolver	($100.0)			($100.0)
Net Cash Flow	$98.0	$128.7	($6.2)	$220.5

As shown in the table above, Kodak expects cash usage of $156 million from its business operations during the 13-week period. In addition, the table shows that Kodak expects restructuring-related cash consumption of $208 million, including $120 million of payments under supplier motions. Unlike cash usage in operating activities, cash usage for restructuring activities appears lopsided with higher cash consumption during the first five-week period due to the payments under supplier motions. These cash usages in operating and restructuring activities, as well as repayment of pre-petition revolver, are funded through an initial DIP drawdown of $685 million.

Recovery Value Revisit

Waterfall calculations of the recovery values for Kodak's various debt securities are provided on pages 6-9 of this report. Critical to our calculations are the following assumptions used:

(a) Confirmation Date: March 31, 2013.

As Kodak's foreign entities are not part of the bankruptcy filing, we don't expect the U.S.-only case to be a very lengthy one. In our calculation, we assume a roughly 15-month court stay for Kodak before the case is confirmed by the first quarter of 2013.

(b) Total DIP drawdown of $950 million.

Although Kodak may not fully draw the total DIP loan committed, we use the full amount of $950 million in our analysis for simplicity. We also note that using a different amount will not materially change our recovery conclusions.

(c) IP proceeds between $825 million and $1,500 million.

Although Kodak's court filing suggests a much higher third party IP valuation ($2.21 billion - $2.57 billion), we will stick to our previous range between $825 million and $1,500 million for the same rationale provided in our previous report.

(d) UK Pension Claims

As indicated in Kodak CFO's first day affidavit, Kodak expects general unsecured claims from the UK Pension Plan. Under the current Guarantee Agreement between Kodak Limited and the Trustee of the UK Pension Plan, Kodak Limited is obligated to pay a minimum of $50 million to the Pension Trust in each of the years 2011 through 2014, and a minimum of $90 million to the Pension Trust in each of the years 2015 through 2022. In addition, in recent years, Kodak made contributions to its UK and U.S. pension plans and OPEB plans in the amounts shown in the table below (information obtained from Kodak's 10-K filings).

($ in million)	2007	2008	2009	2010	2011	2011 - 2014	2015 - 2022
Minimum Funding (UK)						$50	$90
Pension Contributions							
U.S.	$38	$29	$31	$22	$21		
U.K.	$73	$72	$91	$90	$89		
OPEB Contributions							
U.S.	$212	$199	$161	$154	$127		
U.K.	$6	$5	$5	$5	$5		

In addition, in guidance given in its 2011 investor presentation, Kodak forecasted annual pension/OPEB expense of $155 million - $165 million for 2012 and 2013.

In an effort to estimate potential claims from the UK Pension Plan, we simply calculate the present value of the minimum funding required for the UK Plan between 2012 and 2022 using discount rates both at 1% and 5%. The 5% is roughly the discount rate Kodak uses in calculating its non-U.S. pension liabilities while the 1% is the prevailing UK Treasury rate. All told, our estimate of potential claims is $640 million at a 5% rate and $815 million at a 1%. As of December 31, 2010, Kodak had a non-U.S. (mostly UK) pension liability of $1,002 million and an OPEB liability of approximately $830 million. Therefore, potential claims could go over $1,000 million. We want to point out that any potential cross-border UK pension claims would likely be given a general unsecured status in the U.S. bankruptcy court. For this reason, the pension claims will ONLY affect recovery values of Kodak's general unsecured debt but NOT the 2nd-lien notes.

In practice, we believe Kodak should be able to reach an agreement with the Trustee of its UK Pension Plan to avoid any injunctions from the UK Pension Regulator which has "moral hazard" powers through FSDs (Financial Support Directions) and CNs (Contribution Notices) to pursue funding claims abroad. Potential resolutions may include: (a) continued funding agreement between Kodak and the UK Pension Plan trust, or (b) certain asset transfers from Kodak's UK operations to the UK Pension Trust.

Recovery Value Revisit - *Continued*

(e) U.S. portion of cash burn: $600 million - $800 million between September 30, 2011 and March 31, 2013.

Kodak's 13-week cash projections suggest cash usage of $156 million for its operating activities. At that run-rate (without adjustment for seasonality), cash usage would be $940 million for the 18-month period between September 30, 2011 and March 31, 2013. Using a 40-60 breakout, the U.S. portion of the cash burn is roughly $375 million. In addition, Kodak also shows restructuring-related cash consumption of $208 million (or $88 million excluding one-time payments under supplier motions) during the same 13-week period. For the full bankruptcy period, we assume total restructuring-related cash usage of $500 million (including professional fees of $100 million and continued minimum UK pension funding of $50 million). All told, our calculation shows the U.S. portion of cash consumption is roughly $800 million.

Alternatively, one can assume that Kodak will take dramatic steps to restructure its money-losing businesses. Under this scenario, we come up with a lower cash consumption rate of $600 million, which includes: (a) employee severance: $300 million (= $60,000 x 5,000); (b) UK Pension: $50 million; (c) professional fees: $150 million; (d) other: $100 million.

(f) Chapter 11 or Chapter 7

By filing bankruptcy, Kodak took an important step in its effort to monetize the IP portfolio. Understandably, Kodak will also use the filing to reduce its debt load and to obtain relief from its pension and OPEB obligations. However, more critically, Kodak needs to make difficult decisions regarding the future of many of its money-losing ventures (such as the inkjet business). In its Public Lender Presentation, Kodak shows the following EBITDA breakout for its business lines:

EBITDA ($ in mm)	1Q10	2Q10	3Q10	4Q10	2010	1Q11	2Q11	3Q11	4Q11	2011
Core Businesses	$23	$57	$54	$76	$210	$24	$54	$57	$79	$214
Growth Businesses	($74)	($88)	($122)	($96)	($380)	($129)	($103)	($108)	($75)	($415)
Manage for Cash	$530	$17	$220	$43	$810	($75)	($12)	($10)	$77	($20)

Apparently, the source of Kodak's cash burn is the "Growth Businesses", which includes consumer inkjet, digital printing and packaging solutions. On the other hand, cash flow from Kodak's "Core Businesses", which includes retail systems, document scanners and digital plates, is not as strong as we had thought. At approximately $200 million, cash flows from the "Core Businesses" in recent years barely cover Kodak's funding and contribution requirements for its pension and OPEB liabilities. The cash flow summary shown above doesn't speak well for a viable future for Kodak. At this point, it is not inconceivable that the filing is converted to Chapter 7 if Kodak fails to show that a restructured Kodak can meet its various obligations.

Detailed waterfall calculations are presented in the appendix section of this report (pages 6-9). The results are summarized in the table below for various scenarios. Apparently, our analysis shows that Kodak's 2nd-lien debt security has adequate coverage under various scenarios while the general unsecured debt may only recover a small portion of the principal owed.

Recovery Value of Kodak's Secured and Unsecured Debt under Various IP Proceeds and Cash Burn Rates

	Cash Burn Rate =>	U.S. Cash Burn of $600 million			U.S. Cash Burn of $800 million		
Liquidation Approach	IP Proceeds ($ in mm) =>	$825	$1,000	$1,500	$825	$1,000	$1,500
		FV of Asset Coverage			FV of Asset Coverage		
	Secured Claims	127%	150%	217%	100%	123%	190%
	Unsecured & GUC	6%	12%	28%	0%	6%	21%
	Cash Burn Rate =>	Total Cash Burn of $1,100 million			Total Cash Burn of $1,300 million		
Going-Concern Approach	IP Proceeds ($ in mm) =>	$825	$1,000	$1,500	$825	$1,000	$1,500
		FV of Asset Coverage			FV of Asset Coverage		
	Secured Claims	202%	225%	292%	175%	198%	265%
	Unsecured & GUC	15%	18%	28%	11%	15%	24%

Redemption Value (2nd-Lien Notes)

In estimating the redemption value for the 2nd-lien debt, EK 9.75 and EK 10.625, we rely on the indentures for the notes. The indenture language regarding redemptions are similar for both notes: at any time prior to a certain date (March 1, 2014 for EK 9.76 and March 15, 2015 for EK 10.625), Kodak may redeem some or all of the notes at a price of 100% of the principal amount of the notes redeemed plus accrued and unpaid interest and a "make-whole" premium. The make-whole premium (called Applicable Premium in the Indentures) is defined as:

For EK 9.75 Notes, the greater of

(1) 1.0% of the principal amount of such Note;

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the Redemption Price of such Note on March 1, 2014, plus (ii) all required interest payments due on such Note through March 1, 2014 (excluding accrued but unpaid interest, if any, to the Redemption Date), computed using a discount rate equity to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Note.

Note: The redemption price of EK 9.75 on March 1, 2014 is 104.875%.

For EK 10.625 Notes, the greater of

(1) 1.0% of the principal amount of such Note;

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the Redemption Price of such Note on March 15, 2015, plus (ii) all required interest payments due on such Note through March 1, 2014 (excluding accrued but unpaid interest, if any, to the Redemption Date), computed using a discount rate equity to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Note.

Note: The redemption price of EK 10.625 on March 15, 2015 is 105.313%.

To calculate the make-whole premium for the two notes, we incorporate two additional assumptions: (a) Redemption Date: March 31, 2013; (b) Treasury Rate: 1-year rate of 0.12% used for EK 9.75 and 2-year rate of 0.25% used for EK 10.625. All told, the make-whole premiums are $13.17 for EK 9.75 and $24.33 for EK 10.625.

In the table below, we summarize the redemption values for the two notes:

	Accrued Interest		Make-Whole Premium	Accretion Value	Principal Value	Redemption Value without M-W		Redemption Value with M-W
	Pre-Petition	Post-Petition				To Accretion	To Principal	
EK 9.75 03/01/18	$3.74	$11.70	$13.17	$98.75	$100.00	$114.19	$115.44	$128.61
EK 10.625 03/15/19	$3.63	$12.75	$24.33	$99.02	$100.00	$115.40	$116.38	$140.71

For the two notes, we calculate the redemption values under two scenarios: without make-whole premium and with make-whole premium. Although the make-whole provision is generally enforceable outside the bankruptcy court, the enforceability in the context of a bankruptcy filing is unclear and the case law remains unsettled. In Chemtura (see reference [2] on page 11), although the court did not rule on the merit of the extent to which make-whole provision might be enforceable in bankruptcy, the court ultimately approved a settlement pursuant to which the debtors agreed to pay 42% of the potential liability under the make-whole provision. On the other hand, in Solutia (reference [3]), the court flatly rejected bondholders' general unsecured claims for triggering of a make-whole provision. In A&P (reference [1]), a settlement is reached in which the 2nd-lien holders would receive accreted original issue discount, accrued but unpaid interest, default interest, and interest on interest BUT no make-whole premium and pre-payment penalty.

In addition, we are aware that both of the notes were issued with discounts: $2.03 for EK 9.75 and $1.31 for EK 10.625. As demonstrated in the Solutia case (reference [3]), holders of secured debt issued at a discount may not be allowed the face amount claims. Rather, the amount allowable is the accretion value of the OID notes (or the face amount less the un-accrued portion of OID). Again, in A&P (reference [1]), 2nd-lien holders will receive accreted OID discount. For this reason, we also include accretion values for the two EK notes in the table above.

All told, because of the potential make-whole premium, we show a large range of redemption values for Kodak's two 2nd-lien notes. At this stage, given the uncertainties in the case law on this issue, we prefer to treat the make-whole premium as an option. However, even without the premium, the two notes still have potential upside of approximately 26 - 27 points, on an investment of $87 - $89. For this reason, we continue to rate the notes Speculative Buy.

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Appendix

Balance Sheet Adjustments

To reach the liquidation value, we start with Kodak's September quarter balance sheet, for which we made certain adjustments including liquidation cost (discussed in the report) and discount schedules for various assets (as shown in the table). Since Kodak does not break out its guarantor/non-guarantor, U.S./non-U.S. assets and liabilities, we use a 40-60 US/non-US breakout for Kodak's assets except cash position. For cash, Kodak indicated that it had $230 million of cash held within the U.S. as of September 30, 2011.

September 30, 2011 ($ in mm)			Pro Forma Adjustments						Adjusted Book Value		
					Cash Burn 18 Mos Total $1,250 mm						
Assets	Book	US Book @ 40%	Revolver	DIP	US	Non-US	IP Value	Discount	US	Non-US	Total
Cash	$862	$230	$0	$950	($800)	($500)		100%	$380	$132	$512
A/R	$1,052	$421						90%	$379	$568	$947
Net Inventory	$892	$357						50%	$178	$268	$446
IP Portfolio	$0	$0					$825	100%	$825	$0	$825
PPE	$948	$379						10%	$38	$57	$95
Other	$1,348	$539						0%	$0	$0	$0
Total Asset Value	$5,102	$2,041							$1,800	$1,025	$2,825

		Pro Forma Adjustments		
Liabilities	Book	Revolver	New Loan	Adj BV
A/P	$673			$673
ABS Revolver	$100	($100)		$0
DIP Loan			$950	$950
Secured Notes - 2nd Lien (Claim Value)				
9.75% 03/2018	$500			$500
10.625% 03/2019	$250			$250
Germany Notes	$80			$80
US Term Notes	$20			$20
Unsecured Debt (Claim Value)				
7.0% 04/2017	$400			$400
7.25% 11/2013	$250			$250
9.2% 06/2021	$10			$10
9.95% 07/2018	$3			$3
Pension Liabilities (as of December 31, 2010)				
US Funding Gap	$210			$210
Non-US Gap	$1,002			$1,002
OPEB Liabilities (as of December 31, 2010)				
Treated as Current	$133			$133
Non-Current	$1,253			$1,253
Other Liabilities	$1,815			$1,815
Total Liabilities	$6,699			$7,549

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Appendix - *Continued*

Liquidation Recovery

The table below presents our recovery value calculations for Kodak's liabilities including secured and non-secured debt obligations, pension and OPEB liabilities, etc. As shown, we have shaded the non-U.S. portion of assets and liabilities as they are not part of the bankruptcy. As for potential UK pension claims, we use $730 million, a midpoint between $640 million and $815 million, and treat it as general unsecured claims to Kodak's U.S. assets.

Balance Sheet Liquidation Analysis

Claims ($ in mm)		Priority Rank US	Priority Rank Non-US	Assets available without Cross Border Adjustment: US Assets	Assets available without Cross Border Adjustment: Non-US Assets	Deficiency Claims for Cross-Border Assets: US Assets	Deficiency Claims for Cross-Border Assets: Non-US Assets	Assets with Cross Border Deficiency Adjustments: US Assets	Assets with Cross Border Deficiency Adjustments: Non-US Assets	Value of Recovery FV
ABS Revolver	$0	1	1.5	$1,800	$23		$0	$1,800	$0	171%
US & Germany Notes	$100	1	1.5	$1,800	$23		$0	$1,800	$0	171%
DIP Loan	$950	1	1.5	$1,800	$23		$0	$1,800	$0	171%
2nd-Lien Claims	$750	2	2.5	$750	$0		$0	$750	$0	100%
Non-US Pension	$1,002	2.5	1		$1,025	$0		$0	$1,025	
A/P Claims										
US (RWP est.)	$269	3	3	$0	$0		$269	$0	$0	0%
Non-US (est.)	$404	3	3		$0	$404		$0	$0	
Unsecured Debt	$663	3	3	$0	$0		$663	$0	$0	0%
UK Pension Trust Claims	$730	3	3	$0			$730			
Pension Liabilities										
US	$210	3	3	$0	$0		$210	$0	$0	0%
Non-US	$1,002	3	3			$1,002				
OPEB Liabilities										
US (RWP est.)	$554	3	3	$0	$0		$554	$0	$0	0%
Non-US (est.)	$832	3	3		$0	$832		$0	$0	
Other Liabilities										
US (RWP est.)	$726	3	3	$0	$0		$726	$0	$0	0%
Non-US (est.)	$1,089	3	3		$0	$1,089		$0	$0	

The calculations presented in the table above show that Kodak's senior secured 2nd-lien notes appear fully covered by the Company's asset base. However, Kodak's unsecured notes would have limited recovery value. Again, much of the recovery value for the unsecured notes would depend on the potential IP proceeds and cash burn rate during the bankruptcy, as shown in the table below. In addition, if one uses IP proceeds of $2.21 billion (the lower end of the consultant's estimate), recovery for the general unsecured notes would be between 44% and 50% under the two cash burn rates.

Recovery Value of Kodak's Secured and Unsecured Debt under Various IP Proceeds and Cash Burn Rates

Cash Burn Rate =>	U.S. Cash Burn of $600 million			U.S. Cash Burn of $800 million		
IP Proceeds ($ in mm) =>	$825	$1,000	$1,500	$825	$1,000	$1,500
	FV of Asset Coverage			FV of Asset Coverage		
2nd-Lien Secured Claims	127%	150%	217%	100%	123%	190%
Unsecured & GUC	6%	12%	28%	0%	6%	21%

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Appendix - *Continued*

Going-Concern Recovery

In a going-concern scenario, we assume that Kodak will terminate its money losing product lines in the "Growth Businesses" segment and retain its "Core Businesses". We have previously identified two of Kodak's businesses which we believe are EBITDA positive: Prepress Solutions and Film & Photofinishing. In our previous report, we assume Kodak's Prepress Solutions, which include plates, platesetters and packaging solutions, to have an EBITDA margin of 20% on reported segment sales of $1.6 billion for 2010. The 20% margin is roughly in line with the average of its peers in past decade: Schawk Inc, Matthews International, SGS International and Fuji Offset. However, as volumes were weak and the market has faced strong Chinese imports in recent quarters, the EBITDA estimate used in our previous report appears too high. In the following calculation, we simply use Company reported EBITDA of $210 million from the "Core Businesses". Please note, product lines included in the "Core Businesses" are not exactly the same as in the PrePress Solutions segment. For the film business, we also lower our EBITDA assumption to $75 million given the rapid decline rate of that business.

Interestingly, Kodak's total enterprise value calculated below is less than the Company's liquidation asset value shown on page 6. For this reason, Kodak may not emerge as a going-concern entity. On the liability side, we include Kodak's US and non-US liabilities and treat Kodak as a consolidated going-concern entity.

Selective Going-Concern	EBITDA	Multiple		EV
Core Business	$200	4.0 x	=>	$800
Film & Photofinishing	$75	3.0 x	=>	$225
Selective Total				$1,025
Cash on Hand				$862
New Loan				$950
IP Proceeds				$825
Cash Usage before and during Bankruptcy			=>	($1,300)
Total Enterprise Value			=>	$2,362

	US / Non-US Claims		US / Non-US	Recovery
Claims ($ in million)	Amt	Priority	EV	FV
ABS Revolver	$0	1	$2,362	225%
US & Germany Notes	$100	1	$2,362	225%
New Loan - 1st Lien	$950	1	$2,362	225%
2nd-Lien Claims	$750	2	$1,312	175%
Unsecured Debt	$663	3	$562	11%
Pension Liabilities	$1,212	3	$562	11%
OPEB Liabilities	$1,386	3	$562	11%
Other Liabilities	$1,815	3	$562	11%
Total GUC	$5,076	3	$562	11%

Recovery Value of Kodak's Secured and Unsecured Debt under Various IP Proceeds and Cash Burn Rates

Cash Burn Rate =>	Total Cash Burn of $1,100 million			Total Cash Burn of $1,300 million		
IP Proceeds ($ in mm) =>	$825	$1,000	$1,500	$825	$1,000	$1,500
	FV of Asset Coverage			FV of Asset Coverage		
2nd-Lien Secured Claims	202%	225%	292%	175%	198%	265%
Unsecured & GUC	15%	18%	28%	11%	15%	24%

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Appendix - *Continued*

Change of Venue: From Going-Concern to Liquidation

As we work through Kodak's financials and make our projections, it occurs to us that Kodak may not emerge from bankruptcy protection. Apparently, Kodak has too many product lines that are losing money and its "Core Businesses" doesn't appear strong enough to meet Kodak's many funding requirements. It is not inconceivable for Kodak, following the path of Nortel, to ceases its operations and to seek buyers for all of its business units. Provided below is our recovery value calculation under the liquidation scenario that Kodak will unwind all of its businesses. Unlike the balance sheet based liquidation analysis presented on page 7, liquidation analysis presented here is based on our estimates of enterprise values of Kodak's business units.

As shown, the waterfall table is similar to the one on page 8 but with the following modifications:

- We include both accounts receivable (with a 10% haircut) and accounts payable (as general unsecured claims) in the calculation.
- We exclude potential value from current inventory as they are most likely sold with business units.
- To be conservative, we also assign a super priority claim rank for Kodak's non-US pension liabilities. In our previous report, we discussed the legal rationale behind this assumption.

Selective Going-Concern	EBITDA	Multiple		EV
Core Business	$200	4.0 x	=>	$800
Film & Photofinishing	$75	3.0 x	=>	$225
Selective Total				$1,025
Cash on Hand				$862
A/R @ 10% Discount				$947
New Loan				$950
IP Proceeds				$825
Cash Usage before and during Bankruptcy			=>	($1,300)
Total Enterprise Value			=>	$3,309

	US / Non-US Claims		US / Non-US	Recovery
Claims ($ in million)	Amt	Priority	EV	FV
Non-US Pension Liabilities	$1,002	0	$3,309	330%
US & Germany Notes	$100	1	$2,307	220%
New Loan - 1st Lien	$950	1	$2,307	220%
2nd-Lien Claims	$750	2	$1,257	168%
Accounts Payable	$673	3	$507	11%
Unsecured Debt	$663	3	$507	11%
U.S. Pension Liabilities	$210	3	$507	11%
OPEB Liabilities	$1,386	3	$507	11%
Other Liabilities	$1,815	3	$507	11%
Total GUC	$4,747	3	$507	11%

Recovery Value of Kodak's Secured and Unsecured Debt under Various IP Proceeds and Cash Burn Rates

Cash Burn Rate =>	Total Cash Burn of $1,100 million			Total Cash Burn of $1,300 million		
IP Proceeds ($ in mm) =>	$825	$1,000	$1,500	$825	$1,000	$1,500
	FV of Asset Coverage			FV of Asset Coverage		
2nd-Lien Secured Claims	194%	218%	284%	168%	191%	258%
Unsecured & GUC	15%	19%	29%	11%	14%	25%

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Appendix - *Continued*

Kodak's Business

Presented below are Kodak's old and new business segments. The new business structure was announced on January 10, 2012. In its Public Lender Presentation, Kodak also shows a three product line break-out: Core, Growth and Manage for Cash, as shown in the second table below.

Kodak's Business Segments

	2010			9Mo2011		
Old Business Segment ($ in million)	Revenue	EBITDA	EBIT	Revenue	EBIT	New Business Segment
Consumer Digital Group (CDG)	$2,739	($418)	($507)	$1,142	($350)	Consumer Segment
Inkjet Systems						Old CDG
(desktop Inkjet Printers, Inks & Paper)						Partial Old FPEG
Retail System Solutions	~ $700					*Paper & Output Systems*
(Retail Kiosks, Dry Labs, etc.)						*Event Imaging Solutions*
Kodak Gallery						*Intellectual Property*
(Web Merchandise & Services)						
Digital Capture & Devices	~ $2,000					
(Digital Cameras, Royalties, frames, etc.)						
Graphic Communications Group (GCG)	$2,681	$59	($26)	$1,975	($171)	Commercial Segment
Digital Printing Solutions	~ $500					Old GCG
Inkjet Printing Solutions						Partial Old FPEG
Electrophotographic Solutions						*Entertainment Imaging*
Business Solutions & Services	~ $600					*Commercial Films*
Workflow Software & Services						
Document Imaging						
Prepress Solutions	~ $1,600					
Digital Plates =>						
Packaging Solutions =>						
Film, Photofinishing & Entertainment (FPEG)	$1,767	$200	$64	$1,152	$2	
Entertainment Imaging	~ $700					
(Capture, Print & Films, etc.)						
Traditional Photofinishing	~ $700					
(Color Paper, Pro Output, etc.)						
Industrial Materials						
(Aerial Film, Printed Circuit Board film)	~ $400					
Film Capture						
(Consumer & Professional Film, One-Time-Use						

Kodak's Business Lines

Core Businesses
- Retail Systems Solutions
- Document Scanners
- Digital Plates

	2010	2011
Revenue	$2,250	$2,297
EBITDA	$210	$214

Growth Businesses
- Consumer Inkjet
- Digital Printing Solutions
- Workflow Software & Services
- Packaging Solutions

	2010	2011
Revenue	$1,061	$1,187
EBITDA	($380)	($415)

Manage for Cash / Value
- Digital Capture & Devices
- Paper Output Services
- Entertainment Imaging
- Intellectual Property
- Commercial & Consumer Film
- Consumer Film
- Gallery, Event Imaging Solutions

	2010	2011
Revenue	$3,857	$2,538
EBITDA	$810	($20)

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Appendix - *Continued*

Court Case Reference

[1] In re The Great Atlantic & Pacific Tea Company, *et al*, No. 10-24549 (RDD), Southern District of New York, December 12, 2011.

[2] In re Chemtura Corporation, *et al.*, No. 09-11233 (REG), Southern District of New York, November 30, 2010.

[5] In re Reader's Digest Association, Inc., *et al.*, No. 09-23529 (RDD), Southern District of New York, January 19, 2010.

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Disclosure Appendix

Explanation of Rating Recommendations:

BUY RECOMMENDATION – For paying bonds and equities, we consider that the potential total return, from capital appreciation, yield, or both, will be greater than that of comparable indices or benchmarks. For defaulted / distressed securities, we consider the potential total return attractive relative to the possible downside risk.

SPECULATIVE BUY RECOMMENDATION – A Speculative Buy Recommendation differs from a Buy Recommendation in that it carries the highest level of risk and is only suitable for investors that can withstand significant capital losses if events or circumstances differ from our expectations.

MARKET PERFORM RECOMMENDATION – For paying bonds and equities, we consider that the potential total return, from capital appreciation, yield, or both, will match that of comparable indices or benchmarks. For defaulted / distressed securities, we consider the security fairly valued based on the potential total return relative to the possible downside risk.

SELL RECOMMENDATION – For paying bonds and equities, we consider that the potential total return, from capital appreciation/loss and yield, or both, will be lower than that of comparable indices or benchmarks. For defaulted / distressed securities, we consider the security overvalued based on the potential total return relative to the possible downside risk.

NEUTRAL – After careful examination, we either do not have a strong opinion as to the potential return of a security or we consider that there is no reasonably quantifiable basis for estimating the potential return with any degree of certainty.

We generally consider the time horizon for Recommendations to be six to twelve months, though the analyst may specify a particular and possibly different time horizon when instituting his or her rating. Our rating recommendations may not directly address risk, but the analyst may, in the pertinent report, qualify his or her recommendation with comments regarding risk. All Recommendations are subject to investors' own portfolio guidelines. R.W. Pressprich is under no obligation to prepare successive reports regarding a subject issuer.

Separately from our rating methodology, we may issue RWP Profiles\Comments which do not rate a security but provide background information or comments on certain issuers or events.

The following is our Fixed Income Distribution Table as of January 26, 2012.

Fixed Income Recommendations						
	Buy	Speculative Buy	Mkt. Perform	Sell	Neutral	Total
# of Current Ratings	17	12	9	8	2	48
% Current Total	36%	25%	18%	17%	4%	100%

The following is our Equity Rating Distribution Table as of January 26, 2012. Please note that our "Corporate Re-Org Equity" reports may not contain recommendations and are not included in the following table. "Corporate Re-Org Equity" reports often elaborate on various valuation methodologies, letting the reader decide upon the most appropriate methodology for their investment decision.

Equity Recommendations						
	Buy	Speculative Buy	Mkt. Perform	Sell	Neutral	Total
# of Current Ratings	9	7	7	3	2	28
% Current Total	32%	25%	25%	11%	7%	100%

Analyst Certification: I certify that the views expressed in this report accurately reflect my personal views about the subject companies and their securities, and that no part of my compensation was, is, or will be directly or indirectly related to the specific recommendation(s) or view(s) in this report.

Liyang Zhang
February 1, 2012

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February 22, 2012

BY ELECTRONIC MAIL

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Re: ***In re Eastman Kodak Company, et al.*, Case No. 12-10202 (ALG)**
Response to Request for Appointment of Equity Committee

Dear Ms. Davis and Mr. Masumoto:

We are counsel to certain unaffiliated holders (the "Second Lien Noteholders Committee") of the (i) 9.75% Senior Secured Notes due March 1, 2018 issued pursuant to that certain Indenture dated March 5, 2010, as amended, supplemented or otherwise modified from time to time, by and among Eastman Kodak Company, as issuer ("Kodak" and, collectively with its affiliated debtors and debtors-in-possession, the "Debtors"), the guarantors as defined therein, and Wilmington Trust, National Association, as successor indenture trustee to The Bank of New York Mellon Trust Company, N.A. and (ii) 10.625% Secured Notes due March 15, 2019 issued pursuant to that certain Indenture dated March 15, 2011, as amended, supplemented or otherwise modified from time to time, by and among Kodak, as issuer, the guarantors as defined in therein, and Wilmington Trust, National Association, as successor indenture trustee to The Bank of New York Mellon Trust Company, N.A. The purpose of this letter is to respond to the letters (collectively, the "Letters") requesting the formation of an official committee of equity security holders in the above-referenced chapter 11 cases (the "Chapter 11 Cases") from (i) Stephen G. Grygiel, Esq. of Keefe Bartels, dated February 3, 2012, (ii) Frank E. Williams, Jr., dated January 23, 2012, (iii) Gregg Abella, dated January 27, 2012, (iv) William M. Stern, dated January 23, 2012, (v) Andrew Gregor, dated January 31, 2012, (vi) Mark L. Kaufman, dated February 7, 2012 (addressed to Mr. Grygiel), (vii) Robert J.

Stark, Esq., dated February 9, 2012, on behalf of five Kodak shareholders, (viii) Lance Laifer, dated February 8, 2012, and (ix) Luis E. Diaz, dated February 10, 2012 (collectively, the "Requesting Parties").

The Second Lien Noteholders Committee joins the Debtors and the official committee of unsecured creditors (the "Committee") in opposing the appointment of an equity committee in these Chapter 11 Cases. The appointment of an equity committee is extraordinary relief that should not be granted unless "equity holders establish (i) there is a substantial likelihood that they will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) they are unable to represent their interests in the bankruptcy case without an official committee." See In re Williams Communications Group, Inc., 281 B.R. 216, 223 (Bankr. S.D.N.Y. 2002). Because the Requesting Parties have failed to establish either of these elements, their request must be denied.

First, the Requesting Parties have not demonstrated that there is a substantial likelihood that Kodak's equity holders will receive any distribution in the Chapter 11 Cases. Most of the Letters do not address this issue. The Letters that do consider it offer only a superficial analysis based on highly speculative and untested valuations of the Debtors' assets.

As of January 19, 2012 (the "Petition Date"), the Debtors had in excess of $4.6 billion in asserted prepetition liabilities in addition to a projected cash burn of $364 million in the first thirteen weeks of the Chapter 11 Cases. Following the Petition Date, the approval of nearly $1 billion in postpetition financing has further increased the Debtors' liabilities, and the Debtors' unsecured notes have been trading between approximately 25 to 30 percent of face value, which suggests the market is not optimistic about unsecured creditors' recovery in these Chapter 11 Cases. Under the absolute priority rule, unsecured creditors must be paid in full, including postpetition interest, before equity can receive any distribution. Based upon, among other things, the Debtors' significant debt burden, clear market indicators that unsecured creditors will recover far less than the face amount of their claims and the absence of any credible evidence that equity holders would receive any distribution, let alone a "meaningful distribution," in these Chapter 11 Cases, the Requesting Parties' request for an equity committee should be denied.

Second, the Requesting Parties have not established that equity holders' interests are not, or will not be, adequately represented in the Chapter 11 Cases. Both the Debtors and the Committee are statutorily obligated, and economically incentivized, to maximize the value of the Debtors' estates. The Requesting Parties have no basis to conclude that the Debtors and the Committee will not act to maximize the value of the Debtors' estates for the benefit of all stakeholders.

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Moreover, the Requesting Parties appear to be sophisticated investors capable of advocating on behalf of their interests in these Chapter 11 Cases. Indeed, the Requesting Parties already have evidenced their ability to participate effectively by retaining competent counsel and requesting the appointment of an equity committee less than a month after the Petition Date. It appears that, if desired, the Requesting Parties have the ability to fund an ad hoc equity group to participate in the Chapter 11 Cases, which could later seek compensation and reimbursement from the Debtors' estates if the ad hoc group were found to have made a substantial contribution under 11 U.S.C. § 503(b). Accordingly, under these circumstances, the appointment of an official equity committee is not necessary to ensure that the interests of equity holders are adequately represented in the Chapter 11 Cases.

In conclusion, the Second Lien Noteholders Committee respectfully submits that the request to appoint an official equity committee should be denied. The Requesting Parties have failed to establish a substantial likelihood that equity holders will receive any recovery, let alone a meaningful distribution, in the Chapter 11 Cases, and it is clear that the interests of equity holders will be adequately represented without the formation of an official committee.

Respectfully,

Michael S. Stamer

cc: Andrew G. Dietderich, Esq.
Michael Torkin, Esq.
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February 23, 2012

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RE: In re Eastman Kodak Company, et al.,
Ch. 11 Case No. 12- 10202-alg (Bankr. S.D.N.Y.)

Dear Ms. Davis and Mr. Masumoto:

This follows our February 8, 2012 letter on behalf of certain holders of common stock issued by Eastman Kodak Company ("Kodak" or the "Debtor") requesting the appointment of an Official Committee of Equity Security Holders in the Debtor's Chapter 11 case ("Equity Committee"). Specifically, this letter is respectfully offered in reply to opposition letters submitted on February 17, 2012 by: (i) Sullivan & Cromwell LLP on behalf of Kodak; (ii) Milbank, Tweed, Hadley & McCloy LLP on behalf of the Official Creditors' Committee; and (iii) Akin Gump Strauss Hauer & Feld LLP on behalf of the Ad Hoc Second Lien Noteholders Committee (collectively, the "Opposing Parties").

I. The Opposing Parties Do Not Contest The Valuation Record.

In our February 8th letter, we were careful to support the case for an Equity Committee with actual citations to the evidentiary record. We did not predicate our request on flimsy rhetoric or unsubstantiated indicia of value, but pointed to the actual valuation testimony of Kodak executives and experts, offered into evidence by Kodak in support of, among other relief, its request for priming post-petition financing. That testimony was relied on by the Bankruptcy Court, and we supplied true and correct copies as attachments to the letter.

On February 9, 2012, Mr. Masumoto requested that Kodak and the Official Creditors' Committee provide "responses to ... the significant factual allegations" contained in our February 8th letter. By "responses," we understood Mr. Masumoto to be asking for substantial and facially trustworthy data (perhaps even readily admissible evidence), not the unsupported conclusory rhetoric that has been submitted. Such detailed request made sense given that Kodak, its Official Creditors' Committee and pre-petition secured lenders are best positioned to provide the United States Trustee

with actual, detailed information as to value of the estate. That is especially true given that the Opposing Parties were then engaged in hot litigation over a "priming" post-petition loan (and resultant valuation issues), and the parties had their own readily-accessible valuation experts at: (i) Lazard; (ii) Jefferies & Co.; and (iii) The Blackstone Group.

But, no such supporting data was supplied in the February 17th letters. These letters offer nothing substantive; no data as to enterprise/asset worth; no expert report as to insolvency. Not one scintilla of evidence has been offered by Kodak, the Official Creditors' Committee, or the Ad Hoc Second Lien Noteholders Committee to contradict the substantial valuation evidence Kodak recently, and voluntarily, submitted to the Court.

The February 17th responses, thus, essentially concede that: (i) certain estate assets are worth between $3.353 billion and $4.313 billion; (ii) as declared by Ms. McCorvey and Mr. Hart, the aggregate value of the Chapter 11 estates probably greatly exceeds those figures; and (iii) the portfolio of intellectual property now being marketed (representing only about 10% of the Debtor's IP portfolio) is worth between $2.210 billion and $2.573 billion.

II. Debt Trading Is Not A Reliable Indicator Of Insolvency.

Instead of offering valuation data and evidence, the Opposing Parties point to purported debt trading levels to establish insolvency. This so-called "proof" fails for at least three reasons.

First, there is absolutely no authority supporting the argument that debt trading levels reflect enterprise/asset worth, solvency or insolvency. Under clear Supreme Court authority, the value of a business enterprise in bankruptcy is to be based on evidence of anticipated post-bankruptcy performance. See Consolidated Rock Products Co. v. Dubois, 312 U.S. 510 (1941) ("The criterion of earning capacity is the essential one if the enterprise is to be freed from the heavy hand of past errors, miscalculations or disaster, and if the allocation of securities among the various claimants is to be fair and equitable."). We are, in fact, unaware of a single reported decision where a Bankruptcy Court found probative, let alone persuasive, debt trading as evidence of enterprise/asset worth. We are, however, aware of substantial authority establishing that debt trading is not a reliable indicator of estate value. See, e.g., In re Penn Central Transport Co., 596 F.2d 1102, 1115-16 (3d Cir. 1972)("That argument [that market value should not be used] has considerable force when the securities in issue represent equity in, or long term interest bearing obligations of, a reorganized debtor. In such cases, the market value of the security will depend upon the investing public's perception of the future prospects of the enterprise. That perception may well be unduly distorted by the recently concluded reorganization and the prospect of lean years for the enterprise in the immediate future. Use of substitute 'reorganization value' may under the circumstances be the only fair means of determining the value of the securities distributed."); In re Exide Tech., 303 B.R. 48, 59 (Bankr. D. Del. 2003)(rejecting bidding at debtor's post-petition "private equity" process as indicative of enterprise value); In re New York, New Haven & Hartford R.R., 4 B.R. 758, 791 (D. Conn. 1980 ("The stigma of bankruptcy alone is a factor that will seriously depress the market value of a company's securities.").

Second, the contention that trading levels are indicative of enterprise worth is: (i) utterly reliant on the "Efficient Marketplace" hypothesis; and, as a result, (ii) does not tend to work in bankruptcy, given that companies incur dramatic, unpredictable and market-distortive change in Chapter 11, the Court dialectic and inter-creditor battling causes inefficiency and delay, and parties buy/sell securities for strategic and other reasons untethered to underlying enterprise worth. See Anders J. Maxwell, "Markets, Uncertainty, and the Role of Judgment in Bankruptcy Valuation" in Contested Valuation in Corporate Bankruptcy (2011)(establishing that, for these reasons, debt trading levels are a poor indicator of the enterprise value of a Chapter 11 debtor); see also Aswath Damodaran, Investment Valuation Tools and Techniques for Determining the Value of any Asset, pp. 112-17 (2d ed. 2002)(absent assurance of market efficiency, trading levels are not necessarily reliable indicators of enterprise value). Also, in a case such as this (where the capital structure is multi-tiered), debt trading levels are often driven by hedging and derivative transactions, rather than fair appraisals of underlying estate value. Moreover, debt trading is a particularly weak basis to render a conclusion here, given that Kodak is a valuation "black-box": It has intentionally put precious little information about its future path into the public domain, affording the market almost no sense how this Chapter 11 process will conclude or what will be the value end-result. The market for Kodak securities is today about as inefficient as could ever be imagined.

Third, and perhaps for the aforementioned reason, there has not been (contrary to the Opposing Parties' contention) extensive trading in Kodak's unsecured debt. The Bloomberg reports attached to Kodak's responsive letter reveal only a small handful of trades, involving relatively insignificant amounts of unsecured bonds changing hands. This is not, in other words, feverish swapping in large volumes daily, reflecting "mass" consensus towards a market valuation. Sparse trading in Kodak debt actually reflects the opposite of the Opposing Parties' valuation thesis; there is, in fact, no market consensus view of enterprise worth, and large holders are finding a "bid" in the thirties to be an unattractive offer (presumptively because they expect an indeterminately greater amount in recovery).

III. Unaffiliated Third-Parties Corroborate Kodak's Own Evidence Establishing That Stockholders Have A Meaningful Value Entitlement.

The Opposing Parties castigate analyst reports issued by Rafferty Capital Markets because they conclude that Kodak equity-holders have a meaningful value entitlement in this Chapter 11 case. No analysis or substantive reason has been provided as to why the reports are incorrect; the February 17th letters offer only flat rejection of the valuation conclusion. This is curious since the reports facially appear to be the studied opinion of quality investment analysts (copies of the reports are attached here as Exhibit A). The Opposing Parties particularly focus their ridicule on Rafferty's value estimate for intellectual property at $2.4 billion. That ridicule is ironic, given that Kodak's own IP appraiser offered his own valuation (again, essentially conceded in the February 17th letters) between $2,210 billion and $2,573 billion.

Regardless, our request for an Equity Committee is not based on third-party evaluations. It is predicated on hard evidence that Kodak voluntarily placed in the record, through the Declarations of its own executives and experts, evidence that has already be relied on by the Bankruptcy Court. That evidence is, however, corroborated by the Rafferty analyst reports, which reach similar valuation conclusions. Mr. Masumoto challenged the Opposing Parties to provide evidence and analysis, but this request was not honored. The record on valuation therefore stands unopposed.

IV. Whether Pension-Related Claims Are Ultimately Allowed Depends On How The Case Unfolds And The Nature Of The Claims.

The Opposing Parties are also particularly critical of our contention that pension obligations likely will not become allowed claims in the Chapter 11 cases. But, here too, the Opposing Parties fail to provide information to support their criticism. Kodak has clearly and repeatedly stated its intention to reorganize, and in a manner that causes absolutely no impact to its foreign affiliates. See McCorvey Declaration at ¶ 17 ("The company's non-U.S. businesses are expected to be funded primarily from non-U.S. sources and *should not be affected by the filing of these chapter 11 proceedings.*" (emphasis added); see also Steve Kiernan, "Kodak to Become More Asian After Chapter 11 Restructure," ProPrint (Feb. 20, 2012)(Kodak Exceutive Lois Lebegue: "*When we recover and come out of Chapter 11*, the centre of gravity will move more in to Asia-Pacific" (emphasis added))(copy attached hereto as Exhibit B). The Opposing Parties offer absolutely nothing establishing that: (i) these statements are inaccurate; (ii) the enterprise likely will not emerge from bankruptcy as a stand-alone reorganized company; (iii) the small annual amount of UK-pension obligations are not "self-funded" by the UK-affiliate and that company's numerous foreign subsidiaries; and (iv) likely will become US obligations. If there is data opposing our supposition, it certainly would have been readily available for the Opposing Parties to present to the United States Trustee in their February 17th submissions. Their failure to provide any such detail renders their criticism hollow.

We have a similar reaction to the Opposing Parties' statements regarding Kodak's US pension obligations. As discussed in our February 8th letter, the PBGC recently issued a press release indicating that Kodak's US pension plans presently are fairly well-funded, and Kodak's historical SEC statements reveal relatively modest annual funding requirements (about $20 million). If the PBGC's press release is inaccurate in any way or if there is information indicating that Kodak's future annual funding obligations likely will exceed years past (such as, for example, valuation/actuarial data that pension plans must maintain), such information certainly would have been readily available for inclusion in the February 17th responses. Again, the lack of a substantive response to Mr. Masumoto's request speaks volumes.

And, finally respecting Kodak's OPEB liability, our February 8th letter discussed OPEB as a legal proposition, noting that such obligations are generally unenforceable by retirees. Rather, OPEB obligations tend to be "at will" terminable by the employer (without resulting claims), either during the bankruptcy case or immediately following plan consummation. See In re Visteon Corp., 2010 U.S. App. LEXIS 14307 (3d Cir. July 13, 2010); In re Delphi Corp., 2009 Bankr. LEXIS 576, *19 (Bankr. S.D.N.Y. March 10, 2009). Evidence in the record supports the contention that this is

the nature of Kodak's OPEB exposure. See McCorvey Declaration at ¶ 33 ("In addition to consistently managing reductions of its workforce, Kodak actively managed its benefit costs, including with respect to U.S. OPEB. Cost savings came from the Company *exercising its unilateral rights* to reduce or eliminate certain retiree benefits."). If Kodak's OPEB obligations are not terminable "at will," the Opposing Parties presumably would have so informed the United States Trustee (by, for example, furnishing to the United States Trustee copies of the relevant portions of employee handbooks and other OPEB materials). The utter lack of evidence supporting the Opposing Parties' contention essentially corroborates our case theory.

V. Management Behavior Proves That It Cannot Be Expected To Protect Shareholder Interests In Bankruptcy.

As discussed previously, the case law does not expect management to serve shareholders post-petition. See Torkin 2/17/12 letter at 5 ("New Jersey law expects directors of an insolvent corporation to consider the interests of creditors"). Indeed, if the Opposing Parties' argument had any real force, there would never be a need for Official Equity Committees and Bankruptcy Code Section 1102 would not provide the United States Trustee with authority to appoint them.

Regardless, Kodak management has already evidenced its disinclination towards shareholders in, among other ways: (1) vigorously opposing the appointment of an Equity Committee; (2) predicating that opposition on a premature and unstudied conclusion that equity is -- and forever will be -- out-of-the-money; (3) sharply advancing that argument under the cloak of night, by submitting the February 17th letter without copy to us (explanation being that the February 17th letter was a "confidential" communication to the United States Trustee when that letter did not contain one word of confidential information); and (4) moving the Bankruptcy Court for an order restricting stock trading and, in turn, preventing parties from acquiring stock in sufficient amount to justify the incurrence of professional fees to protect that investment (i.e., "transaction" costs would greatly exceed the cost basis or potential investment profit).

VI. Administrative Cost Complaints Do Not Reconcile With The Case Record.

The Opposing Parties have retained three of the most expensive law firms in America: Sullivan & Cromwell; Milbank Tweed; and Akin Gump. Kodak's investment banker (Lazard) has been promised monthly fees of $250,000, a guaranteed "success" fee of $12.5 million, and opportunities to generate other substantial incremental fees. The Ad Hoc Second Lien Noteholders Committee has retained The Blackstone Group, but has not made the terms of that retention public. Presumably, Blackstone will be paid many millions of dollars for their work in this case. The Official Creditors' Committee has hired not one, but two financial advisors: Jefferies and Alvarez & Marsal. Their promised compensation packages also have not been publicly disclosed, but presumably will aggregate many millions of additional administrative dollars. Perhaps the United States Trustee would find it probative, in connection with this request, to make due inquiry as to what compensation is intended for Blackstone, Jefferies, and Alvarez & Marsal.

Each of these law, banking, and advisory firms are excellent, and their clients have every right to select "best in class" professionals, even if they are the most expensive professional services available in today's market. But, after doing so, none should be heard to complain that an Equity Committee will become an overwhelming administrative burden on the estates. Under this record, the contention is insincere.

VII. The Shareholders Advancing This Request Understand Their Role In The Chapter 11 Process And Are Capable And Committed to Faithfully Acquit Their Fiduciary Duties.

The February 17th letters unfortunately veer towards character assessments of those shareholders advancing requests for an Official Equity Committee. Such advocacy is inappropriate, as a general matter. Regardless, we thought it might prove useful to the United States Trustee if we offer brief background statements regarding each requesting shareholder (in alphabetical order):

- Greywolf Capital Management. Greywolf is a registered investment advisor with a focus on distressed investing. The firm manages accounts owning approximately 9.3 million shares of Kodak common stock. Such accounts do not own any other Kodak investments (debt or equity), and Greywolf does not otherwise have any investments in Kodak. These investments are managed by Mr. Joseph McInnis, a Managing Director at Greywolf. Prior to joining Greywolf, Mr. McInnis was an investment analyst on Goldman Sachs' Special Situations Investing desk and, subsequently, in that firm's Distressed Bond Research & Trading Group. Mr. McInnis has actively participated in many large and complex Chapter 11 cases, is well-versed in the Chapter 11 process, understands the fiduciary duties imposed by sitting on an Official Equity Committee, is prepared to faithfully acquit those duties for the benefit of all Kodak stockholders.

- Mr. Kenneth Grossman. Mr. Grossman owns, for his own account, approximately 1.5 million shares of Kodak common stock. He does not otherwise have any investments in Kodak (debt or equity), and he is not affiliated with any firm that holds a Kodak investment. Mr. Grossman previously served as a Managing Director (focused on distressed investments) at Ramius, Del Mar Asset Management, and Alpine Associates. He has served (personally or as a representative) on Official Creditor or Equity Committees and Bank Groups appointed in the following Chapter 11 cases of national prominence: American Homepatient; Claridge Casino; Western Union (a/k/a New Valley); Westmoreland Coal; Hills Department Stores; Kasper/Anne Klein; Oneida, Inc.; Leslie Fay; Loehmanns; and Morris Publishing. Mr. Grossman has served on numerous boards of directors and holds a law degree from George Washington University.

- Richard Katz. Mr. Katz owns, for his own account, approximately 22,000 shares of Kodak common stock. He does not otherwise have any investments in Kodak (debt or equity), and he is not affiliated with any firm that holds a Kodak investment. Mr.

Katz is a former Managing Director at Goldman Sachs & Co., where for years he served as head of that firm's Distressed High Yield Investing desk, managing a $3 billion portfolio of distressed investments. More recently, Mr. Katz was the Chief Financial Officer of ProCure Treatment Centers, a healthcare services firm. While in that position, Mr. Katz's responsibilities including raising $600 million in debt and equity financing, management of corporate accounting and reporting, financial planning and analysis and going-forward risk management.

- Paul Martin. Mr. Martin owns, for his own account, approximately 1,000 shares of Kodak common stock. He does not otherwise have any investments in Kodak (debt or equity), and he is not affiliated with any firm that holds a Kodak investment. Mr. Martin has held senior analyst positions and/or managed portfolios of distressed investments at Greywolf Capital Management, Watershed Asset Management (where he was a founding partner), and Farallon Capital Management. Mr. Martin currently sits on the Board of Directors of Sevenoaks Offshore Opportunities Fund. He (like the other shareholders) has actively participated in many large and complex Chapter 11 cases, is well-versed in the Chapter 11 process, understands the fiduciary duties imposed by sitting on an Official Equity Committee, is prepared to faithfully acquit those duties for the benefit of all Kodak stockholders.

* * *

We again thank you for your consideration, and welcome any opportunity to furnish for you any additional information or brief, or discuss our request with you further.

Very truly yours,

Robert Stark /n.d.

P.P. Robert J. Stark

Copy: Andrew Dietderich, Esq. (Counsel to the Debtors)
Dennis Dunne, Esq. (Counsel to the Official Creditors' Committee)
Michael Stamer, Esq. (Counsel to the *Ad Hoc* Committee of Second Lien Noteholders)
Marshall Huebner, Esq. (Counsel to the DIP Agent)

EXHIBIT A

RAFFERTY CAPITAL MARKETS, LLC

Company Note **Buy**

US Equity Research Photographic Equipment & Supplies

December 20, 2011

Eastman Kodak Co.

(EK, NYSE, BUY, $5.50)

Kodak Inkjet Printing Presses Gain Commercial Acceptance and Should End 2011 with $1.3 Billion in Cash. ITC Ruling by May 21, 2012.

Mark Kaufman, CFA
646-572-3514
kaufmanm@raffcap.com

- Although Kodak's traditional film business has shrunk radically in its size over the past decade, media portrayal and public perception continues to center on Kodak's photographic history rather the Company's technological direction. Kodak has been intently focused on developing its patented inkjet printing technology. **Recent sale announcements of its commercial high-speed variable print inkjet presses, which truly challenge off-set printers on speed, quality and price, signals the business has reached commercial acceptance.**

- Kodak's $160.0 million draw under its Bank Revolver on September 23rd caused a torrent of misinformation, rumors, and speculation that continues to send Kodak investors to the exit. Unlike Kodak's 2010 third quarter, when it had a net benefit of $238.0 million from patent license agreements, Kodak did not generate patent license income in its 2011 third quarter. The lack of license revenue, cost overruns associated with the commercial inkjet printers, as well as Kodak's seasonal peak working capital needs, lead to the Revolver draw. That said Kodak has begun to make progress in fortifying its finances in this quarter. **With the recent sale of its Image Sensor Solutions business, we estimate Kodak has now raised approximately $200.0 million this quarter from divestitures and licensing transactions and we would expect another $100.0 million in license transactions before year end.**

- **We now estimate Kodak should generate $445.0 million in the fourth quarter and end 2011 with a cash balance of approximately $1.3 billion, below our prior estimate in September of $1.35 billion. Due to the domestic origin of Kodak's recent divesture and license revenues, we estimate the makeup of its yearend cash balance to be approximately $450.0 to 475.0 million domestic and $825.0 to $850.0 million international. As result of these and other changes, we have lowered our Net Asset Value to $11.13 per share from $11.28 in our September 9th Note. (See Tables: 1, 2, & 3 for details)**

- In 2012, as Kodak's inkjet printing losses begin to recede, we anticipate it could reduce its 2012 first half global negative cash flow to approximately $500.0 million. However, based on our domestic 2011 yearend cash balance estimate, domestic liquidity could become tight by midyear 2012 without a further injection of cash or credit. **Kodak has made it clear, that it will consider all options including: the sale of its digital imaging patent portfolio, a first lien financing arrangement, repatriation of international cash, cost reductions, or the divestiture of one or more of its profitable businesses to see its digital inkjet properties reach sustainable profitability by 2013.**

- The new ALJ in Kodak's patent infringement suit before the ITC plans to issue a final initial determination on remand by the close of business on May 21, 2012. The ruling is subject to a review before the full ITC.

- **Considerable value remains in Kodak's operations. However, due to the uncertainty of the timing and structure associated with any of Kodak's potential transactions, we are reducing our price target to 50% of our estimate of Net Asset Value or $5.50 per share at this time.**

Market Data

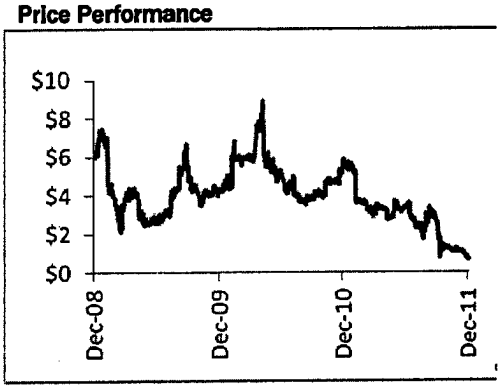
Price: $0.70
Price Target: US$5.50

Current Price	$0.70
Market Cap	$189.0
Shares Outstanding	270.0
Free Float	268.6
Avg. Daily Vol.	10,978,706
52-week High	$5.95
52-week Low	$2.53
EV	$895.5

Financial Data & Estimates

FYE Dec	2010A	2011E	2012E
Revenue	7,187.0	6,296.5	6231.0
EPS	($2.51)	($1.65)	$0.38
Interest Expense	149.0	162.0	90.0
EV/EBITDA	0.9	85.9	2.1
EBITDA/Interest	5.0	0.07	3.61
EBIT	$368.0	($283.5)	$63.9
EBIT Margin	5.1%	-4.5%	1.0%
Gross Margin	27.3%	18.7%	21.9%
EBITDA	747.0	11.5	324.9

Price Performance



Cash Flow Analysis – 2011 and 2012 Forecast

At the beginning of 2011, Kodak's cash balance was $1.62 billion, consisting of $580.0 million in the U.S. and $1.04 billion in its foreign operations. At the end of the 2011 third quarter, those balances were $852.0 million in total, with $230.0 million and $622.0 million, in the U.S. and offshore, respectively. The $762.0 million use of cash of during the first nine months of the year consisted of the following outflows and inflows: negative cash flow from operations of $266.0 million, capital expenditures of $115.0 million, negative changes in working capital and long term assets and liabilities of $397.6 million, estimated interest payments of $93.4 million, restructuring payments of $53.0 million, OPEB payments of $88.0 million, pension payments of $84.0 million and estimated tax payments of $60.0 million, which was offset by net borrowing of $301.0 million and divestiture proceeds of $94.0 million. During the first nine months of the year, the net decline of $350.0 million in Kodak's domestic cash balance represented a drop from 35.7% of the Company's cash total at the beginning of the year, to 27.0% at the end of the September 30th quarter; however, domestic cash usage was substantially higher than that figure as the majority of development costs of the digital inkjet printers, interest payments, restructuring costs and retirement benefits are shouldered by Kodak's domestic operations. We estimate Kodak's actual domestic cash use was approximately $1.05 billion. Unlike the past 3 years, Kodak has not had the benefit of substantial patent license revenues in the first nine months of 2011 to mitigate these simultaneous funding demands. In addition to its net borrowings and divestitures, Kodak transferred $310.0 million from its international subsidiaries through repatriations and loans to buffer the decline in domestic cash to $350.0 million. This would also suggest the Kodak's international business used only $112.0 million in the first nine months of the year, $50.0 million of which was its contribution to its United Kingdom operations pension trust.

In our September 9th Note, we had estimated Kodak's 2011 yearend cash balance at approximately $1.35 billion. That included estimated patent licenses of $300.0 million and no divestiture proceeds in the fourth quarter. We estimate Kodak has already captured approximately $100.0 million in asset sales and $100.0 million in license agreements in the current quarter , which should bring Kodak's yearend cash balance to an estimated minimum of $1.2 billion. We believe Kodak should garner an additional $100.0 million in license transactions in the fourth quarter to end 2011 with a cash balance of approximately $1.3 billion. In addition to these transactions, Kodak should generate positive cash flow from operations in the 2011 fourth quarter as a result of higher year over year margins, due to higher consumer inkjet ink revenue, revenue recognition of commercial inkjet printing press, reduced digital camera inventories entering the holiday season, indexing of silver prices in its entertainment imaging group, mitigated by competitive pricing pressure in its digital printing plate business. To arrive at our 2011 yearend cash estimate we start with Kodak's September 30, 2011, cash balance of $852.0 million, ($230.0 million in the U.S. and $622.0 million offshore), and then add our fourth quarter cash generation estimate of approximately $445.0 million which consists of: cash flow from operations of $123.5 million, divestiture proceeds of $106.0 million, license agreement revenues of $200.0 million, positive changes in working capital and long term assets and liabilities of $225.0 million, capital expenditures of $40.0 million, estimated interest payments of $26.7 million, restructuring payments of $23.0 million, OPEB payments of $32.0 million, pension payments of $18.0 million estimated tax payments of $20.0 million, and a debt repayment of $50.0 million on the outstanding revolver balance. **As a result of the domestic origin of Kodak's fourth quarter divesture and license revenues, we estimate the makeup of its yearend cash balance to be approximately $450.0 to 475.0 million domestic and $825.0 to $850.0 million international.**

The $50.0 million decline from our original estimate is primarily the sum of lower estimated second half Graphics Communications EBITDA of $77.0 million, higher estimated EBITDA for Consumer Digital Imaging and Traditional Entertainment Imaging of $35.0 million and $23.0 million respectively, and higher second half working capital use of approximately $130.0 million offset by an estimated net debt increase from the Revolver draw of $110.0 million at year end. Kodak's working capital benefits in this year's fourth quarter will be lower than the 2010 fourth quarter in due the $95.0 million license receivable in the 2010 fourth quarter, a double digit reduction in digital camera inventories entering the 2011 fourth quarter versus a year ago and a doubling of silver prices from a year ago. **Should Kodak hit the top end of its license revenue estimate and/or improve its working capital utilization, then it could approach a yearend cash balance of approximately $1.4 billion.**

Assuming no license agreements or asset divestitures in 2012, we now estimate Kodak would use approximately $215.0 million in 2012 and end the year with $1.1 billion in cash and equivalents. We believe the combined EBITDA losses from digital cameras, consumer and commercial inkjet printers for the 2012 full year should be reduced to $115.0 million, as digital cameras cash flow is break-even, consumer inkjet achieves profitability and the commercial inkjet printer cash flow loss is cut in more than half from 2011. Working capital for inventories should decline, as digital cameras are aligned for lower sales and higher profitability and commercial inkjet printer installation times are shortened. With Kodak's inkjet printing losses continuing to recede, we anticipate the Company should reduce its 2012 first half global negative cash flow to approximately $500.0 million from the $937.0 million it used in the first half of 2011. However, based on our domestic 2011 yearend cash balance of $450.0 to $475.0 million, continued inkjet expenses, interest expense, and retirement benefit payments, domestic liquidity could become tight by midyear 2012, without a further injection of cash or credit. **If that should be the case, Kodak does have other options aside from the potential sale of its digital imaging patent portfolio or a first lien financing arrangement. Kodak could repatriate additional funds from its international operations, divest of one or more of its profitable businesses that we estimate should generate $450.0 million of EBITDA in 2011, or further reduce costs of its operations by slowing the rollout of its digital printing initiatives for a period of time. (See Tables 4 & 5 for details.)**

Table 1

Kodak Corporation Estimated Net Asset Valuation:

ASSET VALUES

EBITDA Sources -Estimated	2010 E	2011 E	2012 E	Estimated Multiple	Valuation 2011 Estimates
Digital Imaging Patent Portfolio	838.0	250.0	-	8.6x	2,150.0
Established Commercial Printing (GCG)	392.0	314.0	345.4	4.0x	1,256.0
Traditional Entertainment Imaging (FPEG)	202.0	106.0	92.4	3.0x	317.9
Total Positive Contribution	$1,432.0	$ 670.0	$ 437.8		$ 3,723.9
EBITDA Uses - Estimated	**2010 E**	**2011 E**	**2012 E**	**Estimated Multiple**	**Valuation**
Consumer (CDG) - Cameras, Kiosks and Kodak Gallery	(260.0)	(258.5)	1.1	.4x Est. 2011 Revenues	500.0
Consumer Ink Jet Printers	$ (150.0)	$ (75.0)	$ 25.0	1.5x Est. 2011 Revenues	$ 700.0
Commercial Ink Jet Printers & Enterprise Solutions	(275.0)	(325.0)	(140.0)	1x Est. 2011 Revenues	600.0
Total Negative Contribution	$ (685.0)	$ (658.5)	$ (115.0)		$ 1,800.0
TOTAL Consolidated EBITDA - Adjusted	$ 747.0	$ 11.5	$ 324.9		$ 5,523.9
Other Assets	**Year End 2010**	**Year End 2011 E**	**Year End 2012 E**	**Year End Estimate**	**Valuation 2011 Year end**
Year End Cash Balance	$1,624.0	$1,307.9	$1,092.8	2011 Est.	$ 1,307.9
Other Net Tangible Assets less Other Liabilities	447.0	447.0	447.0	2011 Est.	447.0
KKR Warrant Exercise - 40 million Shares at $5.50 per share	-	220.0	220.0	2011 Est.	220.0
Estimated Total Asset Value	$2,071.0	$1,974.9	$1,759.8		$ 7,498.8

Less: LONG TERM LIABILITIES

Long-Term Liabilities	Year End 2010	Year End 2011 E	Year End 2012 E	Year End Estimate	Valuation 2011 Year end
Long-Term Debt Adjusted for Convertible Debt in 2012 Estimate	$1,195.0	$1,203.0	$1,153.0	2011 Est.	$ 1,203.0
Pension Liability	1,212.0	1,187.0	1,162.0	2011 Est.	1,187.0
Other Post Retirement Benefits	1,253.0	1,203.0	1,153.0	2011 Est.	1,203.0
Total Long-Term Liabilities	$3,660.0	$3,593.0	$3,468.0		$ 3,593.0
Estimated Net Asset Value					$ 3,905.8
Fully Diluted shares Outstanding - Debt Conversion and Warrant Exercise					350.9
Estimated Net Asset Value Per Share					**$11.13**

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Table 2

Kodak Corporation 2011 Quarterly Income

($'s in millions)	Qtr. Ending March 31	Qtr. Ending June 30	Qtr. Ending Sept. 30	Estimated Qtr. Ending Dec. 31
Revenues				
Consumer Digital Imaging Group (CDG)	$ 330.0	$ 404.0	$ 408.0	$ 805.5
Film, Photofinishing and Entertainment Group (FPEG)	367.0	396.0	389.0	387.0
Graphic Communications Group (GCG)	625.0	685.0	665.0	835.0
All Other	-	-	-	-
Total Revenues	$ 1,322.0	$ 1,485.0	$ 1,462.0	$ 2,027.5
Cost of Goods Sold				
Consumer Digital Imaging Group (CDG)	339.0	358.0	364.0	480.0
Film, Photofinishing and Entertainment Group (FPEG)	334.0	347.0	330.0	327.0
Graphic Communications Group (GCG)	510.0	554.0	547.0	630.0
Total Cost of Goods Sold	$ 1,183.0	$ 1,259.0	$ 1,241.0	$ 1,437.0
Gross Profit	$ 139.0	$ 226.0	$ 221.0	$ 590.5
Gross Margin				
Consumer Digital Imaging Group (CDG)	-2.73%	11.39%	10.78%	40.41%
Film, Photofinishing and Entertainment Group (FPEG)	8.99%	12.37%	15.17%	15.50%
Graphic Communications Group (GCG)	18.40%	19.12%	17.74%	24.55%
Total Gross Margin	10.51%	15.22%	15.12%	29.13%
SG&A				
Consumer Digital Imaging Group (CDG)	120.0	105.0	102.0	110.0
Film, Photofinishing and Entertainment Group (FPEG)	45.0	44.0	41.0	38.0
Graphic Communications Group (GCG)	145.0	139.0	136.0	145.0
Total SG&A	$ 310.0	$ 288.0	$ 279.0	$ 293.0
Research & Development				
Consumer Digital Imaging Group (CDG)	39.0	33.0	32.0	26.0
Film, Photofinishing and Entertainment Group (FPEG)	3.0	3.0	3.0	3.0
Graphic Communications Group (GCG)	40.0	37.0	37.0	34.0
Total Research & Development	$ 82.0	$ 73.0	$ 72.0	$ 63.0
Income From Operations				
Consumer Digital Imaging Group (CDG)	(168.0)	(92.0)	(90.0)	189.5
Film, Photofinishing and Entertainment Group (FPEG)	(15.0)	2.0	15.0	19.0
Graphic Communications Group (GCG)	(71.0)	(45.0)	(55.0)	26.0
All Other	-	-	(1.0)	-
Income From Operations	$ (254.0)	$ (135.0)	$ (131.0)	$ 234.5
EBIT Margin				
Consumer Digital Imaging Group (CDG)	-50.91%	-22.77%	-22.06%	23.53%
Film, Photofinishing and Entertainment Group (FPEG)	-4.09%	0.51%	3.86%	4.90%
Graphic Communications Group (GCG)	-11.36%	-6.57%	-8.27%	3.11%
Total EBIT Margin	-19.21%	-9.09%	-8.96%	11.57%
Restructuring Charges	(35.0)	(36.0)	(18.0)	(61.0)
Corporate Pension & OPEB Expense	(8.0)	(4.0)	(13.0)	-
Other Income (Expenses), Net	70.0	1.0	(12.0)	100.0
Adjustments to contingencies and reserves	-	-	-	-
Interest Expense	(38.0)	(38.0)	(41.0)	(45.0)
Early Extinguishment of Debt	-	-	-	-
Other Income (Charges)	(8.0)	17.0	(7.0)	41.0
Income (Loss) before Tax & Other	$ (273.0)	$ (195.0)	$ (222.0)	$ 269.5
Income Tax Provision (Benefit)	(24.0)	(16.0)	-	90.0
Income (Loss) from Continuing Operations	(249.0)	(179.0)	(222.0)	179.5
Discontinued Operations	3.0	-	-	-
Net Income (Loss)	$ (246.00)	$ (179.00)	$ (222.00)	$ 179.51
Continuing Operations	$ (0.93)	$ (0.67)	$ (0.83)	$ 0.67
Discontinued Operations & Extraordinary Items	$ 0.01	$ -	$ -	$ -
Earnings per share	$ (0.91)	$ (0.67)	$ (0.83)	$ 0.67
Shares Outstanding in millions	268.9	268.9	269.0	269.1

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Table 3

Kodak Corporation 2011 Quarterly Cash Flow

($'s in millions)	Qtr. Ending March 31	Qtr. Ending June 30	Qtr. Ending Sept. 30	Estimated Qtr. Ending Dec. 31
Income From Operations				
Consumer Digital Imaging Group (CDG)	$ (168.0)	$ (92.0)	$ (90.0)	$ 189.5
Film, Photofinishing and Entertainment Group (FPEG)	(15.0)	2.0	15.0	19.0
Graphic Communications Group (GCG)	(71.0)	(45.0)	(55.0)	26.0
All Other	-	-	(1.0)	-
Income From Operations	$ (254.0)	$ (135.0)	$ (131.0)	$ 234.5
Depreciation & Amortization				
Consumer Digital Imaging Group (CDG)	19.6	19.8	18.8	18.8
Film, Photofinishing and Entertainment Group (FPEG)	21.6	21.9	20.7	20.7
Graphic Communications Group (GCG)	33.8	34.3	32.5	32.5
All Other	-	-	-	-
Total Depreciation & Amortization	$ 75.0	$ 76.0	$ 72.0	$ 72.0
EBITDA				
Consumer Digital Imaging Group (CDG)	(148.4)	(72.2)	(71.2)	208.3
Film, Photofinishing and Entertainment Group (FPEG)	6.6	23.9	35.7	39.7
Graphic Communications Group (GCG)	(37.2)	(10.7)	(22.5)	58.5
All Other	-	-	-	-
Total EBITDA	$ (179.0)	$ (59.0)	$ (58.0)	$ 306.5
EBITDA Margin	-13.54%	-3.97%	-3.97%	15.12%
Total Capital Expenditures	$ 50.0	$ 33.0	$ 32.0	$ 40.0
Total EBITDA Less Capital Expenditures	$ (229.0)	$ (92.0)	$ (90.0)	$ 266.5
Other Non-Cash Expenses (Income)				
Pension Charges	10.0	5.0	10.0	10.0
OPEB expenses	6.0	5.0	4.0	7.0
Total Other Non-Cash Expenses (Income)	$ 16.0	$ 10.0	$ 14.0	$ 17.0
Other Cash Charges				
Restructuring Payments	17.0	19.0	17.0	23.0
Pension Contributions	10.0	87.0	17.0	18.0
OPEB Contributions	23.0	33.0	32.0	32.0
Cash Taxes - Esitmated	20.0	20.0	20.0	20.0
Cash Interest - Estimated	27.0	27.1	39.3	26.7
Total Other Cash Charges	$ 97.0	$ 166.1	$ 125.3	$ 119.7
Free Cash Flow before W/C & Other Changes	$ (310.0)	$ (248.1)	$ (201.3)	$ 163.9
Working Capital & Other Changes				
Assets Sales	65.0	10.0	19.0	106.0
Working Capital & Other Asset Changes	(270.0)	(104.9)	(22.7)	225.0
Total Free Cash Flow	$ (515.0)	$ (343.0)	$ (205.0)	$ 494.9
Debt Retirement (Additions)	(191.0)	-	(110.0)	50.00
Net Change in Cash Position:	$ (324.0)	$ (343.0)	$ (95.0)	$ 444.9

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Kodak's Commercial Printing Opportunity

Kodak has been keenly focused on developing its proprietary inkjet and related printing technology to expand its print and graphics operations for commercial and business needs. The Company is already well on its way toward that goal and the potential divestiture of its digital imaging patents should only hasten its evolution toward this end. Kodak's digital still and video camera, along with its traditional consumer photofinishing and film business, should only account for an estimated 25% of Kodak's revenues in 2011. In contrast, in 2011 we estimate Kodak's Graphics Communications Group (GCG) should generate approximately $2.8 billion in revenues and the print component of its Consumer Digital Imaging Group (CDG), consisting of consumer inkjet printers, retail printing kiosks and the Kodak Gallery, should add revenues of approximately $900.0 million for a total of $3.7 billion that should represent approximately 60% of Kodak's 2011 total revenues.

Kodak's Graphics Communications Group could be separated into three categories: Digital Printing Solutions - inkjet and electrophotographic printers; Business Solutions and Services – workflow software and document imaging; Prepress Solutions - off-set aluminum digital printing plates, packaging solutions and proofing. The group also provides maintenance and professional services for Kodak and other manufacturers' products, as well as providing imaging services to customers. **By providing printing, prepress solutions, and document imaging services for worldwide clients in the creative, in-plant, data center, commercial printing, packaging, newspaper, and digital market segments, Kodak has its products in over 90% of the commercial printing establishments worldwide. As a measure of Kodak's commercial graphics global reach, its international revenues were approximately 72% through the first nine months of 2011.**

The market opportunity is large; currently, it is estimated there are 75 trillion pages printed annually worldwide. Kodak's digital inkjet printers have the potential penetrate book, catalog, direct mail, newspaper and promotional print markets representing over 35 trillion pages. Currently, it is estimated only 200 billion color pages or less than one percent of the total print output is printed digitally. Kodak's graphics and print revenues now represent about a 3.0% market share of its global addressable market of $110.0 billion. This figure is a subset of an approximate trillion dollar market worldwide consisting of: Commercial Printing, $290.0 billion; Packaging, $205.0 billion; Publishing, $155.0 billion; Printing and Document Management, $75.0 billion; and Consumer Digital Printing, $280.0 billion. Commercial printing and packaging, which make up approximately 50% of the addressable markets, should continue to exhibit modest worldwide growth as demand growth in emerging markets offsets the decline in developed nations printing output. As an example demand growth for printing equipment is currently estimated to be growing annually in excess of 20% in China and India. In many cases, printing equipment in emerging markets is antiquated and foreign businesses are seeking to make a leap in technology and seek to by-pass the purchase of traditional offset printers for the greater versatility of digital printing. As the commercial printing industry continues to transition from traditional off-set printing to digital technology, **Kodak is uniquely positioned because the company offers a broad range of digital and traditional solutions to assist printers with their transition. Kodak's best opportunity to expand its graphics and printing footprint is through its inkjet and electrophotographic printers as digital color page volume is estimated to continue to grow globally at 25% annually. With an established product line and sales force, Kodak has a natural entrée into potential customers for these printers as well as related products and services.**

At the same time the adoption of e-readers and other electronic information devices has reduced some printing volumes, like books and newspapers in developed nations, it has actually spurred demand for Kodak's, and its competitors, digital inkjet printers. These printers, which do away with traditional printing plates, are making inroads into book and periodical publishing as individuals are still reading the same amount of titles but fewer print copies. As a result of the changing habits, printer and publisher fixed costs are rising per title as they absorb the expense of printing plates over smaller volumes. Inkjet printers, by doing away with printing plates, allow for better operating economics at lower volumes; in the case of book publishing, fewer than 5,000 copies at a time. More importantly, these printers can improve returns on clients' marketing investment through the ability to create continuous personalized print to target advertising pages to specific demographics and micro markets, but with the same low cost of a high volume off-set printer. Also, with the digital inkjet printers' ability to change print, if different titles can be printed on similar paper then scheduling could be sequenced to further obviate the need to stop the presses.

Although Kodak entered the digital inkjet printing market later than its rivals Hewlet Packard (HPQ; $25.53, NR), OCE (OCE NA; Euro 6.45, NR), and Xerox (XRX; $7.85, NR), the recent sales of Kodak's ROSPER Press Platform, a continuous variable inkjet printing system, signals the Company's business has reached commercial acceptance. **Kodak's PROSPER XL5000 Color and XL1000 Black and White digital presses bring offset-class output approaching 175 lines per inch, (600 x 900 dpi), with roll-fed speeds of up to 650 feet per minute. The digital printing presses patented jetting modules and pigmented inks can produce 90 million pages a month at a speed of 2,600 pages per minute and are able to handle both coated and uncoated papers, including glossy coated, with basis weights ranging from 30 lbs–200 lbs. Kodak estimates its color printers can produce a printed page for $0.008 per page, (depending on the per page ink coverage).** At that speed, digital inkjet printing is competitive with traditional offset printing for production runs of books, magazines, catalogs and other items. The digital printing presses

(press seems like a misnomer because the paper is not being pressed like an offset printer) sell for approximately $3.0 million; however, what is so vital to Kodak with these printers, is the annuity stream that Kodak gains through the manufacture of selling of its proprietary pigmented inks, which allow for quicker drying than dye based inks. This reduces the need for dryers, energy use and footprint requirements. The PROSPER printers, at 58 feet long, gives Kodak an additional advantage over the competition in countries like Japan, where energy and space are at a premium. Some companies with existing large off-set printing investments are adding digital PROSPER S-Series Imprinting Systems with speeds matching those of a web offset press to create a hybrid digital printing product line. These S-Series print heads can handle speeds from 500 feet per minute up to 2,000 feet per minute. Print shops can place these print heads at the end of an offset press for the imprinting of direct mail, variable newspaper advertising, scratch-off lottery and packaging.

What does this mean for Kodak, which has an industry leading position in digital plates for offset printers? While it would lose the one time sale of a printing plate that could be used on an offset printer, it would gain the annuity revenue of its inks that will be used to continually print digital inkjet pages. **Based on the potential of 90 million pages a month at $0.008 per page, using the 80% operating rate, a PROSPER printer could produce potential revenue of $720,000 per month, or $8.5 million per year, on ink and fluids alone. If it were to run only 50% of the time, it should still produce approximately $450,000 in monthly revenue or approximately $5.5 million annually from ink. In addition, Kodak would also generate revenue from the refurbishment of the jetting modules, maintenance and work flow services, helping to create 15 times the revenue that it would have received if it were instead selling only digital printing plates to the customer.**

Kodak's Electrophotgraphic printer, the NEXPRESS SX Digital Production Color Platform with Print Genius, is a sheet fed digital printer that can print up to 4.4 million photo quality pages a month at print speeds of 91, 109 or 131 pages per minute, when printing on 26"/660 mm long sheets. The NEXPRESS SX Platform prints on more than 700 standard offset substrates, including coated, uncoated, FSC, plastics, magnets, linens, static clings, micro-perforated substrates, and more. The NEXPRESS SX features new KODAK NEXPRESS HD DRY INKS, which are instrumental to the overall print quality. These new dry inks, like the PROSPER inks are produced and distributed by Kodak leading to future annuity streams. The NEXPRESS SX printer has been designed to meet the needs of commercial printers, photo product printers, direct mail houses, in-plant printers and data centers. Given the NEXPRESS SX's print quality and versatility, it can produce covers and be placed in-line with a PROSPER inkjet press to seamlessly produce finished books.

Kodak's VERSAMARK Printing Systems are well established mid-volume Drop-on-Demand inkjet printers for the transactional and direct mail markets with full variable data capabilities. These are continuous inkjet printers that can print at speeds up to 750 feet per minute at a resolution of 300 x 300 dpi and 500 feet per minute at a resolution of 300 x 600 dpi. The VERSAMARK VL Printing Systems offer an environmentally friendly machine that uses water based inks and fluids requiring only enough paper to run the job, reducing waste in make-ready and overages. These printers do not provide the offset resolution of the PROSPER AND NEXPRESS systems, but their speed and resolution are sufficient for the markets they serve. Kodak is reseller of these inks, so the potential for annuity revenues from the VERSAMARK is far smaller than the PROPER and NEXPRESS inkjet printing presses.

There have been at least five announcements by major domestic and international commercial printing firms of the purchase of the digital PROSPER inkjet printers and a similar amount of NEXPRESS SX announcements since the beginning of the quarter. The commercial presses are large, complex and different than off-set technology; therefore, a considerable amount of service and support is involved with the installation before presses are up and running. The purchase announcements by major printing organizations represent presses, which, in some instances, have been in test mode at the customers' plants for almost a year, that are now in production mode and generating ink and service annuities rather than start-up expenses for Kodak. In essence, a switch has been flipped that changed these printers from a profit drain to a gross margin contributor. We now estimate digital inkjet revenues for 2011 of $600.0 million to grow to $800.0 million in 2012. The estimated 30% growth should be driven by new PROSPER and NEXPRESS printing units continuing to reach production certification to generate the annuity ink revenues they are capable of. The cost to build, develop, install and onsite test these presses has been at a significant cost to Kodak in 2011, which we now estimate at $325.0 million. Management is acutely aware of the

lead time issues and is seeking to make progress to reduce lead times, as well as the time it takes to create the sub-assemblies of the presses. The growing ink annuity stream and a reduction in operating costs should lead to a reduction of the 2011 negative cash flow contribution of $325.0 million to a negative $140.0 million in 2012. By 2013, a growing installed base leading to a larger annuity stream should generate revenues in excess of $1.0 billion with a small contribution to earnings. By 2014, further improvement in revenues should lead to a blended gross margin between inks, hardware and service of approximately 40% to 45% and a potential earnings contribution of $200.0 million. Based on its proprietary product, embedded marketing relation with its customers, and potential market size, we estimate Kodak's commercial inkjet business to be worth at least 1.0 times our estimate of $600.0 million of revenue in 2011 or 3 times potential 2014 EBITDA.

Unfortunately, the losses from the PROSPER inkjet launch have overshadowed Kodak's GCG businesses that generate profits, Business Solutions and Services – workflow software and document imaging and Prepress Solutions - off-set aluminum digital printing plates, packaging solutions and proofing. These businesses should generate a combined $2.1 billion of revenue on 2011. Kodak's largest business, digital off-set printing plates, has an estimated leading market share of 35% to 40%; however, margin pressure throughout 2011, due to competitive pricing in Europe and higher aluminum in the first half of the year, has hurt profitability. The price of aluminum has reversed all of its 2011 increase at this point; nonetheless, the Company has taken steps to mitigate the gross margin pressure through hedges and additional price adjustments. In addition, earlier this year Kodak introduced new TRILLIAN offset digital plates providing customers with improved productivity and an operation cost reduction of approximately 10% on a reduction in energy prices alone. Workflow software has also been weaker than expected, in part due to the inkjet printer delays that incorporate the software. Overall, revenues have increased over 2% from year ago levels in the first nine months of 2011, due to higher volumes in emerging markets and growing demand for Kodak's flexible packaging solutions; but, margins have declined due to the headwinds mentioned above. As a result of these factors, we have reduced our EBITDA estimate for the GCG's Business Solutions and Services and Prepress Solution to $314.0 million from approximately $340.0 million of EBITDA in 2011. Based on what should be a fairly stable revenue base and cash flow and competitors EV/EBITDA ratios in a range of 3 to 5 times, we continue to value Kodak's established commercial printing operations at 4 times our revised estimated 2011 EBITDA for a total value of $1.25 billion.

U.S International Trade Commission Ruling Sets May 21, 2012 for New Initial Final Determination.

This has been a difficult year for Kodak. One of the biggest factors may have been the drawn out U.S. International Trade Commission (ITC) action brought by Kodak against Apple Inc. (AAPL; $387.76, NR) and Research In Motion Limited (RIMM; $13.10 NR). We believe the initial negative ruling by Administrative Law Judge (ALJ) on January 24th had a chilling effect on Kodak's other potential patent license counterparties through the first nine months of the year. There is movement in the ITC case, as it is now under review by a new Administrative Law Judge (ALJ), who on December 15th, set September 21, 2012 as the new target date in this investigation. Pursuant to the new target date, he plans to issue a final initial determination on remand no later than the close of business on May 21, 2012. This ruling is still subject to a review before the full ITC. An order will be issued shortly detailing the extent of additional discovery and the procedural schedule on remand. In reviewing the ITC's full remand of June 30th, it would appear the remaining infringement issue in the case centers on whether or not the Apple G3S and 4 iPhones would infringe the Kodak patent if the 'doctrine of equivalents' were applied. This is an analysis applied to an individual claim limitation of a patent, not the patent as a whole, in order to determine whether or not the practicing difference is "insubstantial" to the patent. This doctrine has been upheld in the courts to protect a patent holder against future changes in technology that are insubstantial to a patent claim.

Table 4

Kodak Corporation Historical & Projected Income Statement

($'s in millions)	Year End 12/31/2008	Year End 12/31/2009	Year End 12/31/2010	Estimated Year End 12/31/2011	Estimated Year End 12/31/2012
Revenues					
Consumer Digital Imaging Group (CDG)	$ 3,088.0	$ 2,619.0	$ 2,739.0	$ 1,947.5	$ 1,801.1
Film, Photofinishing and Entertainment Group (FPEG)	2,987.0	2,257.0	1,767.0	1,539.0	1,338.9
Graphic Communications Group (GCG)	3,334.0	2,726.0	2,681.0	2,810.0	3,091.0
All Other	7.0	4.0	-	-	-
Total Revenues	$ 9,416.0	$ 7,606.0	$ 7,187.0	$ 6,296.5	$ 6,231.0
Cost of Goods Sold					
Consumer Digital Imaging Group (CDG)	$ 2,495.0	$ 1,955.0	$ 1,729.0	$ 1,541.0	$ 1,390.0
Film, Photofinishing and Entertainment Group (FPEG)	2,335.0	1,775.0	1,481.0	1,338.0	1,178.2
Graphic Communications Group (GCG)	2,445.0	2,073.0	2,012.0	2,241.0	2,299.7
Total Cost of Goods Sold	$ 7,275.0	$ 5,803.0	$ 5,222.0	$ 5,120.0	$ 4,867.9
Gross Profit	$ 2,141.0	$ 1,803.0	$ 1,965.0	$ 1,176.5	$ 1,363.1
Gross Margin					
Consumer Digital Imaging Group (CDG)	19.2%	25.4%	36.9%	20.9%	22.8%
Film, Photofinishing and Entertainment Group (FPEG)	21.8%	21.4%	16.2%	13.1%	12.0%
Graphic Communications Group (GCG)	26.7%	24.0%	25.0%	20.2%	25.6%
Total Gross Margin	22.7%	23.7%	27.3%	18.7%	21.9%
SG&A					
Consumer Digital Imaging Group (CDG)	555.0	481.0	531.0	437.0	360.0
Film, Photofinishing and Entertainment Group (FPEG)	404.0	290.0	203.0	168.0	133.9
Graphic Communications Group (GCG)	627.0	522.0	543.0	565.0	571.8
Total SG&A	$ 1,586.0	$ 1,293.0	$ 1,277.0	$ 1,170.0	$ 1,065.7
Research & Development					
Consumer Digital Imaging Group (CDG)	215.0	148.0	148.0	130.0	85.0
Film, Photofinishing and Entertainment Group (FPEG)	52.0	33.0	19.0	12.0	9.4
Graphic Communications Group (GCG)	231.0	171.0	152.0	148.0	139.1
Total Research & Development	$ 498.0	$ 352.0	$ 319.0	$ 290.0	$ 233.5
Income From Operations					
Consumer Digital Imaging Group (CDG)	(177.0)	35.0	331.0	(160.5)	(33.9)
Film, Photofinishing and Entertainment Group (FPEG)	196.0	159.0	64.0	21.0	17.4
Graphic Communications Group (GCG)	31.0	(40.0)	(26.0)	(144.0)	80.4
All Other	(17.0)	(10.0)	(1.0)	-	-
Income From Operations	$ 33.0	$ 144.0	$ 368.0	$ (283.5)	$ 63.9
EBIT Margin					
Consumer Digital Imaging Group (CDG)	-5.73%	1.34%	12.08%	-8.24%	-1.88%
Film, Photofinishing and Entertainment Group (FPEG)	6.56%	7.04%	3.62%	1.36%	1.30%
Graphic Communications Group (GCG)	0.93%	-1.47%	-0.97%	-5.12%	2.60%
Total EBIT Margin	0.35%	1.89%	5.12%	-4.50%	1.02%
Restructuring Charges	(149.0)	(258.0)	(78.0)	(150.0)	-
Corporate Pension & OPEB Expense	94.0	-	-	-	-
Other Income (Expenses), Net	(766.0)	88.0	(519.0)	159.0	175.0
Adjustments to contingencies and reserves	(33.0)	-	(8.0)	-	-
Interest Expense	(108.0)	(119.0)	(149.0)	(162.0)	(90.0)
Early Extinguishment of Debt			(102.0)		
Other Income (Charges)	55.0	30.0	26.0	43.0	20.0
Income (Loss) before Tax & Other	$ (874.0)	$ (115.0)	$ (562.0)	$ (393.5)	$ 168.9
Income Tax Provision (Benefit)	(147.0)	115.0	114.0	50.0	67.5
Income (Loss) from Continuing Operations	(727.0)	(230.0)	(676.0)	(443.5)	101.3
Discontinued Operations	285.0	23.0	(12.0)	-	-
Net Income (Loss)	$ (442.0)	$ (208.0)	$ (688.0)	$ (443.5)	$ 101.3
Continuing Operations	$ (2.58)	$ (0.86)	$ (2.51)	$ (1.65)	$ 0.38
Discontinued Operations & Extraordinary Items	$ 1.01	$ 0.09	$ (0.05)	$ -	$ -
Earnings per share	$ (1.57)	$ (0.78)	$ (2.56)	$ (1.65)	$ 0.38
Shares Outstanding in millions	281.8	268.0	268.9	269.0	269.2

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Table 5

Kodak Corporation Historical & Projected Cash Flow Analysis

($'s in millions)	Year End	Year End	Year End	Estimated Year End	Estimated Year End
Income From Operations	12/31/2008	12/31/2009	12/31/2010	12/31/2011	12/31/2012
Consumer Digital Imaging Group (CDG)	(177.0)	35.0	331.0	(160.5)	(33.9)
Film, Photofinishing and Entertainment Group (FPEG)	196.0	168.0	64.0	21.0	17.4
Graphic Communications Group (GCG)	31.0	(40.0)	(26.0)	(144.0)	80.4
All Other	(17.0)	(19.0)	(1.0)	(5.0)	-
Income From Operations	$ 33.0	$ 144.0	$ 368.0	$ (283.5)	$ 63.9
Depreciation & Amortization					
Consumer Digital Imaging Group (CDG)	105.0	86.0	89.0	77.0	60.0
Film, Photofinishing and Entertainment Group (FPEG)	193.0	153.0	138.0	85.0	75.0
Graphic Communications Group (GCG)	193.0	165.0	143.0	133.0	125.0
All Other	3.0	1.0	9.0	-	-
Continuing Depreciation & Amortization	494.0	405.0	386.0	295.0	260.0
Restructuring Depreciation	6.0	22.0	-	-	-
Total Depreciation & Amortization	$ 500.0	$ 427.0	$ 379.0	$ 295.0	$ 260.0
EBITDA					
Consumer Digital Imaging Group (CDG)	(72.0)	121.0	420.0	(83.5)	26.1
Film, Photofinishing and Entertainment Group (FPEG)	389.0	312.0	202.0	106.0	92.4
Graphic Communications Group (GCG)	224.0	125.0	117.0	(11.0)	205.4
All Other	(14.0)	(9.0)	8.0	-	1.0
Continuing Operations EBITDA	$ 527.0	$ 549.0	$ 747.0	$ 11.5	$ 324.9
Total EBITDA	$ 533.0	$ 571.0	$ 747.0	$ 11.5	$ 324.9
EBITDA Margin					
Consumer Digital Imaging Group (CDG)	-2.33%	4.62%	15.33%	-4.29%	1.45%
Film, Photofinishing and Entertainment Group (FPEG)	13.02%	13.82%	11.43%	6.89%	6.90%
Graphic Communications Group (GCG)	6.72%	4.59%	4.36%	-0.39%	6.64%
Total Continuing EBITDA Margin	5.60%	7.22%	10.39%	0.18%	5.21%
Total EBITDA	5.66%	7.51%	10.39%	0.18%	5.21%
Capital Expenditures					
Consumer Digital Imaging Group (CDG)	96.0	61.0	59.0	60.0	60.0
Film, Photofinishing and Entertainment Group (FPEG)	40.0	23.0	26.0	20.0	15.0
Graphic Communications Group (GCG)	118.0	67.0	64.0	75.0	90.0
All Other	-	1.0	-	-	-
Total Capital Expenditures	$ 254.0	152.0	149.0	$ 155.0	$ 165.0
EBITDA Less Capital Expenditures					
Consumer Digital Imaging Group (CDG)	(168.0)	60.0	361.0	(143.5)	(33.9)
Film, Photofinishing and Entertainment Group (FPEG)	349.0	289.0	176.0	86.0	77.4
Graphic Communications Group (GCG)	106.0	58.0	53.0	(86.0)	115.4
All Other	(14.0)	(10.0)	8.0	-	1.0
Total EBITDA Less Capital Expenditures	$ 273.0	$ 419.0	$ 598.0	$ (143.5)	$ 159.9
Other Non-Cash Expenses (Income)					
Pension Charges	(121.0)	(46.0)	(106.0)	35.0	140.0
OPEB expenses	16.0	45.0	25.0	22.0	25.0
Total Other Non-Cash Expenses (Income)	$ (105.0)	$ (1.0)	$ (81.0)	$ 57.0	$ 165.0
Other Cash Charges					
Restructuring Payments	133.0	177.0	88.0	76.0	80.0
Pension Contributions	101.0	121.0	112.0	112.0	110.0
OPEB Contributions	230.0	192.0	168.0	120.0	115.0
Cash Taxes	145.0	225.0	197.0	80.0	80.0
Cash Interest	85.0	70.0	115.0	120.0	130.0
Total Other Cash Charges	$ 694.0	$ 785.0	$ 680.0	$ 508.0	$ 515.0
Free Cash Flow before W/C & Other Changes	$ (526.0)	$ (367.0)	$ (163.0)	$ (594.5)	$ (190.1)
Working Capital & Other Changes					
Assets Sales	54.0	139.0	32.0	200.0	-
Working Capital & Other Asset Changes	416.0	172.0	(207.0)	(172.6)	25.0
Total Free Cash Flow	$ (56.0)	$ (56.0)	$ (338.0)	$ (567.1)	$ (165.1)
Debt Retirement (Additions)	306.0	63.0	62.0	(251.0)	50.0
Dividends	139.0	-	-	-	-
Share Repurchases	301.0	-	-	-	-
Net Change in Cash Position:	$ (802.0)	$ (119.0)	$ (400.0)	$ (316.1)	$ (215.1)

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

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Investment Risk
Demonstrate the ability to reach profitability goals in consumer and commercial inkjet printers and related products.
Need to stabilize profitability of digital still camera and commercial printing plate business.
Execute asset divestures and patent license transactions to gain funding for its growth businesses.
Secure additional lines of credit to fund its growth businesses.

Valuation Methodology
50% Discount to Net Asset Value.

Rating Distribution (as of September 30, 2011)	Investment Banking Relationships (as of September 30, 2011)
Buy: 100% Hold: 0% Sell: 0%	Buy: 0% Hold: 0% Sell: 0%

Company Rating System:
Buy: Expected to produce a total return of 15% or better in the next 12 months.
Hold: Fairly valued; total return in the next 12 months expected to be ± 15%.
Sell: Stock is expected to decline by 15% or more in the next 12 months.

Rafferty Capital Markets Disclosures as of December 20, 2011

Company	Disclosure
Eastman Kodak Co.	4

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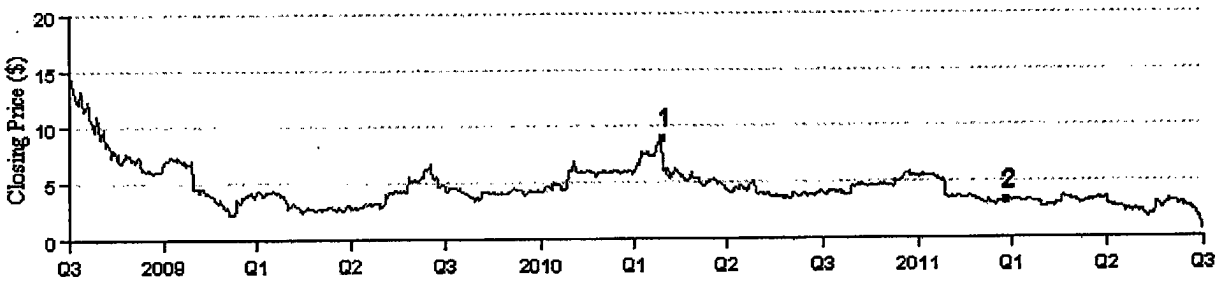
EK

1) 04/26/10	2) 03/22/11
Buy $15	Buy $9.50



Additional information on recommended securities is available on request

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RAFFERTY CAPITAL MARKETS, LLC

Company FLASH

US Equity Research Photographic Equipment & Supplies

December 28, 2011

Eastman Kodak Co.

Mark Kaufman, CFA
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kaufmanm@raffcap.com

(EK: $0.65, Buy, US$5.50)

The Elevation of Laura Quatela to President Likely Signals A Corporate Restructuring to Raise Liquidity and Unlock Kodak's Asset Values.

- **The appointment last week of a Co-President reporting to the CEO, Antonio Perez, signals Kodak may be positioning itself for a major corporate restructuring to simultaneously unlock its asset value and provide added liquidity.** Elevating Laura Quatela, who has lead Kodak's patent monetization strategy, from Chief Counsel to President to serve with the existing President, Phil Faraci, could pave the way to raising additional liquidity in the near term for the Company. Kodak's Intellectual Property (IP), which consists of approximately 10,000 patents, various copyrights and trademarks, is already in a separate subsidiary as part of the collateral package for its secured notes and revolver liquidity totaling $1.15 billion. With Laura Quatela at the helm of Kodak's Intellectual Property operations and with Phil Faraci continuing to head up its tangible consumer and commercial operations, Kodak could seek to raise money by selling up to a 20% stake or entering into a joint venture for either the IP business or the tangible operations. The choice would likely depend on how Kodak's advisors see how best to maximize the value of the $3.6 billion domestic NOL. Kodak's patents have a zero cost basis, as research and development costs are expensed as they are incurred. As a result, in either a sale or a license of a patent, the proceeds are almost purely profit. Although the patents are currently collateral, Kodak can use the proceeds from any license of or claims settlement related to its Intellectual Property.

- In an effort to accelerate the monetization of it intellectual property, Kodak has been seeking the sale of its 1,100 digital imaging patents since late summer. There has been serious interest by various companies, but delays in the final determination by the U.S. ITC in the patent infringement action brought by Kodak against Apple (AAPL; $406.89, NR) and RIMM (RIMM; $14.78, NR), has potentially delayed a meeting of the minds on price. **However, Kodak and its advisors are likely also looking at intermediate steps to raise cash. Aside from the outright sale of the digital imaging patents at this juncture, Kodak could possibly first sell up to a 20% stake in its new IP business to the public, or structure a partnership with a strategic or financial investor. A private transaction could take the form of a joint venture, where Kodak contributes its operations and the partner contributes cash for liquidity to the partnership. A portion of the partner's cash contribution could be paid out to Kodak, in the form of a note or dividend, and the joint venture owners would share in the future IP license and royalty streams. Either strategy should not only improve Kodak's liquidity but also bring other potential licensees back to the bargaining table to execute license agreements with the new Kodak JV.**

- Intellectual Property Management Firms currently trade at approximately 10X EBITDA, and based on Kodak's annualized EBTIDA potential of approximately $250.0 million, its Intellectual Property business could be valued at $2.5 billion. Kodak would still own at least 80% of the IP business as well as its other business lines, which would appear to be more than ample collateral for its secured debt. Kodak could instead potentially sell up to a 20% stake in its commercial printing operations, the proceeds of which could be injected directly into the business to fund its 2012 liquidity needs. Again, Kodak's large NOL would have an influence on the direction the Company will likely take. **(Please see our September 9th and December 20th Notes for estimated values of Kodak's businesses.)**

- Kodak has other liquidity options that are not mutually exclusive to the strategies mentioned above: 1) replace its existing first lien secured revolver with a new secured loan up to the inter creditor agreement limit of $600.0 million, 2) enter into separate patent license agreements or settle existing infringement suits, the proceeds of which could be used for general corporate purposes and, 3) the sale of non-core businesses. The recent sale of its Eastman Gelatine Corporation business to Rousselot for an undisclosed amount, that will close in the next few weeks, is such a transaction. Potential license agreements and non-core asset sales could be sufficient to retire the outstanding $160.0 million balance on Kodak's $400.0 million revolver, which could then be replaced by the new $600.0 million first lien loan to provide additional liquidity. **Whatever form Kodak's restructuring will actually take, we expect the details to be revealed in the next month.**

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Investment Risk
Demonstrate the ability to reach profitability goals in consumer and commercial inkjet printers and related products.
Need to stabilize profitability of digital still camera and commercial printing plate business.
Execute asset divestures and patent license transactions to gain funding for its growth businesses.
Secure additional lines of credit to fund its growth businesses.

Valuation Methodology
50% Discount to Net Asset Value.

Rating Distribution (as of September 30, 2011)	Investment Banking Relationships (as of September 30, 2011)
Buy: 100% Hold: 0% Sell: 0%	Buy: 0% Hold: 0% Sell 0%

Company Rating System:
Buy: Expected to produce a total return of 15% or better in the next 12 months.
Hold: Fairly valued; total return in the next 12 months expected to be ± 15%.
Sell: Stock is expected to decline by 15% or more in the next 12 months.

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Company	Disclosure
Eastman Kodak Co.	4

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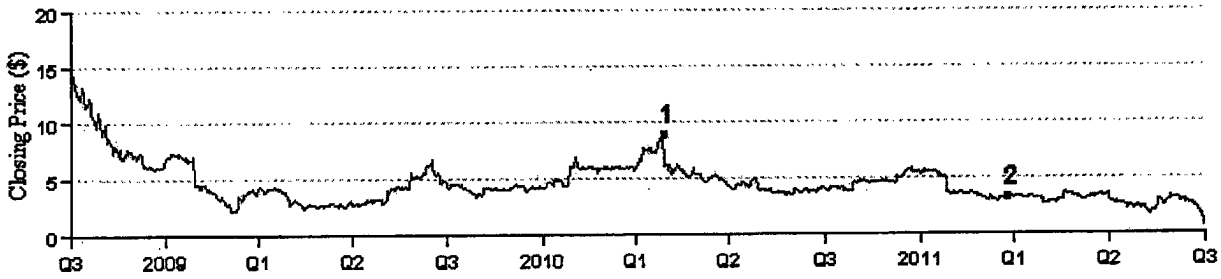
EK

1) 04/26/10	2) 03/22/11
Buy $15	Buy $9.50



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RAFFERTY CAPITAL MARKETS, LLC

Company FLASH

US Equity Research Photographic Equipment & Supplies

January 5, 2012

Eastman Kodak Co.

Mark Kaufman, CFA
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kaufmanm@raffcap.com

(EK: $0.42, Hold, US$2.75)

Lowering Kodak to Hold and Target to $2.75 due to Uncertain Timing of the Patent Portfolio Sale and Potential for Strategic Chapter 11 Reorganization

- Yesterday, the Wall Street Journal ("WSJ") reported that Kodak explored the option of a Chapter 11 bankruptcy filing in December should its efforts to receive a fair price for its digital patent portfolio falls short in the near term. The story is more complicated, it has been no secret that Kodak has been seeking shore up its liquidity to support its digital printing operations through the sale of its patents or other means, which we highlighted in a 12/27/2011 Note. **At this juncture a Chapter 11 bankruptcy would amount to a strategic maneuver, which perverse as it may seem, could actually preserve more value for all of Kodak's investment constituents including the equity than other options it is likely considering.** Should Kodak file for a Chapter 11 Reorganization it would enable the Company to borrow more than the $600.0 million that is currently allowed under its debt indentures. Under that scenario, the WSJ also suggested Kodak could raise a Debtor in Possession ("DIP") credit line of a $1.0 billion dollars from a consortium of banks, which should be more than ample liquidity for 2012. Kodak foreign subsidiaries where the majority of its tangible assets and cash reside would not be placed in bankruptcy or receivership. Some or all of Kodak's domestic operations would be placed in Chapter 11, which would still operate normally and continue to pay their vendors.

- Although we believe Kodak could replace its existing secured revolver with a new secured loan up to the aforementioned limit of $600.0 million, it may consider the amount of the equity those private lenders are seeking as part of the loan package to be too high a price to pay. A DIP credit line in a Chapter 11 Reorganization would receive a super priority lien over the pre-bankruptcy creditors on all of Kodak's assets. If Kodak were to realize full value for its patent portfolio later this year, which we continue to estimate at $2.4 billion, it should have sufficient cash to repay any outstanding DIP loan balances, retire its second lien notes, and reinstate it remaining creditors and exit bankruptcy leaving the equity intact.

- We said in our Note last week, there was serious interest for the digital patent portfolio, but delays in the final determination by the U. S. ITC in the patent infringement action brought by Kodak against Apple (AAPL; $414.95, NR) and RIMM (RIMM; $14.99, NR), has potentially delayed a meeting of the minds on price. The Administrative Law Judge ("ALJ") has said that he plans to issue his initial determination on remand by May 21st which should impact what a buyer would be willing to pay and what Kodak is willing accept for the patent portfolio. This ruling is still subject to a review before the full ITC by September 21st. We do not see a potential buyer gaining any leverage by attempting to purchase Kodak's digital patents in bankruptcy; the advantage is with the Company. In an attempt to maximize value the rules for an auction would be determined by the court where there would likely be a 'stalking horse' buyer that would be entitled to a breakup fee. Bids would also be required to increase in large increments and the bidders would be known to each other.

- **We believe Kodak's asset values are not likely to be impaired by a strategic Chapter 11 bankruptcy reorganization; however the headline risk associated with that potential event would likely hurt the shares. As a result, and as well as the heightened uncertainty about the actual timing and manner of a digital patent portfolio transaction and/or other liquidity events we are lowering our rating for Kodak to HOLD from BUY. Also to reflect these near term risks, we are lowering our Target Price to $2.75 a 75% discount to our estimate of Kodak's Net Asset Value of approximately $11.00.**

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Investment Risk
Demonstrate the ability to reach profitability goals in consumer and commercial inkjet printers and related products.
Need to stabilize profitability of digital still camera and commercial printing plate business.
Execute asset divestures and patent license transactions to gain funding for its growth businesses.
Secure additional lines of credit to fund its growth businesses.

Valuation Methodology
75% Discount to Net Asset Value.

Rating Distribution (as of December 31, 2011)	Investment Banking Relationships (as of December 31, 2011)
Buy: 100% Hold: 0% Sell: 0%	Buy: 0% Hold: 0% Sell 0%

Company Rating System:
Buy: Expected to produce a total return of 15% or better in the next 12 months.
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Sell: Stock is expected to decline by 15% or more in the next 12 months.

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Buy $15	Buy $9.50

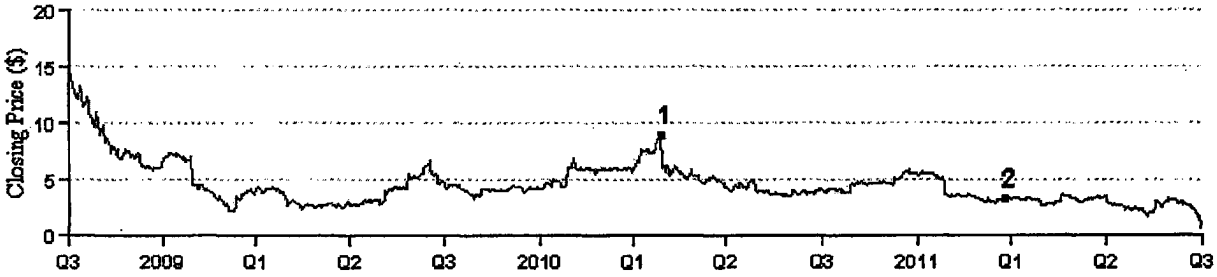

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EXHIBIT B

ProPrint

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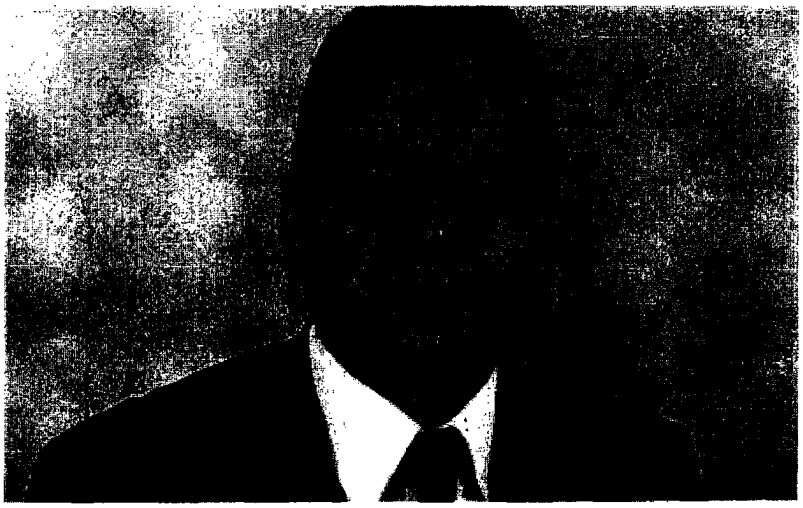
Kodak to become more Asian after Chapter 11 restructure

Steven Kiernan | Feb 20, 2012



Kodak's "centre of gravity will move more into Asia-Pacific" when it emerges from bankruptcy protection – which it said would be good news for Australian customers.

Lois Lebegue, Kodak managing director of the Asia-Pacific region, has told *ProPrint* that despite the bleak headlines out of the US and western Europe, "Asia-Pacific is very strong, very healthy and growing".

He said the parent group's filing for Chapter 11 bankruptcy protection in the US should have minimal impact in this region, particularly as the vendor is banking on its Asia-Pacific business to help secure a long-term future.

"When we recover and come out of Chapter 11, the centre of gravity will move more in to Asia-Pacific," said Lebegue.

"I can't comment on how long it will take to exit [Chapter 11] - that very much depends on the profile of the company... but for us the move to grow our footprint in Asia-Pacific is happening whatever.

"We are seeing more and more of our manufacturing capacity being moved to Asia-Pacific, more and more of our R&D capacity moved to Asia-Pacific, so our global footprint and go-to market is growing year over year," added Lebegue.

Kodak Australia and New Zealand managing director Adrian Fleming said that with teams across the Asia-Pacific region sitting in the same time zone as Australia, "we can't help but benefit from any increased focus in Asia".

The ANZ market accounts for 15% of Kodak's $1 billion sales in Asia-Pacific, added Fleming.

Asia-Pacific is expected be protected from any dramatic reshaping taking place in the US and Western Europe, said Lebegue. "We are not going to be chasing a lot of restructuring and cost-cutting in Asia-Pacific except the impact of decisions such as stopping the manufacture of digital cameras."

Digital cameras account for less than 5% of Kodak's Asia-Pacific sales, and less than 2% here in Australia and New Zealand.

This means the decision to pull out of cameras won't drive any restructuring here, said Fleming.

Kodak's troubles largely stem from the poor performance of its consumer business, and Lebegue pointed out that in Asia-Pacific, there is a much more "healthy" balance of 75% commercial to 25% consumer.

Fleming said the balance is almost as healthy in ANZ but closer to "two-thirds, one-third" in favour of its commercial side, which includes its plates business, Prinergy workflow products and digital production presses.

This is still a far cry from the skew in the US, where until a decade ago, up to 80% of Kodak's sales came from consumer products, said Lebegue.

He said that some of the other "legacy" issues plaguing Kodak in the States and Europe, such as its pension liabilities, had no bearing in Asia-Pacific.

Source:

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February 23, 2012

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Re: **In re Eastman Kodak Company, et al., Debtors**
Chapter 11, Case No. 12-10202 (ALG)

Dear Brian,

As you know, last evening we received the February 22, 2012 letters from counsel for the Debtor, the Official Creditors' Committee and the Ad Hoc Second Lien Noteholders' Committee (collectively the "Letters"). As you also know, all three entities objected to formation of an Equity Committee.

We confine ourselves here to a brief response, for three reasons.

First, we adopt Mr. Stark's response letter to you of today. Mr. Stark's letter rigorously demonstrates the Letters' blithe valuation assertions and other arguments for the *ipse dixits* they are, long on rhetoric but short on reason and substance. We pay no mind to the Letters' assays into the *ad hominem*.

Second, the Letters do not – cannot – factually gainsay the demonstrable existence of the key Equity Committee formation triggers of "no other adequate representation" and "Debtor is not hopelessly insolvent."

Third, if a more detailed showing proves necessary – it should not - we will make that showing by filing a motion with the Bankruptcy Court for an evidentiary hearing. Addressing the Letters' professed concern that we have presented mere "speculation" about valuation, such a hearing will further establish factually, under oath, full satisfaction of the elements required for Equity Committee formation. Such a hearing need not long detain the Court. The Debtor's admissions, first-day filings and abundant other data of evidentiary quality show the Debtor is not "hopelessly insolvent." Nor will any officers or agents of the Debtor, Official Creditors'

Committee, or Second Lien Noteholders Committee be able to offer credible evidence of any "adequate" representation of equity's interests.

Permit us a few observations on the Letters' vaporous assurances that equity is irretrievably out of the money and merits no committee:

* Reflecting practical realities, the operative legal test is whether Kodak *"appear[s] to be hopelessly insolvent." In re Williams Communication Group, Inc.*, 281 B.R. 216, 220-222 (Bankr. S.D.N.Y. 2002) (emphasis in original) (emphasizing conditional – "appears" – nature of solvency inquiry at Equity Committee formation stage). Kodak's CFO, Antoinette P. McCorvery, filed a first-day declaration, dated January 18, 2002, which shows Kodak is not "hopelessly insolvent." Ms. McCorvery's declaration neatly unmakes the Letters' insistence on the supposedly adamantine legacy liabilities mandating a "hopelessly insolvent" conclusion. Ms. McCorvery's sworn declaration calls these "significant legacy liabilities" "[c]ontingent, unliquidated, disputed...." *See* Declaration of Antoinette P. McCorvery, Jan. 18, 2012, at 8, 8 n. 2.

* None of the Letters meaningfully analyzes asset values. Even accepting, *arguendo*, e.g., Kodak's reliance on R.W. Pressprich & Co. reports, proper valuation rebuttal goes a-begging. Those reports value the patents at $800-$900 million and the digital printing business at zero. This sad valuation story, however, runs squarely afoul of the recent $2.4 Billion valuation *the Company itself* provided in its DIP lender presentation and publicized in its January 23, 2012 8K filing.

* Banging the drum of "hopeless insolvency," the Letters' sponsors developed a sudden curious deafness to the words of Matthew J. Hart, a Director in Lazard's Restructuring Group. In his first-day Declaration, Mr. Hart "estimate[d] the value of a portion" – only a "portion" – "of the prepetition secured creditors' collateral at a range of $3.4 to $4.3 billion." Mr. Hart went on: "This analysis notably does not give any credit to other prepetition collateral such as the Debtors' globally-recognized and highly reputable brand, stock of certain foreign subsidiaries, or over 9,000 other patents beyond the digital imaging patent portfolio. This analysis also does not represent what is likely a materially higher enterprise value for the Debtors as a going concern." *See* Declaration of Matthew J. Hart, Jan. 19, 2012, at 9-10.

* For a year before Kodak's bankruptcy filing, Mr. Kaufman based his Rafferty & Co. public research reports on *net asset values.* Those

net asset values always reflected subtraction of long term debt and potential pension and OPEB obligations from the asset value estimates.

* In Kodak's so-called "Town Hall Meeting," less than 24 hours after Kodak's bankruptcy filing, Kodak's CEO, Antonio Perez, stated that only the day before he had believed Kodak would avoid bankruptcy through an Intellectual Property deal. That statement - from not just any insider but one presumptively possessing all material and available valuation knowledge - strongly supports the conclusion that Kodak's IP portfolio value means Kodak is not "hopelessly insolvent."

* In that Town Hall Meeting, Mr. Perez also underscored Kodak's strongly positive post-bankruptcy valuation prospects – the ones that really matter for Equity Committee formation. Mr. Perez said "This is a very important meeting, believe it or not. It's not a sad meeting....[Kodak] will come out as the world's leading material sciences and digital imaging company for the digital age."

* Kodak's President and Chief Operating Officer, Laura Quatela, in that same Town Hall meeting, asserted that Kodak could obtain $6 Billion in IP licensing revenue over the next four years. That assessment, too, from a senior executive surely in the know, augurs well for a valuation that puts equity in the money.

Concerning the "adequate representation prong," the Letters themselves quite conclusively prove our point. No other entity will examine, let alone adequately represent, equity's interests. Much of the highly-compensated senior executive insiders' substantial equity holdings came on the cheap. Those insiders lack the same incentive robustly to protect equity that the equity buying public, like those seeking a committee here, possess. Nor will such insiders likely bother to look at, let alone carefully investigate with the requisite gimlet eye, equity's possible claims against officers and management.

The Letters' argument that "the investors who want an Equity Committee are big players who can hire their own lawyers" misses the point. That certain larger investors might have the initiative and means to retain private counsel is simply no answer to the Code's clear recognition and repeated judicial confirmations that equity interests, big and small, are entitled to an Equity Committee in circumstances like those here. Otherwise why have a multi-factorial test at all?

None of the Letters' cited cases are apposite. For example, the Debtor's reliance on *In re Williams Communications Group, Inc.*, 281 B.R. 216 (Bankr. S.D.N.Y. 2002), is misplaced for a good number of good reasons. Among others, the *Williams* debtor lacked the rich equity-protecting values of Kodak's IP portfolio. Second, in *Williams*, the debtor, WCG, had already "reached agreements" with "TWC [its former corporate parent], prepetition secured lenders, and holders of approximately $875 million of WCG's Notes...regarding the terms and conditions on which a chapter 11 plan would provide for the financial restructuring and de-leveraging of WCG's balance sheet." *Id.* at 219. That plan had already been filed when the court was deciding the equity committee request at issue. *Id.* Unsurprisingly, the *Williams* court found "appointment of an equity committee would clearly cause a delay in this case." *Id.* at 223. That distinguishing concern, too, does not apply to our request. *In Re Spansion, Inc.*, 421 B.R. 151 (Bank R. D. Del. 2009), also involved a request for an Equity Committee only after the Debtor had filed a Plan of Reorganization and Disclosure Statement. *Williams* and *Spansion* illustrate by telling contrast why an Equity Committee is warranted here.

Williams's statement, of which the Letters make much, that "appointment of an official equity committee should be the rare exception" is inapplicable here. Much recent experience so demonstrates. *See, e.g.,* American College of Bankruptcy Best Practices Report Formation, Function & Obligations of Equity Committees In Chapter 11 (2011) at 2-3 ("Indeed, prior to 2002, the appointment of Equity Committees had been quite rare....In the last decade, however, there has been a remarkable increase in the number of requests for, and appointments of, Equity Committees. In the first half of the decade alone, Equity Committees were appointed in over 30 cases in 12 separate jurisdictions, and the appointments of Equity Committees in so-called 'mega cases' has become relatively common." (Citations omitted.)

In re Ampex Corporation, et al., 2008 WL 2051128 (Bankr. S.D.N.Y. May 14, 2008), confirms "[t]he threshold inquiry is solvency." 2008 WL 2051128 at *1. *Ampex* makes that inquiry citing *Williams. Id.* But *Ampex* instructively did not employ *Williams's* dicta formulation – which came after *Williams's* initial invocation and application of the "hopelessly insolvent" test - of the more-rigorous sounding "substantial likelihood of meaningful distribution" test. *Williams,* 281 BR at 223. Here, the choice of formulation is of little consequence. Kodak is not "hopelessly insolvent" and numerous presently uncontradicted valuations demonstrate the substantial likelihood of a meaningful distribution to equity. Beyond its analytical framework,

Ampex is of little use here. Unlike Kodak's, Ampex's "equity securities [were] not widely held." *Ampex*, 2008 WL 2051128, at * 2. Unlike Kodak's case, Ampex's was "not complex." *Id.* Under the pre-arranged plan in *Ampex*, "none of the creditors senior to equity are receiving payment in full on behalf of their claims," demonstrating "there simply is no value for equity holders" under *Ampex's* particular facts. *Id. Ampex's* pre-arranged plan provided already for "a gift of 'contingent payment rights' to equity that may yield value in the future." *Id.* No such solicitude for Kodak's equity interests appears anywhere in the current record. Like *Williams, Ampex*, properly read, shows why an Equity Committee is fully warranted here.

Kodak's bankruptcy presents a paradigmatic case for formation of an Equity Committee.

Kind regards.

Very truly yours,

KEEFE BARTELS

By: _____
Stephen G. Grygiel

McELROY, DEUTSCH, MULVANEY
& CARPENTER
Thomas Scrivo

SGG:nd
cc: Frank E. Williams, Jr. (all by e-mail)
Gregg T. Abella
Andrew Gregor
William Stern
George Karfunkel
Lance Laifer
Luis Diaz
Chris DePierro
Roman Stockhammer
Eric Wagoner
Louis Modugno, Esq.
Thomas Scrivo, Esq.

U.S. Department of Justice

Office of the United States Trustee
Southern District of New York

33 Whitehall Street
21st Floor
New York, New York 10004

(212) 510-0500
Fax: (212) 668-2255

February 28, 2012

Robert J. Stark, Esq.
Brown Rudnick
Seven Times Square
New York, NY 10036

Re: In re Eastman Kodak Company, et al.
Case No. 12-10202 (ALG)

Dear Mr. Stark:

The United States Trustee received your letters dated February 9, 2012, February 23, 2012, and February 27, 2012 requesting that the United States Trustee appoint an official committee of equity security holders in this case (the "Equity Committee").

The United States Trustee received correspondence from counsel to the debtor on February 17, 2012, proposed counsel to the Official Committee of Unsecured Creditors on February 17, 2012, and counsel to certain unaffiliated holders identified as the "Second Lien Holders" on February 22, 2012 (collectively, the "Respondents"), copies of which were forwarded to you and Mr. Grygiel. Each of the Respondents indicated their opposition to the request that an Equity Committee be formed in this case.

After careful consideration of the facts of this case and an analysis of your request, and the comments from the Respondents relating to your request, the United States Trustee declines to form an Official Equity Committee at this time.

Very truly yours,

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By:

Brian S. Masumoto
Trial Attorney

cc: Andrew G. Dietderich, Esq. (By email)
Dennis F. Dunne, Esq. (By email)
Michael S. Stamer, Esq. (By email)
Stephen G. Grygiel, Esq. (By email)

EXHIBIT B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-10202 (ALG)

- -x

In the Matter of:

EASTMAN KODAK COMPANY, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 15, 2012

11:05 AM

B E F O R E:

HON. ALLAN L. GROPPER

U.S. BANKRUPTCY JUDGE

The debtor has reviewed these terms, the debtor has reviewed market comps, the debtor believes that this is a reasonable arrangement in light of the overall deal. The provisions of the Blackstone letter provide for a monthly fee of 175,000 dollars and a success fee upon either repayment in full of the class or consummation on the plan of reorganization, of 5 million dollars, with a 50 percent fee credit against the monthly that begins on October 10th.

The rest of the order --

THE COURT: The credit begins --

MR. DIETDERICH: October 10th, 2012. So to the extent there's a monthly fee that's paid for dates after October 10th, 2012, there will be a fifty percent -- fifty percent of that fee will be applied to reduce the five-million-dollar success fee.

THE COURT: And I gather there are provisions for the payment of the second-lien holders from any extraordinary sales --

MR. DIETDERICH: Yeah.

THE COURT: -- from certain sales as defined.

MR. DIETDERICH: We'll get to that in a second.

THE COURT: So once they're paid, then the fees -- obviously, the monthly fees stop.

MR. DIETDERICH: Yes.

THE COURT: All right. I assume the creditors'

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	Case No. 12-_____ (_____)
Debtors.	(Joint Administration Requested)

DECLARATION OF ANTOINETTE P. MCCORVEY PURSUANT TO RULE 1007-2 OF THE LOCAL BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT OF NEW YORK IN SUPPORT OF FIRST DAY PLEADINGS

Antoinette P. McCorvey, being duly sworn, deposes and states:

1. I am the Chief Financial Officer and Senior Vice President of Eastman Kodak Company ("**EKC**"), a publicly owned corporation organized under the laws of the State of New Jersey and a debtor and debtor in possession in the above-captioned cases of EKC and certain of its affiliates (collectively, the "**Debtors**"). In such capacity, I am generally familiar with the Debtors' businesses, day-to-day operations and financial affairs.

2. I submit this declaration (this "**Declaration**") pursuant to rule 1007-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "**Local Rules**") in support of the voluntary petitions for relief filed by each of the Debtors under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") and the motions and applications for related relief filed as of January 19, 2012 (the "**Petition Date**") or concurrently

[1] 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.

1210202120118000000000016

herewith (collectively, the "**First Day Pleadings**"). I have reviewed the First Day Pleadings or have otherwise had their contents explained to me and, to the best of my knowledge, insofar as I have been able to ascertain after reasonable inquiry, I believe that approval of the relief requested therein is necessary to minimize disruption to the Debtors' business operations so as to permit an effective transition into chapter 11, preserve and maximize the value of the Debtors' estates and, ultimately, achieve a successful reorganization. I also believe that, absent immediate access to additional financing, use of cash collateral and authority to make certain essential preplan payments and otherwise continue conducting ordinary course business operations as set forth herein, and described in greater detail in the First Day Pleadings, the Debtors would suffer immediate and irreparable harm to the detriment of their estates.

3. Except as otherwise indicated, the facts set forth in this Declaration are based upon my review of relevant documents, information provided to me or verified by other executives, employees or the Debtors' professional advisors, including Sullivan & Cromwell LLP, Young Conaway Stargatt & Taylor, LLP, Lazard Frères & Co. LLC and FTI Consulting, Inc., and my experience, knowledge and information concerning the Debtors' operations, financials and the film and digital imaging industry generally. Unless otherwise indicated, the financial information contained in this Declaration is unaudited and subject to change. This financial information is presented on a consolidated basis for the Debtors and their non-Debtor affiliates, except where noted. I am authorized to submit this Declaration on behalf of the Debtors, and, if called upon to testify, I would testify competently to the facts set forth herein.

Preliminary Statement

4. The Debtors and their non-Debtor affiliates (collectively, "**Kodak**" or the "**Company**") operate a globally integrated enterprise. The Company has approximately 17,000

employees worldwide (approximately 9,100 of whom are in the U.S.), and in fiscal year 2011 had sales of approximately $6.0 billion.

5. Kodak is a materials science company with a long history of innovation and successful commercialization of proprietary technologies. The Company was once the world's leading producer of film and cameras, and today has a diverse collection of mature and growth businesses. Kodak has invested significantly in research and development ("**R&D**") for over a century, and continues to do so today. The Debtors have approximately 13,100 foreign patents and trademark registrations or pending registration in approximately 160 countries. Additionally, the Debtors have approximately 8,900 patent and trademark registrations and applications in the United States.

6. Over the past several years, the Company has been working to transform itself from a business primarily based on film and consumer photography to a smaller business with a digital growth strategy focused on the commercialization of proprietary digital imaging and printing technologies. Digital businesses generated approximately 75%, or $4.5 billion, of Kodak's revenue in fiscal year 2011. Kodak's digital products include consumer devices such as self-service photo kiosks and ink jet printers, and business-to-business products and services such as its technologically advanced PROSPER commercial inkjet printing systems, electrophotographic printing systems, digital printing plates, high-volume document scanners and new technologies related to packaging and workflow software solutions.

7. Kodak has transitioned to a digital company, as the market for film based products has declined rapidly over the past ten years. Kodak's global workforce has been reduced from approximately 63,900 employees in 2003 to approximately 17,000 employees in 2011. This transition also has led to a financially smaller Kodak, with revenues declining from

approximately $13.3 billion in 2003 to about $6.0 billion in 2011. Kodak has funded its business restructuring costs from a combination of licensing fees generated by Kodak's digital capture patents sale proceeds from the disposition of non-core assets and cash from its cash generating film and digital business.

8. Kodak innovations enabled the digital transformation that has effectively replaced film. In 1975, Kodak scientists invented the first digital camera. Kodak then went on to develop a vast collection of patented technologies to enhance digital image capture and processing, technologies that are used in virtually every modern digital camera, smartphone and tablet, as well as numerous other devices. From 2003 to 2010, the Company negotiated approximately $3.0 billion of licensing revenue from its digital capture patent portfolio; however, the company only generated $98 million in licensing revenue in 2011. The Company anticipates substantial future revenue from licensing its intellectual property for use in smartphones and tablets that employ digital cameras, as well as in next-generation products that utilize Kodak technology, or from the disposition of related patents to third parties.

9. Since initiating its digital transformation strategy in 2003, Kodak has generated approximately $4.0 billion from the sale of assets and businesses, including the Health Group, Remote Sensing Systems, HPA, Light Management Films, Image Sensor Solutions, Eastman Gel, Silver Operations, a variety of chemical operations, OLED and Kodak's ownership interest in Lucky Film.

10. Since 2008, despite Kodak's best efforts, restructuring costs and recessionary forces have continued to negatively impact the Company's liquidity position, ultimately leading to the commencement of these chapter 11 cases. In 2011, Kodak took actions to enhance its cash position, including: (i) issuing $250 million in senior secured notes due 2019; (ii) entering into a

second amended and restated credit agreement with its lenders that facilitated a draw of approximately $160 million; and (iii) selling certain non-strategic businesses and assets. Despite these actions, the Company's liquidity has been impaired further by difficulties collecting licensing fees from infringers of Kodak's intellectual property, who Kodak believes have employed a strategy of delay in light of Kodak's liquidity position, and by substantial foreign and U.S. legacy costs.

11. In order to resolve their liquidity challenges, the Debtors, with the assistance of their advisors, have evaluated strategic alternatives for new lending facilities, strategic transactions, intellectual property monetization, and asset sales. The Debtors have determined that seeking the debtor-in-possession financing described in my declaration in support of the Debtors' motion authorizing them to obtain postpetition financing (the "**Financing Declaration**"), and reorganizing under chapter 11 protection is in the long-term best interests of the Debtors, their estates and their stakeholders.

12. To familiarize the Court with the Debtors' businesses, operations, key creditor constituencies and other parties in interest in these chapter 11 cases, together with the relief sought by the Debtors in the First Day Pleadings, this Declaration is organized as follows: Part I describes Kodak's history and the Debtors' current corporate structure and prepetition indebtedness; Part II describes the Debtors' businesses and operations; Part III describes the events leading up to the commencement of these cases and the Debtors' prepetition restructuring initiatives; and Part IV sets forth the relevant facts in support of each First Day Pleading. To the extent not otherwise provided herein, the information required under Local Rule 1007-2, relating to, among other things, the Debtors' businesses, employees, assets and parties in interest in these

chapter 11 cases, is set forth on Schedules 1-12 attached hereto and incorporated by reference herein.

I.
Company Overview

A. Company History and Corporate Structure

13. Founded in 1880 by George Eastman, the Company helps businesses and consumers unleash the power of pictures and printing. The Company has been headquartered in Rochester, New York since its founding. In 1888, with the slogan "you press the button, we do the rest", George Eastman put the first film camera into the hands of a world of consumers. In April 1905, Kodak went public, offering shares of its common stock on The New York Stock Exchange. The Company was added to the Dow Jones Industrial Average index in July 1930.

14. Since its founding, Kodak has prided itself on its reputation. In April 2011, for the second year in a row, Kodak ranked among the top 20 "most reputable" American companies by the Reputation Institute, an independent consulting company. The survey was based on nearly 33,000 consumers' opinions, and measured trust, esteem, admiration and good feelings toward companies. For ten years in a row, Kodak has been named to the Dow Jones Sustainability North American Index, one of the most prestigious and well-known hallmarks of sustainability performance among leading corporations.

15. EKC is incorporated under the laws of New Jersey, which has a corporate governance statute commonly called an "Other Constituency" statute. The Other Constituency statute permits the board of directors, in discharging its duties, to consider the effects of its actions not merely on shareholders and creditors, but also on employees, suppliers, customers, and the community. It states:

> In discharging his duties to the corporation and in determining what he reasonably believes to be in the best interest of the

> corporation, a director may, in addition to considering the effects of any action on shareholders, consider any of the following: (a) the effects of the action on the corporation's employees, suppliers, creditors and customers; (b) the effects of the action on the community in which the corporation operates; and (c) the long term as well as the short term interests of the corporation and its shareholders, including the possibility that these interests may best be served by the continued independence of the corporation.

N.J. Stat. Ann § 14A:6-1. Consistent with the Other Constituency statute and George Eastman's legacy, Kodak strives to be a good corporate citizen.

16. The Company's worldwide offices operate as an integrated global enterprise. A detailed organizational chart is attached hereto as Exhibit A. The Company has approximately 120 subsidiaries. In fiscal year 2010, the Company earned approximately 57% of its revenue abroad. The percentage of the Company's revenue earned abroad had increased to 67% for the first three quarters of 2011. The Company's patents and intellectual property generally are held by EKC, and the Company's research and administrative functions are located primarily in the United States. As a result, the Debtors have been a net receiver of cash through the Company's ordinary course global intercompany netting and financing system.

17. The Company's international operations are structured for, among other things, tax and regulatory efficiencies. Business units often cross geographic borders. For example, much of the Company's Asian business involves taking semi-raw goods from other entities (*e.g.*, ink produced in New York) and adding value in China by converting them into finished products (*e.g.*, printer cartridges) for sale in other markets. The Company's non-U.S. businesses are expected to be funded primarily from non-U.S. sources and should not be affected by the filing of these chapter 11 proceedings.

18. Orderly funding of the Company's global operations involves intercompany lending and netting by Kodak International Finance Limited, a company organized under the

laws of the United Kingdom ("**KIFL**"). Intercompany netting currently occurs once a month. The Company believes that the continued operation of KIFL in the ordinary course is critical to minimize non-U.S. liquidity requirements and avoid business interruptions within and outside the U.S.

B. Prepetition Capitalization and Indebtedness

19. The Debtors have significant legacy liabilities.[2] These include $1.2 billion in non-U.S. pension liabilities (calculated in accordance with U.S. GAAP), $1.3 billion of Other Post-Employment Benefit ("**OPEB**") liabilities and approximately $100 million in environmental liabilities.[3]

20. As of the Petition Date, the Debtors have outstanding funded debt in an aggregate amount of approximately $1.6 billion, consisting primarily of approximately:[4] (a) $100 million outstanding under the first lien revolving credit facility plus an additional $96 million in face amount of outstanding letters of credit; (b) $750 million in principal amount of second lien secured notes; (c) $400 million in principal amount of convertible notes; and (d) $283 million in principal amount of other senior unsecured debt. The Debtors also have approximately $425 million in outstanding trade debt.

II.
Current Businesses and Operations

21. Research and development drives Kodak's product and service offerings, which in 2011 were organized across three business segments: (i) Graphic Communications Group, (ii) Consumer Digital Imaging Group, and (iii) Film, Photofinishing and Entertainment Group.

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2 Contingent, unliquidated, disputed; estimate for illustrative purposes.

3 Amounts with respect to OPEB and Pension are based on preliminary estimates as of December 31, 2011.

4 Estimate for illustrative purposes only.

Beginning in 2012, the Company reorganized its business into a Commercial and Consumer segment. New segment-based financial reporting will begin with the first quarter 2012 results.

A. Product Offerings

22. Graphic Communications Group ("**GCG**") has a portfolio of digital products, primarily aimed at business customers, which accounted for 45% of the Company's consolidated revenue for 2011. GCG generates revenue from a traditional commercial plate and equipment printing business, innovative high-speed commercial inkjet printing (which prints on a variety of surfaces), electrophotographic printing systems, high speed document scanners, workflow software and services to business clients.

23. Consumer Digital Imaging Group ("**CDG**") offers printers, cameras and accessories to consumers, accounting for 29% of the Company's consolidated revenue for 2011. CDG generates revenues from digital cameras and accessories, the largest installed base of retail photo kiosks in the world, desktop inkjet printers and Kodak Gallery, an online merchandise and photo sharing service.

24. Film, Photofinishing and Entertainment Group ("**FPEG**") provides consumers, professionals and the entertainment industry with film and paper products and related software and services. FPEG is the industry leader in large markets, such as motion picture film, and accounted for 26% of the Company's consolidated revenue for 2011. FPEG sells color motion picture film, services for the entertainment industry, traditional photofinishing products, and specialized industrial film and chemical products.

B. Research and Development

25. Kodak's digital growth strategy is centered on exploiting its competitive advantage at the intersection of materials science and digital imaging science. Kodak's materials

science research is relevant both to innovative printing and fundamental scientific disciplines, as illustrated below:

1. Materials Science (inks, toners, coatings, paper and other media): Materials, inks, toners and papers used in Kodak systems draw upon a deep understanding of the sophisticated properties of these materials, and Kodak conducts cutting-edge research in polymer science, chemistry modeling and atomic scale assembly.

2. Nano-/Micro-Scale Devices: Research includes microfluidic systems that have a wide range of potential applications, such as inkjet printing, blood cell separation, biochemical assays, chemical synthesis, genetic analysis, drug screening, electrochromatography, surface micromachining, laser ablation and mechanical micromilling.

3. Computational Science: Research in labeling, organizing, compressing and interacting with digital data.

26. Most of the Company's R&D is performed in the U.S., with R&D taking place in Rochester, New York; Boston, Massachusetts; New Haven, Connecticut; Dayton, Ohio; and San Jose, Emeryville and San Diego, California; however, several comparatively smaller R&D operations are located outside the U.S. in Canada, England, Israel, Germany, Japan, China and Singapore. These groups work in close cooperation with manufacturing units and marketing organizations to develop new products and applications to serve both existing and new markets. Historically, the Company has spent between $300-500 million per year on R&D.

27. It has been the Company's general practice to protect its investment in R&D and its freedom to use its inventions by obtaining patents. As noted above, the Debtors have approximately 13,100 foreign patents and trademark registrations or pending registrations in approximately 160 countries. Additionally, the Debtors have approximately 8,900 patent and trademark registrations and applications in the United States. Kodak continues to produce patented technologies at a considerable pace, with 590 priority applications filed in 2011 and 482

in 2010. The ownership of these patents contributes to the Company's ability to develop and market innovative products.

28. The Company's major products are not dependent upon a single material patent. Rather, the technologies that underlie the Company's products are supported by an aggregation of patents having various remaining lives and expiration dates. There is no individual patent expiration or group of patent expirations that is expected to have a material impact on the Company's results of operations.

29. As announced publicly on July 20, 2011, the Company has been exploring, and continues to explore, strategic alternatives related to its digital capture and imaging systems and services portfolios of approximately 1,150 patents with related foreign and pending applications (the "**Imaging Portfolio**"). The Imaging Portfolio pertains to capturing, processing, storing, organizing, editing, sharing and monetizing digital images, and is fundamental to the digital imaging industry, including the cell phone, tablet and social networking markets.

30. The Imaging Portfolio comprises one of the world's richest collections of imaging-related intellectual property, reflecting decades of scientific innovation and billions of dollars of investment in R&D.

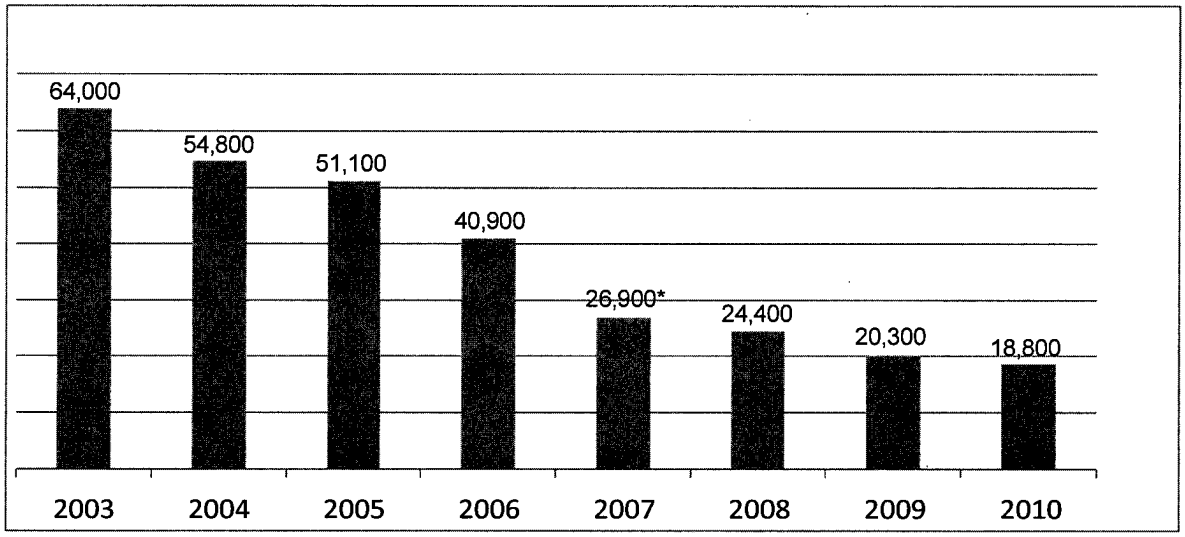
III.
Restructuring Initiatives and Events Leading to Chapter 11

31. At least ten years ago, the Company recognized the inevitable decline in its traditional film business, and began working to restructure its operations. Since 2003, the Company has actively managed its workforce and post-employment benefit costs. The Company's transition to a digital business, however, has been interrupted by a liquidity shortfall, primarily in the United States.

A. Restructuring Initiatives

32. From 2003 to 2010, Kodak reduced its workforce by 50,000 employees, and closed 13 of its 15 film plants and 130 photo labs. The following chart shows the decline in Kodak's global workforce over this eight-year period.

Worldwide Employment

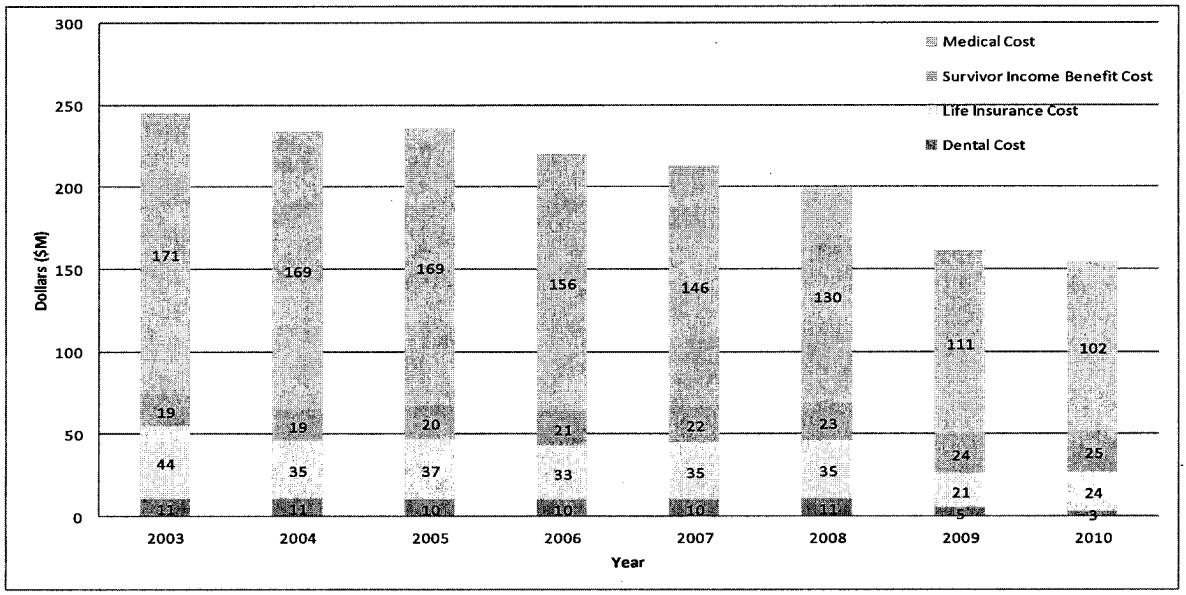


*The change between 2006 and 2007 reflects the divestiture of 8,100 Health Group employees. During the period from 2003 to 2010, 13 operations and 130 labs were closed.

33. In addition to consistently managing reductions of its workforce, Kodak actively managed its benefit costs, including with respect to U.S. OPEB.[5] Cost savings came from the Company exercising its unilateral rights to reduce or eliminate certain retiree benefits, in addition to increasing employee and retiree health care contributions. The following shows the declining cost of U.S. retiree benefits over the same eight-year period.

[5] Kodak has approximately 65,000 retirees worldwide.

Cash Cost for U.S. Retiree Benefits



As of 2010, the U.S. plan represents 93% of total other post-employment benefit plans.

B. Events Leading to Chapter 11

34. There are several key drivers for the Debtors' near-term liquidity issues. First, market conditions since 2008 have caused losses in Kodak's historically profitable traditional businesses, reduced revenue, earnings and cash from the Company's digital cash generating business and delayed revenue generation from Kodak's digital growth initiatives. Second, legacy post-employment benefits continue to consume a substantial amount of the Debtors' cash. Third, cash flow from the licensing and sale of intellectual property has been delayed due to litigation tactics employed by a small number of infringing technology companies with strong balance sheets and an awareness of Kodak's liquidity challenges. Fourth, near the end of 2011, negative publicity and other external issues caused substantial strains on trade credit.

(i) Market Conditions in 2008 to Present

35. Since 2008, the Company has been negatively impacted by market conditions. The Company has seen both a decline in profits from its traditional businesses, such as FPEG,

and slowed revenue growth in its newer initiatives due in part to reduced revenue and earnings from its digital cash generating business.

36. When it began its business transformation, Kodak planned to source funds for restructuring costs and investment in new businesses from its historically profitable film business. Even though Kodak had projected FPEG to generate less cash as film was replaced by digital imaging, the FPEG business was still anticipated to generate substantial cash flow. The rate of the decline of the market for film between 2008 and 2010, however, was significantly steeper than anticipated by nearly all observers: the industry projected a 10% decline, Kodak forecasted a 20% decline and the actual decline was approximately 40%. In addition to demand impairment, increasing commodity prices negatively impacted FPEG's cash flow. FPEG purchased approximately $300 million of silver in 2011. Silver prices have ranged between 199% and 294% higher than 2008 prices. Because of the lingering effects of the economic crisis, Kodak cannot pass through all of these price increases to its customers.

37. One of the businesses in which Kodak invested heavily was consumer inkjet. The consumer inkjet business runs on the "razor/blade" model – profits are not made on the sale of the printers, but on aftermarket sales of ink and other consumables. Kodak can only expand its market share, and create a market for the highly profitable ink, by increasing its global installed base. However, the financial crisis of 2008 resulted in slower growth in the installed base than Kodak had projected and in lower printer prices in the market, delaying the realization of profits through the sale of ink and consumables.

38. Similarly, during the financial crisis and immediately thereafter, the market for Kodak's commercial products, many of which represent significant investments for the businesses that purchase them, shrank significantly. This reduced the profitability of Kodak's

digital growth initiatives, which require establishing an installed base of Kodak products to create economies of scale and build a market for highly profitable services and consumables.

(ii) Costs of Post-employment Benefits

39. Post-employment benefit liabilities consumed approximately $245 million of the Debtors' cash in 2011. Kodak's largest single cash cost in 2011 was approximately $119 million spent on OPEB. The Debtors also made an approximately $60 million annual contribution to the U.K. pension. Despite actions taken, the Debtors have been unable to reduce the amount of cash consumed by post-employment benefit obligations to make them proportional to a financially smaller Kodak.

(iii) Delays in Licensing of Intellectual Property

40. Revenue generated through monetization of the digital capture portfolio over the past several years has been an integral part of the funding for Kodak's digital transformation. Over 30 companies have licensed the digital capture portfolio, including such leading mobile-device companies as LG, Motorola, Samsung and Nokia, all of which are royalty-bearing to Kodak.

41. When Kodak's financial condition started to deteriorate, Kodak began to experience delays in licensing negotiations with Apple Inc. ("**Apple**"), Research In Motion, Corp. ("**RIM**") and HTC Corporation ("**HTC**"), all of which owe substantial royalties for use of Kodak's digital capture portfolio. Kodak has pursued patent litigation against each of Apple, RIM and HTC to enforce its rights relating to the digital camera functionality included in their smartphone handsets and, in the cases of Apple and HTC, in their tablets. In addition, Kodak believes Apple's operating system itself, which employs object-linking capability, infringes Kodak's patents (now expired) directed to such fundamental technology. The Company expects that these lawsuits, once resolved, will benefit Kodak stakeholders substantially. As an

alternative to lengthy patent litigation, Kodak has explored the sale of the Imaging Portfolio to third parties. However, the Company has faced difficulties executing the sale due to uncertainty about its financial condition.

(iv) Trade Credit and Market Rumors

42. Persistent negative press has caused concern among many of Kodak's suppliers. In the last few weeks leading up to these chapter 11 proceedings, some vendors have stopped shipping and providing services to Kodak, making it more difficult to operate. Vendors also have been demanding shorter payment terms and/or additional guarantees. The Debtors anticipate that approval of the debtor-in-possession financing, together with vendor preplan payment authorization, will provide confidence to the supplier community that Kodak will be a reliable and long-term partner to its global vendors.

C. Discussions Concerning U.K. Pension Plan

43. Although the Debtors are reviewing documentation and reserve rights, the Debtors currently expect KPP Trustees Limited (the "**Trustee**"), the trustee for the Kodak pension plan (the "**Plan**") in the United Kingdom, to have a significant general unsecured claim against Eastman Kodak Company by virtue of the Guaranty Agreement, effective October 9, 2007 (as amended) (the "**Guarantee**"), among EKC, the Trustee and EKC's U.K. subsidiary, Kodak Limited. The Guarantee is governed by English law and on its face, among other things, and subject to certain terms and conditions, guarantees the ability of Kodak Limited to contribute to the Plan (i) the minimum amount of assets necessary such that the Plan will have sufficient assets to make member benefit payments as they are immediately due and payable if the Plan would not otherwise have sufficient assets needed to make such benefit payments; and (ii) such that the Plan will achieve a "Full Funding status" (as defined in the Guarantee) by December 31,

2022. The Debtors have not determined a valuation of the Trustee's potential claim in connection with the Guarantee.

44. As part of the preparation for these proceedings, representatives of the Debtors traveled to London to meet with the Board of Directors of the Trustee and the Pension Regulator of the United Kingdom. The meetings occurred on January 11th and 12th, 2012. At these meetings, representatives of the Debtors discussed confidentially the prospect of these proceedings and our intent that only the U.S. entities of the Kodak group file for chapter 11, and that non-U.S. companies continue to conduct operations in the ordinary course of business. The Debtors' representatives discussed their plans to ensure for adequate funding for European operations during these proceedings. The representatives also informed the Trustee and the Pension Regulator of the Debtors' view that ordinary course operations around the world, and the absence of non-U.S. insolvency proceedings, are in the best interest of the Trustee and critical to maximizing value for all stakeholders of the Debtors, including the Trustee. The Debtors intend to work collaboratively with the Trustee and have invited them to take an active role in the proceedings.

IV.

First Day Pleadings

45. Contemporaneously herewith, the Debtors have filed a number of First Day Pleadings. I believe that, among other things, the relief requested in the First Day Pleadings is necessary to enable the Debtors to operate with minimal disruption during the pendency of these chapter 11 cases. A description of the relief requested and the facts supporting each of the pleadings is set forth below.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 18, 2012
New York, New York

By: /s/ Antoinette P. McCorvey
Name: Antoinette P. McCorvey
Title: Chief Financial Officer
and Senior Vice President

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, et al.,[1]	Case No. 12-10202 (_____)
Debtors.	(Joint Administration Requested)

DECLARATION OF MATTHEW J. HART IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E), AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364, AND (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)

Pursuant to 28 U.S.C. § 1746, I, Matthew J. Hart, hereby declare as follows:

1. I am a Director in the Restructuring Group of Lazard Frères & Co. LLC ("Lazard"), which has its principal office at 30 Rockefeller Plaza, New York, New York 10020. I am authorized to execute this affidavit on behalf of Lazard.

2. I submit this declaration in support of the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection to*

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[1] 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 Networking, 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.

proposed DIP facility are generally within the range of other large, broadly-syndicated DIP facilities in recent years.

D. The Prepetition Secured Parties are Protected by a Significant Equity Cushion

23. In addition to the Adequate Protection Liens and the Junior Adequate Protection Liens outlined by the Debtors in the Motion, I believe that the prepetition secured creditors (including holders of the Second Lien Notes) are also protected through the existence of an "equity cushion" in their collateral. Based upon certain third party appraisals, borrowing base certificates and preliminary December 31, 2011 book values of the Debtors U.S. assets as provided by the Debtors[4], I estimate the value of a portion of the prepetition secured creditors' collateral at a range of $3.4 to $4.3 billion[5]. These amounts are comprised of (a) 284 Partners, LLC's estimated value range for the digital imaging patent portfolio of $2.2 to $2.6 billion[6]; (b) the Debtors' estimated pro forma domestic cash and equivalents of $820 million; (c) U.S. accounts receivable valued at an estimated $142 to $257 million[7]; (d) U.S. inventory valued at an estimated $149 to $369 million[7]; and (e) U.S. machinery & equipment valued at an estimated $32 to 294 million[7].

24. This analysis notably does not give any credit to other prepetition collateral such as the Debtors' globally-recognized and highly reputable brand, stock of certain foreign subsidiaries, or over 9,000 other patents beyond the digital imaging patent portfolio. This

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4 In performing my analysis, I have relied upon such information without the independent verification thereof and have not conducted any appraisal.

5 See analysis attached hereto as Exhibit A.

6 The digital imaging patent portfolio valuation, conducted by 284 Partners, LLC, is explained in greater detail in the Declaration of Michael Lasinski filed in Support of the Motion.

7 Based upon certain third party appraisals and preliminary December 31, 2011 book values of the Debtors assets as provided by the Debtors.

analysis also does not represent what is likely a materially higher enterprise value for the Debtors as a going concern.

25. As explained in the First Day Declaration, the Debtors have outstanding Second Lien Note claims of approximately $777 million, inclusive of accrued and unpaid interest up to the chapter 11 filing. Pro forma for a full draw of the $925 million U.S. portion of the proposed DIP facility, total secured debt would total approximately $1.7 billion. Even at the $3.4 billion low end of the valuation range of the selected collateral, there still exists over $1.6 billion of equity cushion above the estimated $1.7 billion of pro forma secured debt, equal to 97% of the total pro forma secured debt. Even if one were to remove all of the estimated $820 million of pro forma cash from the low end of the valuation range, the equity cushion would remain at over $800 million, equal to 49% of the total pro forma secured debt. At the mid-point and high end of the valuation range the equity cushions are obviously much greater.

E. The Debtors' Request for Interim Authority is Appropriately Sized

26. The Debtors have sought the authority, in the Motion, for up to $700 million of availability under the proposed DIP facility. This would be comprised of a $450 million cash draw of the DIP term loan and full availability of the $225 million U.S. portion of the $250 million DIP ABL. Based on the Debtors' 13-Week Projections, the Debtors require this amount of liquidity during the next four weeks to meet their working capital needs, including, without limitation, to repay drawings under the prepetition revolving credit facility, cover letters of credit and secured agreements (primarily related to hedging activities), make various restructuring-related disbursements (professional fees, critical/foreign vendor payments, utility deposits, etc.), pay fees, interest and expenses related to the proposed DIP facility, and meet the minimum

liquidity covenant of the proposed DIP facility[8]. The $225 million U.S. portion of the DIP ABL is only projected to be utilized during the interim period for the unfunded letters of credits and secured agreements and to meet the minimum liquidity covenant; it is not projected to be drawn.

27. I believe that the Debtors' request for interim authority is appropriately sized and tailored to cover their projected liquidity needs pending a final hearing. Absent interim or final approval of the proposed DIP facility, the Debtors' may have to curtail or even terminate their business operations, to the material detriment of all stakeholders.

Conclusion

28. Under current market conditions and the circumstances of these chapter 11 cases, I believe the proposed DIP facility provides financing that is otherwise unavailable to the Debtors on more favorable terms and best meets the Debtors' projected financing needs during these chapter 11 cases, while adequately protecting the collateral of prepetition secured creditors.

29. I declare under penalty of perjury under the laws of the United States of America that I believe the foregoing is true and correct.

New York, New York
Dated: January 19, 2012

By: _____
Matthew J. Hart
Director, Lazard Frères & Co LLC

[8] See analysis attached hereto as Exhibit B.

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, et al.,[1]	Case No. 12-_____ (_____)
Debtors.	(Joint Administration Requested)

DECLARATION OF MICHAEL J. LASINSKI IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS(I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364, AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)

Pursuant to 28 U.S.C. § 1746, I, Michael J. Lasinski, hereby declare as follows:

1. I am a Managing Director and Chief Executive Officer of 284 Partners, LLC – a professional services firm focused on intellectual property ("IP") and business valuation, litigation consulting, IP strategy, and IP transactional services. I have personal, first-hand knowledge of each and every fact set forth in this declaration and, if called upon to testify thereto as a witness, I could and would do so competently. My curriculum vitae is attached as Exhibit 1.

2. My consulting practice has focused on financial aspects of intellectual property since 1995. I have valued IP and IP-related businesses in the contexts of bankruptcy,

[1] 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 Networking, 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.

portfolio of the size and complexity of Kodak's DC and KISS patent portfolios. Furthermore, patent buyers often assign different values to potential cash-flow streams based on their business strategy and exposure to litigation; therefore, the value that any given buyer will assign to Kodak's DC and KISS patent portfolios may vary materially from the valuation analysis conducted by 284 Partners. In addition, patents can have a strategic value to certain industry participants that is greater than cash-flow valuation implies, especially in growth industries and competitive industries with a concentrated number of participants.

The DC and KISS Patent Portfolios

9. The scope of 284 Partners' assignment in this matter was limited to the DC and KISS patent portfolios. 284 Partners understands that the DC and KISS patent portfolios represent only a portion of Kodak's total patents; however, 284 Partners has not conducted any analysis of Kodak patents other than those included in either the DC or KISS patent portfolios.

10. Kodak's DC patent portfolio includes approximately 750 U.S. and 290 foreign patents as well as 120 pending U.S. applications and 215 pending foreign applications. Kodak has historically licensed the DC patent portfolio in the digital still camera, digital video camera, and camera-phone markets. 284 Partners understands that the DC patent portfolio is also relevant to the tablet market.

11. Kodak's KISS patent portfolio includes approximately 400 U.S. patents and 290 foreign patents as well as 140 pending U.S. patent applications and 180 pending foreign patent applications. Kodak has not historically licensed the KISS patent portfolio separate from its overall portfolio; however, we understand that the KISS patent portfolio is relevant to the Social Networking & Websites, and Photo Fulfillment & Software Providers markets.

Licensing in the Relevant Markets

12. Companies operating in the relevant markets for the DC patent portfolio often purchase, license, and litigate patents. The last few years saw significant patent monetization activity in these markets including, but not limited to, the following:

- January 2012: Google bought 217 patents from IBM;[2]
- September 2011: Microsoft licensed Samsung patents covering the Android mobile operating system in return for a running royalty;[3]
- August 2011: Google acquired Motorola Mobility for $12.5 billion, in part due to its patent portfolio;[4]
- June 2011: Nortel sold its patents at auction for over $4.5 billion;[5] and
- June 2011: Apple and Nokia entered into a cross license which included an up-front payment and running royalties to be paid by Apple to Nokia.[6]

13. While patent monetization has been historically less common in the markets relevant to the KISS patent portfolio than in the markets relevant to DC patent portfolio, as the KISS markets grow, patent monetization is likely to become more common. 284 Partners has identified the following historical transactions:

- July 2011: Apple, Groupon, and others settled a patent dispute with Walker Digital for $25 million;[7] and

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2 http://www.theverge.com/2012/1/3/2680128/google-buys-217-IBM-patents

3 http://www.guardian.co.uk/technology/2011/sep/28/samsung-microsoft-android-licensing-dispute

4 http://techcrunch.com/2011/08/15/breaking-google-buys-motorola-for-12-5-billion/

5 http://www.forbes.com/sites/elizabethwoyke/2011/07/07/an-insider-on-the-nortel-patent-auction-and-its-consequences/

6 http://www.bloomberg.com/news/2011-06-14/nokia-apple-payments-to-nokia-settle-all-litigation.html

7 http://www.electronista.com/articles/11/07/25/walker.admits.to.three.recent.wrap.ups/

- August 2010: Facebook purchased seven patents and eleven patent applications from Friendster for $40 million.[8]

Kodak's Historical Licensing Efforts

14. Kodak has an established history of successfully licensing its patents. During its due diligence, 284 Partners reviewed almost 40 Kodak patent license agreements, from which Kodak has earned no less than $3 billion in royalty revenue. Kodak's historical licensees have included large electronics manufacturers operating in the relevant markets; for instance, Kodak licensed Samsung Electronics and LG Electronics for $550 million and $400 million, respectively.[9]

15. Kodak has an established patent licensing group within the company. During its work on this engagement, 284 Partners met with several members of Kodak's IP licensing team, all of whom were knowledgeable about Kodak's patent portfolio, its current monetization efforts, current patent licensing and litigation risks, and Kodak's plans for monetizing its patents in the future.

16. Combined with a high quality patent portfolio, Kodak's historical success in monetizing its patents and the quality of Kodak's patent monetization team strongly suggests that Kodak will likely have the capability to effectively monetize its patents in the future, given the necessary time and resources.

284 Partners and Reed Smith Due Diligence and Valuation Analysis

17. As a starting point for the analysis, Kodak provided 284 Partners and Reed Smith with access to a number of resources including, but not limited to:

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8 http://gigaom.com/2010/08/04/facebook-buys-friendster-patents-for-40m/

9 http://online.wsj.com/article/SB10001424053111903648204576554982192071202.html

- Listing of Patent Assets;
- Kodak Personnel;
- Licensing Plans;
- Kodak's Patent Licenses;
- Kodak's Historical Royalty Receipts;
- Claims Charts; and
- Patent Portfolio Overviews.

18. To value the DC and KISS patent portfolios and related licensing plans, 284 Partners used a cash-flow analysis that projects the expected licensing income and cash-flows from monetizing the patents ("284 Partners Model"), which is sometimes referred to as the Relief-From-Royalty Approach. This approach is based on the premise that a property's value can be measured by quantifying the amount of income the owner would generate by licensing the IP to others. This approach requires the determination of projected royalty payments, which are often derived by multiplying a royalty base times a royalty rate. This approach does not necessarily capture the entire value of an asset. For instance, in *Nestle Holdings, Inc.* v. *Commissioner of Internal Revenue*, the Court found that this approach "fails to capture the value of all of the rights of ownership . . . ."[10] This approach is therefore sometimes considered a conservative measure of the value of an IP portfolio.

DC Portfolio Due Diligence:

19. The 284 Partners Model includes DC patent portfolio licensing revenue from the following markets: Camera Phones, Tablets, Digital Cameras, Camcorders, and

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[10] Nestle Holdings, Inc. v. Commissioner of Internal Revenue, 152 F.3d 83, 88 (2d Cir. 1998).

- Interviewed Kodak's management concerning their projected licensing opportunities;
- Interviewed Kodak's management concerning their projection of royalty bearing revenue;
- Interviewed Kodak's management concerning their projected royalty rate;
- Reviewed the publicly available financial information of the projected licensees;
- Reviewed publically available royalty rates for comparable technologies; and
- Reviewed selected patents in the KISS Portfolio.

284 Partners' Findings:

28. Based upon the aforementioned due diligence, 284 Partners projected potential licensees to the DC and KISS patent portfolios, potential licensees' royalty bearing revenues, potential royalty rates by market, and Kodak's licensing and litigation expenses. 284 Partners applied the potential royalty rates to the licensees' projected royalty bearing revenues to quantify Kodak's projected royalty revenue for the DC and KISS patent portfolios. When appropriate, 284 Partners adjusted the royalty revenue projections to reflect the risks inherent in Kodak's current, and expected, licensing efforts. From these royalty revenue projections, 284 Partners deducted Kodak's projected licensing and litigation expenses to arrive at projected pre-tax cash-flows.

29. 284 Partners projected pre-tax cash-flows from the DC and KISS patent portfolios of $3.07 billion during the period 2012-2020. These pre-tax cash-flows are consistent with Kodak's historical licensing revenues generated over a similar period and are very conservative relative to its current licensing opportunities and plans.

30. To determine the Net Present Value (NPV) of the pre-tax cash-flows, 284 Partners has discounted them at rates of 8%, 12%, and 16% which results in NPVs of $2.57

billion, $2.38 billion, and $2.21 billion, respectively. The mid-point of this range is consistent with the Weighted Average Cost of Capital ("WACC") for SIC Code 6794 (Patent Owners and Lessors).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 18th day of January, 2012.

New York, New York
Dated: January 18, 2012

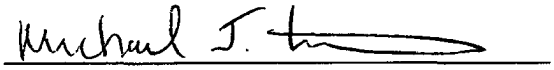
By: 
Michael J. Lasinski

EXHIBIT F

RAFFERTY CAPITAL MARKETS, LLC

Company Note **Buy**

US Equity Research Photographic Equipment & Supplies

December 20, 2011

Eastman Kodak Co.

(EK, NYSE, BUY, $5.50)

Kodak Inkjet Printing Presses Gain Commercial Acceptance and Should End 2011 with $1.3 Billion in Cash. ITC Ruling by May 21, 2012.

Mark Kaufman, CFA
646-572-3514
kaufmanm@raffcap.com

- Although Kodak's traditional film business has shrunk radically in its size over the past decade, media portrayal and public perception continues to center on Kodak's photographic history rather the Company's technological direction. Kodak has been intently focused on developing its patented inkjet printing technology. **Recent sale announcements of its commercial high-speed variable print inkjet presses, which truly challenge off-set printers on speed, quality and price, signals the business has reached commercial acceptance.**

- Kodak's $160.0 million draw under its Bank Revolver on September 23rd caused a torrent of misinformation, rumors, and speculation that continues to send Kodak investors to the exit. Unlike Kodak's 2010 third quarter, when it had a net benefit of $238.0 million from patent license agreements, Kodak did not generate patent license income in its 2011 third quarter. The lack of license revenue, cost overruns associated with the commercial inkjet printers, as well as Kodak's seasonal peak working capital needs, lead to the Revolver draw. That said Kodak has begun to make progress in fortifying its finances in this quarter. **With the recent sale of its Image Sensor Solutions business, we estimate Kodak has now raised approximately $200.0 million this quarter from divestitures and licensing transactions and we would expect another $100.0 million in license transactions before year end.**

- **We now estimate Kodak should generate $445.0 million in the fourth quarter and end 2011 with a cash balance of approximately $1.3 billion, below our prior estimate in September of $1.35 billion. Due to the domestic origin of Kodak's recent divesture and license revenues, we estimate the makeup of its yearend cash balance to be approximately $450.0 to 475.0 million domestic and $825.0 to $850.0 million international. As result of these and other changes, we have lowered our Net Asset Value to $11.13 per share from $11.28 in our September 9th Note. (See Tables: 1, 2, & 3 for details)**

- In 2012, as Kodak's inkjet printing losses begin to recede, we anticipate it could reduce its 2012 first half global negative cash flow to approximately $500.0 million. However, based on our domestic 2011 yearend cash balance estimate, domestic liquidity could become tight by midyear 2012 without a further injection of cash or credit. **Kodak has made it clear, that it will consider all options including: the sale of its digital imaging patent portfolio, a first lien financing arrangement, repatriation of international cash, cost reductions, or the divestiture of one or more of its profitable businesses to see its digital inkjet properties reach sustainable profitability by 2013.**

- The new ALJ in Kodak's patent infringement suit before the ITC plans to issue a final initial determination on remand by the close of business on May 21, 2012. The ruling is subject to a review before the full ITC.

- **Considerable value remains in Kodak's operations. However, due to the uncertainty of the timing and structure associated with any of Kodak's potential transactions, we are reducing our price target to 50% of our estimate of Net Asset Value or $5.50 per share at this time.**

Market Data

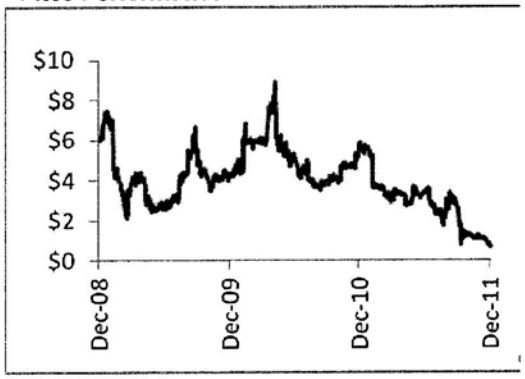
Price: $0.70
Price Target: US$5.50

Current Price	$0.70
Market Cap	$189.0
Shares Outstanding	270.0
Free Float	268.6
Avg. Daily Vol.	10,978,706
52-week High	$5.95
52-week Low	$2.53
EV	$895.5

Financial Data & Estimates

FYE Dec	2010A	2011E	2012E
Revenue	7,187.0	6,296.5	6231.0
EPS	($2.51)	($1.65)	$0.38
Interest Expense	149.0	162.0	90.0
EV/EBITDA	0.9	85.9	2.1
EBITDA/Interest	5.0	0.07	3.61
EBIT	$368.0	($283.5)	$63.9
EBIT Margin	5.1%	-4.5%	1.0%
Gross Margin	27.3%	18.7%	21.9%
EBITDA	747.0	11.5	324.9

Price Performance



Cash Flow Analysis – 2011 and 2012 Forecast

At the beginning of 2011, Kodak's cash balance was $1.62 billion, consisting of $580.0 million in the U.S. and $1.04 billion in its foreign operations. At the end of the 2011 third quarter, those balances were $852.0 million in total, with $230.0 million and $622.0 million, in the U.S. and offshore, respectively. The $762.0 million use of cash of during the first nine months of the year consisted of the following outflows and inflows: negative cash flow from operations of $266.0 million, capital expenditures of $115.0 million, negative changes in working capital and long term assets and liabilities of $397.6 million, estimated interest payments of $93.4 million, restructuring payments of $53.0 million, OPEB payments of $88.0 million, pension payments of $84.0 million and estimated tax payments of $60.0 million, which was offset by net borrowing of $301.0 million and divestiture proceeds of $94.0 million. During the first nine months of the year, the net decline of $350.0 million in Kodak's domestic cash balance represented a drop from 35.7% of the Company's cash total at the beginning of the year, to 27.0% at the end of the September 30th quarter; however, domestic cash usage was substantially higher than that figure as the majority of development costs of the digital inkjet printers, interest payments, restructuring costs and retirement benefits are shouldered by Kodak's domestic operations. We estimate Kodak's actual domestic cash use was approximately $1.05 billion. Unlike the past 3 years, Kodak has not had the benefit of substantial patent license revenues in the first nine months of 2011 to mitigate these simultaneous funding demands. In addition to its net borrowings and divestitures, Kodak transferred $310.0 million from its international subsidiaries through repatriations and loans to buffer the decline in domestic cash to $350.0 million. This would also suggest the Kodak's international business used only $112.0 million in the first nine months of the year, $50.0 million of which was its contribution to its United Kingdom operations pension trust.

In our September 9th Note, we had estimated Kodak's 2011 yearend cash balance at approximately $1.35 billion. That included estimated patent licenses of $300.0 million and no divestiture proceeds in the fourth quarter. We estimate Kodak has already captured approximately $100.0 million in asset sales and $100.0 million in license agreements in the current quarter , which should bring Kodak's yearend cash balance to an estimated minimum of $1.2 billion. We believe Kodak should garner an additional $100.0 million in license transactions in the fourth quarter to end 2011 with a cash balance of approximately $1.3 billion. In addition to these transactions, Kodak should generate positive cash flow from operations in the 2011 fourth quarter as a result of higher year over year margins, due to higher consumer inkjet ink revenue, revenue recognition of commercial inkjet printing press, reduced digital camera inventories entering the holiday season, indexing of silver prices in its entertainment imaging group, mitigated by competitive pricing pressure in its digital printing plate business. To arrive at our 2011 yearend cash estimate we start with Kodak's September 30, 2011, cash balance of $852.0 million, ($230.0 million in the U.S. and $622.0 million offshore), and then add our fourth quarter cash generation estimate of approximately $445.0 million which consists of: cash flow from operations of $123.5 million, divestiture proceeds of $106.0 million, license agreement revenues of $200.0 million, positive changes in working capital and long term assets and liabilities of $225.0 million, capital expenditures of $40.0 million, estimated interest payments of $26.7 million, restructuring payments of $23.0 million, OPEB payments of $32.0 million, pension payments of $18.0 million estimated tax payments of $20.0 million, and a debt repayment of $50.0 million on the outstanding revolver balance. **As a result of the domestic origin of Kodak's fourth quarter divesture and license revenues, we estimate the makeup of its yearend cash balance to be approximately $450.0 to 475.0 million domestic and $825.0 to $850.0 million international.**

The $50.0 million decline from our original estimate is primarily the sum of lower estimated second half Graphics Communications EBITDA of $77.0 million, higher estimated EBITDA for Consumer Digital Imaging and Traditional Entertainment Imaging of $35.0 million and $23.0 million respectively, and higher second half working capital use of approximately $130.0 million offset by an estimated net debt increase from the Revolver draw of $110.0 million at year end. Kodak's working capital benefits in this year's fourth quarter will be lower than the 2010 fourth quarter in due the $95.0 million license receivable in the 2010 fourth quarter, a double digit reduction in digital camera inventories entering the 2011 fourth quarter versus a year ago and a doubling of silver prices from a year ago. **Should Kodak hit the top end of its license revenue estimate and/or improve its working capital utilization, then it could approach a yearend cash balance of approximately $1.4 billion.**

Assuming no license agreements or asset divestitures in 2012, we now estimate Kodak would use approximately $215.0 million in 2012 and end the year with $1.1 billion in cash and equivalents. We believe the combined EBITDA losses from digital cameras, consumer and commercial inkjet printers for the 2012 full year should be reduced to $115.0 million, as digital cameras cash flow is break-even, consumer inkjet achieves profitability and the commercial inkjet printer cash flow loss is cut in more than half from 2011. Working capital for inventories should decline, as digital cameras are aligned for lower sales and higher profitability and commercial inkjet printer installation times are shortened. With Kodak's inkjet printing losses continuing to recede, we anticipate the Company should reduce its 2012 first half global negative cash flow to approximately $500.0 million from the $937.0 million it used in the first half of 2011. However, based on our domestic 2011 yearend cash balance of $450.0 to $475.0 million, continued inkjet expenses, interest expense, and retirement benefit payments, domestic liquidity could become tight by midyear 2012, without a further injection of cash or credit. **If that should be the case, Kodak does have other options aside from the potential sale of its digital imaging patent portfolio or a first lien financing arrangement. Kodak could repatriate additional funds from its international operations, divest of one or more of its profitable businesses that we estimate should generate $450.0 million of EBITDA in 2011, or further reduce costs of its operations by slowing the rollout of its digital printing initiatives for a period of time. (See Tables 4 & 5 for details.)**

Table 1

Kodak Corporation Estimated Net Asset Valuation:

ASSET VALUES

EBITDA Sources -Estimated	2010 E	2011 E	2012 E	Estimated Multiple	Valuation 2011 Estimates
Digital Imaging Patent Portfolio	838.0	250.0	-	8.6x	2,150.0
Established Commercial Printing (GCG)	392.0	314.0	345.4	4.0x	1,256.0
Traditional Entertainment Imaging (FPEG)	202.0	106.0	92.4	3.0x	317.9
Total Positive Contribution	$1,432.0	$ 670.0	$ 437.8		$ 3,723.9
EBITDA Uses - Estimated	**2010 E**	**2011 E**	**2012 E**	**Estimated Multiple**	**Valuation**
Consumer (CDG) - Cameras, Kiosks and Kodak Gallery	(260.0)	(258.5)	1.1	.4x Est. 2011 Revenues	500.0
Consumer Ink Jet Printers	$ (150.0)	$ (75.0)	$ 25.0	1.5x Est. 2011 Revenues	$ 700.0
Commercial Ink Jet Printers & Enterprise Solutions	(275.0)	(325.0)	(140.0)	1x Est. 2011 Revenues	600.0
Total Negative Contribution	$ (685.0)	$ (658.5)	$ (115.0)		$ 1,800.0
TOTAL Consolidated EBITDA - Adjusted	$ 747.0	$ 11.5	$ 324.9		$ 5,523.9
Other Assets	**Year End 2010**	**Year End 2011 E**	**Year End 2012 E**	**Year End Estimate**	**Valuation 2011 Year end**
Year End Cash Balance	$1,624.0	$1,307.9	$1,092.8	2011 Est.	$ 1,307.9
Other Net Tangible Assets less Other Liabilities	447.0	447.0	447.0	2011 Est.	447.0
KKR Warrant Exercise - 40 million Shares at $5.50 per share	-	220.0	220.0	2011 Est.	220.0
Estimated Total Asset Value	$2,071.0	$1,974.9	$1,759.8		$ 7,498.8

Less: LONG TERM LIABILITIES

Long-Term Liabilities	Year End 2010	Year End 2011 E	Year End 2012 E	Year End Estimate	Valuation 2011 Year end
Long-Term Debt Adjusted for Convertible Debt in 2012 Estimate	$1,195.0	$1,203.0	$1,153.0	2011 Est.	$ 1,203.0
Pension Liability	1,212.0	1,187.0	1,162.0	2011 Est.	1,187.0
Other Post Retirement Benefits	1,253.0	1,203.0	1,153.0	2011 Est.	1,203.0
Total Long-Term Liabilities	$3,660.0	$3,593.0	$3,468.0		$ 3,593.0
Estimated Net Asset Value					$ 3,905.8
Fully Diluted shares Outstanding - Debt Conversion and Warrant Exercise					350.9
Estimated Net Asset Value Per Share					**$11.13**

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Table 2

Kodak Corporation 2011 Quarterly Income

($'s in millions)	Qtr. Ending March 31	Qtr. Ending June 30	Qtr. Ending Sept. 30	Estimated Qtr. Ending Dec. 31
Revenues				
Consumer Digital Imaging Group (CDG)	$ 330.0	$ 404.0	$ 408.0	$ 805.5
Film, Photofinishing and Entertainment Group (FPEG)	367.0	396.0	389.0	387.0
Graphic Communications Group (GCG)	625.0	685.0	665.0	835.0
All Other	-	-	-	-
Total Revenues	$ 1,322.0	$ 1,485.0	$ 1,462.0	$ 2,027.5
Cost of Goods Sold				
Consumer Digital Imaging Group (CDG)	339.0	358.0	364.0	480.0
Film, Photofinishing and Entertainment Group (FPEG)	334.0	347.0	330.0	327.0
Graphic Communications Group (GCG)	510.0	554.0	547.0	630.0
Total Cost of Goods Sold	$ 1,183.0	$ 1,259.0	$ 1,241.0	$ 1,437.0
Gross Profit	$ 139.0	$ 226.0	$ 221.0	$ 590.5
Gross Margin				
Consumer Digital Imaging Group (CDG)	-2.73%	11.39%	10.78%	40.41%
Film, Photofinishing and Entertainment Group (FPEG)	8.99%	12.37%	15.17%	15.50%
Graphic Communications Group (GCG)	18.40%	19.12%	17.74%	24.55%
Total Gross Margin	10.51%	15.22%	15.12%	29.13%
SG&A				
Consumer Digital Imaging Group (CDG)	120.0	105.0	102.0	110.0
Film, Photofinishing and Entertainment Group (FPEG)	45.0	44.0	41.0	38.0
Graphic Communications Group (GCG)	145.0	139.0	136.0	145.0
Total SG&A	$ 310.0	$ 288.0	$ 279.0	$ 293.0
Research & Development				
Consumer Digital Imaging Group (CDG)	39.0	33.0	32.0	26.0
Film, Photofinishing and Entertainment Group (FPEG)	3.0	3.0	3.0	3.0
Graphic Communications Group (GCG)	40.0	37.0	37.0	34.0
Total Research & Development	$ 82.0	$ 73.0	$ 72.0	$ 63.0
Income From Operations				
Consumer Digital Imaging Group (CDG)	(168.0)	(92.0)	(90.0)	189.5
Film, Photofinishing and Entertainment Group (FPEG)	(15.0)	2.0	15.0	19.0
Graphic Communications Group (GCG)	(71.0)	(45.0)	(55.0)	26.0
All Other	-	-	(1.0)	-
Income From Operations	$ (254.0)	$ (135.0)	$ (131.0)	$ 234.5
EBIT Margin				
Consumer Digital Imaging Group (CDG)	-50.91%	-22.77%	-22.06%	23.53%
Film, Photofinishing and Entertainment Group (FPEG)	-4.09%	0.51%	3.86%	4.90%
Graphic Communications Group (GCG)	-11.36%	-6.57%	-8.27%	3.11%
Total EBIT Margin	-19.21%	-9.09%	-8.96%	11.57%
Restructuring Charges	(35.0)	(36.0)	(18.0)	(61.0)
Corporate Pension & OPEB Expense	(8.0)	(4.0)	(13.0)	-
Other Income (Expenses), Net	70.0	1.0	(12.0)	100.0
Adjustments to contingencies and reserves	-	-	-	-
Interest Expense	(38.0)	(38.0)	(41.0)	(45.0)
Early Extinguishment of Debt	-	-	-	-
Other Income (Charges)	(8.0)	17.0	(7.0)	41.0
Income (Loss) before Tax & Other	$ (273.0)	$ (195.0)	$ (222.0)	$ 269.5
Income Tax Provision (Benefit)	(24.0)	(16.0)	-	90.0
Income (Loss) from Continuing Operations	(249.0)	(179.0)	(222.0)	179.5
Discontinued Operations	3.0	-	-	-
Net Income (Loss)	$ (246.00)	$ (179.00)	$ (222.00)	$ 179.51
Continuing Operations	$ (0.93)	$ (0.67)	$ (0.83)	$ 0.67
Discontinued Operations & Extraordinary Items	$ 0.01	$ -	$ -	$ -
Earnings per share	$ (0.91)	$ (0.67)	$ (0.83)	$ 0.67
Shares Outstanding in millions	268.9	268.9	269.0	269.1

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Table 3

Kodak Corporation 2011 Quarterly Cash Flow

($'s in millions)	Qtr. Ending March 31	Qtr. Ending June 30	Qtr. Ending Sept. 30	Estimated Qtr. Ending Dec. 31
Income From Operations				
Consumer Digital Imaging Group (CDG)	$ (168.0)	$ (92.0)	$ (90.0)	$ 189.5
Film, Photofinishing and Entertainment Group (FPEG)	(15.0)	2.0	15.0	19.0
Graphic Communications Group (GCG)	(71.0)	(45.0)	(55.0)	26.0
All Other	-	-	(1.0)	-
Income From Operations	**$ (254.0)**	**$ (135.0)**	**$ (131.0)**	**$ 234.5**
Depreciation & Amortization				
Consumer Digital Imaging Group (CDG)	19.6	19.8	18.8	18.8
Film, Photofinishing and Entertainment Group (FPEG)	21.6	21.9	20.7	20.7
Graphic Communications Group (GCG)	33.8	34.3	32.5	32.5
All Other	-	-	-	-
Total Depreciation & Amortization	**$ 75.0**	**$ 76.0**	**$ 72.0**	**$ 72.0**
EBITDA				
Consumer Digital Imaging Group (CDG)	(148.4)	(72.2)	(71.2)	208.3
Film, Photofinishing and Entertainment Group (FPEG)	6.6	23.9	35.7	39.7
Graphic Communications Group (GCG)	(37.2)	(10.7)	(22.5)	58.5
All Other	-	-	-	-
Total EBITDA	**$ (179.0)**	**$ (59.0)**	**$ (58.0)**	**$ 306.5**
EBITDA Margin	**-13.54%**	**-3.97%**	**-3.97%**	**15.12%**
Total Capital Expenditures	**$ 50.0**	**$ 33.0**	**$ 32.0**	**$ 40.0**
Total EBITDA Less Capital Expenditures	**$ (229.0)**	**$ (92.0)**	**$ (90.0)**	**$ 266.5**
Other Non-Cash Expenses (Income)				
Pension Charges	10.0	5.0	10.0	10.0
OPEB expenses	6.0	5.0	4.0	7.0
Total Other Non-Cash Expenses (Income)	**$ 16.0**	**$ 10.0**	**$ 14.0**	**$ 17.0**
Other Cash Charges				
Restructuring Payments	17.0	19.0	17.0	23.0
Pension Contributions	10.0	67.0	17.0	18.0
OPEB Contributions	23.0	33.0	32.0	32.0
Cash Taxes - Esitmated	20.0	20.0	20.0	20.0
Cash Interest - Estimated	27.0	27.1	39.3	26.7
Total Other Cash Charges	**$ 97.0**	**$ 166.1**	**$ 125.3**	**$ 119.7**
Free Cash Flow before W/C & Other Changes	**$ (310.0)**	**$ (248.1)**	**$ (201.3)**	**$ 163.9**
Working Capital & Other Changes				
Assets Sales	65.0	10.0	19.0	106.0
Working Capital & Other Asset Changes	(270.0)	(104.9)	(22.7)	225.0
Total Free Cash Flow	**$ (515.0)**	**$ (343.0)**	**$ (205.0)**	**$ 494.9**
Debt Retirement (Additions)	(191.0)	-	(110.0)	50.00
Net Change in Cash Position:	**$ (324.0)**	**$ (343.0)**	**$ (95.0)**	**$ 444.9**

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Kodak's Commercial Printing Opportunity

Kodak has been keenly focused on developing its proprietary inkjet and related printing technology to expand its print and graphics operations for commercial and business needs. The Company is already well on its way toward that goal and the potential divestiture of its digital imaging patents should only hasten its evolution toward this end. Kodak's digital still and video camera, along with its traditional consumer photofinishing and film business, should only account for an estimated 25% of Kodak's revenues in 2011. In contrast, in 2011 we estimate Kodak's Graphics Communications Group (GCG) should generate approximately $2.8 billion in revenues and the print component of its Consumer Digital Imaging Group (CDG), consisting of consumer inkjet printers, retail printing kiosks and the Kodak Gallery, should add revenues of approximately $900.0 million for a total of $3.7 billion that should represent approximately 60% of Kodak's 2011 total revenues.

Kodak's Graphics Communications Group could be separated into three categories: Digital Printing Solutions - inkjet and electrophotographic printers; Business Solutions and Services – workflow software and document imaging; Prepress Solutions - off-set aluminum digital printing plates, packaging solutions and proofing. The group also provides maintenance and professional services for Kodak and other manufacturers' products, as well as providing imaging services to customers. **By providing printing, prepress solutions, and document imaging services for worldwide clients in the creative, in-plant, data center, commercial printing, packaging, newspaper, and digital market segments, Kodak has its products in over 90% of the commercial printing establishments worldwide. As a measure of Kodak's commercial graphics global reach, its international revenues were approximately 72% through the first nine months of 2011.**

The market opportunity is large; currently, it is estimated there are 75 trillion pages printed annually worldwide. Kodak's digital inkjet printers have the potential penetrate book, catalog, direct mail, newspaper and promotional print markets representing over 35 trillion pages. Currently, it is estimated only 200 billion color pages or less than one percent of the total print output is printed digitally. Kodak's graphics and print revenues now represent about a 3.0% market share of its global addressable market of $110.0 billion. This figure is a subset of an approximate trillion dollar market worldwide consisting of: Commercial Printing, $290.0 billion; Packaging, $205.0 billion; Publishing, $155.0 billion; Printing and Document Management, $75.0 billion; and Consumer Digital Printing, $280.0 billion. Commercial printing and packaging, which make up approximately 50% of the addressable markets, should continue to exhibit modest worldwide growth as demand growth in emerging markets offsets the decline in developed nations printing output. As an example demand growth for printing equipment is currently estimated to be growing annually in excess of 20% in China and India. In many cases, printing equipment in emerging markets is antiquated and foreign businesses are seeking to make a leap in technology and seek to by-pass the purchase of traditional offset printers for the greater versatility of digital printing. As the commercial printing industry continues to transition from traditional off-set printing to digital technology, **Kodak is uniquely positioned because the company offers a broad range of digital and traditional solutions to assist printers with their transition. Kodak's best opportunity to expand its graphics and printing footprint is through its inkjet and electrophotographic printers as digital color page volume is estimated to continue to grow globally at 25% annually. With an established product line and sales force, Kodak has a natural entrée into potential customers for these printers as well as related products and services.**

At the same time the adoption of e-readers and other electronic information devices has reduced some printing volumes, like books and newspapers in developed nations, it has actually spurred demand for Kodak's, and its competitors, digital inkjet printers. These printers, which do away with traditional printing plates, are making inroads into book and periodical publishing as individuals are still reading the same amount of titles but fewer print copies. As a result of the changing habits, printer and publisher fixed costs are rising per title as they absorb the expense of printing plates over smaller volumes. Inkjet printers, by doing away with printing plates, allow for better operating economics at lower volumes; in the case of book publishing, fewer than 5,000 copies at a time. More importantly, these printers can improve returns on clients' marketing investment through the ability to create continuous personalized print to target advertising pages to specific demographics and micro markets, but with the same low cost of a high volume off-set printer. Also, with the digital inkjet printers' ability to change print, if different titles can be printed on similar paper then scheduling could be sequenced to further obviate the need to stop the presses.

Although Kodak entered the digital inkjet printing market later than its rivals Hewlet Packard (HPQ; $25.53, NR), OCE (OCE NA; Euro 6.45, NR), and Xerox (XRX; $7.85, NR), the recent sales of Kodak's ROSPER Press Platform, a continuous variable inkjet printing system, signals the Company's business has reached commercial acceptance. **Kodak's PROSPER XL5000 Color and XL1000 Black and White digital presses bring offset-class output approaching 175 lines per inch, (600 x 900 dpi), with roll-fed speeds of up to 650 feet per minute. The digital printing presses patented jetting modules and pigmented inks can produce 90 million pages a month at a speed of 2,600 pages per minute and are able to handle both coated and uncoated papers, including glossy coated, with basis weights ranging from 30 lbs–200 lbs. Kodak estimates its color printers can produce a printed page for $0.008 per page, (depending on the per page ink coverage).** At that speed, digital inkjet printing is competitive with traditional offset printing for production runs of books, magazines, catalogs and other items. The digital printing presses

(press seems like a misnomer because the paper is not being pressed like an offset printer) sell for approximately $3.0 million; however, what is so vital to Kodak with these printers, is the annuity stream that Kodak gains through the manufacture of selling of its proprietary pigmented inks, which allow for quicker drying than dye based inks. This reduces the need for dryers, energy use and footprint requirements. The PROSPER printers, at 58 feet long, gives Kodak an additional advantage over the competition in countries like Japan, where energy and space are at a premium. Some companies with existing large off-set printing investments are adding digital PROSPER S-Series Imprinting Systems with speeds matching those of a web offset press to create a hybrid digital printing product line. These S-Series print heads can handle speeds from 500 feet per minute up to 2,000 feet per minute. Print shops can place these print heads at the end of an offset press for the imprinting of direct mail, variable newspaper advertising, scratch-off lottery and packaging.

What does this mean for Kodak, which has an industry leading position in digital plates for offset printers? While it would lose the one time sale of a printing plate that could be used on an offset printer, it would gain the annuity revenue of its inks that will be used to continually print digital inkjet pages. **Based on the potential of 90 million pages a month at $0.008 per page, using the 80% operating rate, a PROSPER printer could produce potential revenue of $720,000 per month, or $8.5 million per year, on ink and fluids alone. If it were to run only 50% of the time, it should still produce approximately $450,000 in monthly revenue or approximately $5.5 million annually from ink. In addition, Kodak would also generate revenue from the refurbishment of the jetting modules, maintenance and work flow services, helping to create 15 times the revenue that it would have received if it were instead selling only digital printing plates to the customer.**

Kodak's Electrophotgraphic printer, the NEXPRESS SX Digital Production Color Platform with Print Genius, is a sheet fed digital printer that can print up to 4.4 million photo quality pages a month at print speeds of 91, 109 or 131 pages per minute, when printing on 26"/660 mm long sheets. The NEXPRESS SX Platform prints on more than 700 standard offset substrates, including coated, uncoated, FSC, plastics, magnets, linens, static clings, micro-perforated substrates, and more. The NEXPRESS SX features new KODAK NEXPRESS HD DRY INKS, which are instrumental to the overall print quality. These new dry inks, like the PROSPER inks are produced and distributed by Kodak leading to future annuity streams. The NEXPRESS SX printer has been designed to meet the needs of commercial printers, photo product printers, direct mail houses, in-plant printers and data centers. Given the NEXPRESS SX's print quality and versatility, it can produce covers and be placed in-line with a PROSPER inkjet press to seamlessly produce finished books.

Kodak's VERSAMARK Printing Systems are well established mid-volume Drop-on-Demand inkjet printers for the transactional and direct mail markets with full variable data capabilities. These are continuous inkjet printers that can print at speeds up to 750 feet per minute at a resolution of 300 x 300 dpi and 500 feet per minute at a resolution of 300 x 600 dpi. The VERSAMARK VL Printing Systems offer an environmentally friendly machine that uses water based inks and fluids requiring only enough paper to run the job, reducing waste in make-ready and overages. These printers do not provide the offset resolution of the PROSPER AND NEXPRESS systems, but their speed and resolution are sufficient for the markets they serve. Kodak is reseller of these inks, so the potential for annuity revenues from the VERSAMARK is far smaller than the PROPER and NEXPRESS inkjet printing presses.

There have been at least five announcements by major domestic and international commercial printing firms of the purchase of the digital PROSPER inkjet printers and a similar amount of NEXPRESS SX announcements since the beginning of the quarter. The commercial presses are large, complex and different than off-set technology; therefore, a considerable amount of service and support is involved with the installation before presses are up and running. The purchase announcements by major printing organizations represent presses, which, in some instances, have been in test mode at the customers' plants for almost a year, that are now in production mode and generating ink and service annuities rather than start-up expenses for Kodak. In essence, a switch has been flipped that changed these printers from a profit drain to a gross margin contributor. We now estimate digital inkjet revenues for 2011 of $600.0 million to grow to $800.0 million in 2012. The estimated 30% growth should be driven by new PROSPER and NEXPRESS printing units continuing to reach production certification to generate the annuity ink revenues they are capable of. The cost to build, develop, install and onsite test these presses has been at a significant cost to Kodak in 2011, which we now estimate at $325.0 million. Management is acutely aware of the

lead time issues and is seeking to make progress to reduce lead times, as well as the time it takes to create the sub-assemblies of the presses. The growing ink annuity stream and a reduction in operating costs should lead to a reduction of the 2011 negative cash flow contribution of $325.0 million to a negative $140.0 million in 2012. By 2013, a growing installed base leading to a larger annuity stream should generate revenues in excess of $1.0 billion with a small contribution to earnings. By 2014, further improvement in revenues should lead to a blended gross margin between inks, hardware and service of approximately 40% to 45% and a potential earnings contribution of $200.0 million. Based on its proprietary product, embedded marketing relation with its customers, and potential market size, we estimate Kodak's commercial inkjet business to be worth at least 1.0 times our estimate of $600.0 million of revenue in 2011 or 3 times potential 2014 EBITDA.

Unfortunately, the losses from the PROSPER inkjet launch have overshadowed Kodak's GCG businesses that generate profits, Business Solutions and Services – workflow software and document imaging and Prepress Solutions - off-set aluminum digital printing plates, packaging solutions and proofing. These businesses should generate a combined $2.1 billion of revenue on 2011. Kodak's largest business, digital off-set printing plates, has an estimated leading market share of 35% to 40%; however, margin pressure throughout 2011, due to competitive pricing in Europe and higher aluminum in the first half of the year, has hurt profitability. The price of aluminum has reversed all of its 2011 increase at this point; nonetheless, the Company has taken steps to mitigate the gross margin pressure through hedges and additional price adjustments. In addition, earlier this year Kodak introduced new TRILLIAN offset digital plates providing customers with improved productivity and an operation cost reduction of approximately 10% on a reduction in energy prices alone. Workflow software has also been weaker than expected, in part due to the inkjet printer delays that incorporate the software. Overall, revenues have increased over 2% from year ago levels in the first nine months of 2011, due to higher volumes in emerging markets and growing demand for Kodak's flexible packaging solutions; but, margins have declined due to the headwinds mentioned above. As a result of these factors, we have reduced our EBITDA estimate for the GCG's Business Solutions and Services and Prepress Solution to $314.0 million from approximately $340.0 million of EBITDA in 2011. Based on what should be a fairly stable revenue base and cash flow and competitors EV/EBITDA ratios in a range of 3 to 5 times, we continue to value Kodak's established commercial printing operations at 4 times our revised estimated 2011 EBITDA for a total value of $1.25 billion.

U.S International Trade Commission Ruling Sets May 21, 2012 for New Initial Final Determination.

This has been a difficult year for Kodak. One of the biggest factors may have been the drawn out U.S. International Trade Commission (ITC) action brought by Kodak against Apple Inc. (AAPL; $387.76, NR) and Research In Motion Limited (RIMM; $13.10 NR). We believe the initial negative ruling by Administrative Law Judge (ALJ) on January 24th had a chilling effect on Kodak's other potential patent license counterparties through the first nine months of the year. There is movement in the ITC case, as it is now under review by a new Administrative Law Judge (ALJ), who on December 15th, set September 21, 2012 as the new target date in this investigation. Pursuant to the new target date, he plans to issue a final initial determination on remand no later than the close of business on May 21, 2012. This ruling is still subject to a review before the full ITC. An order will be issued shortly detailing the extent of additional discovery and the procedural schedule on remand. In reviewing the ITC's full remand of June 30th, it would appear the remaining infringement issue in the case centers on whether or not the Apple G3S and 4 iPhones would infringe the Kodak patent if the 'doctrine of equivalents' were applied. This is an analysis applied to an individual claim limitation of a patent, not the patent as a whole, in order to determine whether or not the practicing difference is "insubstantial" to the patent. This doctrine has been upheld in the courts to protect a patent holder against future changes in technology that are insubstantial to a patent claim.

Table 4

Kodak Corporation Historical & Projected Income Statement

($'s in millions)	Year End 12/31/2008	Year End 12/31/2009	Year End 12/31/2010	Estimated Year End 12/31/2011	Estimated Year End 12/31/2012
Revenues					
Consumer Digital Imaging Group (CDG)	$ 3,088.0	$ 2,619.0	$ 2,739.0	$ 1,947.5	$ 1,801.1
Film, Photofinishing and Entertainment Group (FPEG)	2,987.0	2,257.0	1,767.0	1,539.0	1,338.9
Graphic Communications Group (GCG)	3,334.0	2,726.0	2,681.0	2,810.0	3,091.0
All Other	7.0	4.0	-	-	-
Total Revenues	$ 9,416.0	$ 7,606.0	$ 7,187.0	$ 6,296.5	$ 6,231.0
Cost of Goods Sold					
Consumer Digital Imaging Group (CDG)	$ 2,495.0	$ 1,955.0	$ 1,729.0	$ 1,541.0	$ 1,390.0
Film, Photofinishing and Entertainment Group (FPEG)	2,335.0	1,775.0	1,481.0	1,338.0	1,178.2
Graphic Communications Group (GCG)	2,445.0	2,073.0	2,012.0	2,241.0	2,299.7
Total Cost of Goods Sold	$ 7,275.0	$ 5,803.0	$ 5,222.0	$ 5,120.0	$ 4,867.9
Gross Profit	$ 2,141.0	$ 1,803.0	$ 1,965.0	$ 1,176.5	$ 1,363.1
Gross Margin					
Consumer Digital Imaging Group (CDG)	19.2%	25.4%	36.9%	20.9%	22.8%
Film, Photofinishing and Entertainment Group (FPEG)	21.8%	21.4%	16.2%	13.1%	12.0%
Graphic Communications Group (GCG)	26.7%	24.0%	25.0%	20.2%	25.6%
Total Gross Margin	22.7%	23.7%	27.3%	18.7%	21.9%
SG&A					
Consumer Digital Imaging Group (CDG)	555.0	481.0	531.0	437.0	360.0
Film, Photofinishing and Entertainment Group (FPEG)	404.0	290.0	203.0	168.0	133.9
Graphic Communications Group (GCG)	627.0	522.0	543.0	565.0	571.8
Total SG&A	$ 1,586.0	$ 1,293.0	$ 1,277.0	$ 1,170.0	$ 1,065.7
Research & Development					
Consumer Digital Imaging Group (CDG)	215.0	148.0	148.0	130.0	85.0
Film, Photofinishing and Entertainment Group (FPEG)	52.0	33.0	19.0	12.0	9.4
Graphic Communications Group (GCG)	231.0	171.0	152.0	148.0	139.1
Total Research & Development	$ 498.0	$ 352.0	$ 319.0	$ 290.0	$ 233.5
Income From Operations					
Consumer Digital Imaging Group (CDG)	(177.0)	35.0	331.0	(160.5)	(33.9)
Film, Photofinishing and Entertainment Group (FPEG)	196.0	159.0	64.0	21.0	17.4
Graphic Communications Group (GCG)	31.0	(40.0)	(26.0)	(144.0)	80.4
All Other	(17.0)	(10.0)	(1.0)	-	-
Income From Operations	$ 33.0	$ 144.0	$ 368.0	$ (283.5)	$ 63.9
EBIT Margin					
Consumer Digital Imaging Group (CDG)	-5.73%	1.34%	12.08%	-8.24%	-1.88%
Film, Photofinishing and Entertainment Group (FPEG)	6.56%	7.04%	3.62%	1.36%	1.30%
Graphic Communications Group (GCG)	0.93%	-1.47%	-0.97%	-5.12%	2.60%
Total EBIT Margin	0.35%	1.89%	5.12%	-4.50%	1.02%
Restructuring Charges	(149.0)	(258.0)	(78.0)	(150.0)	-
Corporate Pension & OPEB Expense	94.0	-	-	-	-
Other Income (Expenses), Net	(766.0)	88.0	(619.0)	159.0	175.0
Adjustments to contingencies and reserves	(33.0)	-	(8.0)	-	-
Interest Expense	(108.0)	(119.0)	(149.0)	(162.0)	(90.0)
Early Extinguishment of Debt			(102.0)		
Other Income (Charges)	55.0	30.0	26.0	43.0	20.0
Income (Loss) before Tax & Other	$ (874.0)	$ (115.0)	$ (562.0)	$ (393.5)	$ 168.9
Income Tax Provision (Benefit)	(147.0)	115.0	114.0	50.0	67.5
Income (Loss) from Continuing Operations	(727.0)	(230.0)	(676.0)	(443.5)	101.3
Discontinued Operations	285.0	23.0	(12.0)	-	-
Net Income (Loss)	$ (442.0)	$ (208.0)	$ (688.0)	$ (443.5)	$ 101.3
Continuing Operations	$ (2.58)	$ (0.86)	$ (2.51)	$ (1.65)	$ 0.38
Discontinued Operations & Extraordinary Items	$ 1.01	$ 0.09	$ (0.05)	$ -	$ -
Earnings per share	$ (1.57)	$ (0.78)	$ (2.56)	$ (1.65)	$ 0.38
Shares Outstanding in millions	281.8	268.0	268.9	269.0	269.2

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

Table 5

Kodak Corporation Historical & Projected Cash Flow Analysis

($'s in millions)	Year End	Year End	Year End	Estimated Year End	Estimated Year End
Income From Operations	12/31/2008	12/31/2009	12/31/2010	12/31/2011	12/31/2012
Consumer Digital Imaging Group (CDG)	(177.0)	35.0	331.0	(160.5)	(33.9)
Film, Photofinishing and Entertainment Group (FPEG)	196.0	159.0	64.0	21.0	17.4
Graphic Communications Group (GCG)	31.0	(40.0)	(26.0)	(144.0)	80.4
All Other	(17.0)	(10.0)	(1.0)	(5.0)	-
Income From Operations	$ 33.0	$ 144.0	$ 368.0	$ (283.5)	$ 63.9
Depreciation & Amortization					
Consumer Digital Imaging Group (CDG)	105.0	86.0	89.0	77.0	60.0
Film, Photofinishing and Entertainment Group (FPEG)	193.0	153.0	138.0	85.0	75.0
Graphic Communications Group (GCG)	193.0	165.0	143.0	133.0	125.0
All Other	3.0	1.0	9.0	-	-
Continuing Depreciation & Amortization	494.0	405.0	386.0	295.0	260.0
Restructuring Depreciation	6.0	22.0	-	-	-
Total Depreciation & Amortization	$ 500.0	$ 427.0	$ 379.0	$ 295.0	$ 260.0
EBITDA					
Consumer Digital Imaging Group (CDG)	(72.0)	121.0	420.0	(83.5)	26.1
Film, Photofinishing and Entertainment Group (FPEG)	389.0	312.0	202.0	106.0	92.4
Graphic Communications Group (GCG)	224.0	125.0	117.0	(11.0)	205.4
All Other	(14.0)	(9.0)	8.0	-	1.0
Continuing Operations EBITDA	$ 527.0	$ 549.0	$ 747.0	$ 11.5	$ 324.9
Total EBITDA	$ 533.0	$ 571.0	$ 747.0	$ 11.5	$ 324.9
EBITDA Margin					
Consumer Digital Imaging Group (CDG)	-2.33%	4.62%	15.33%	-4.29%	1.45%
Film, Photofinishing and Entertainment Group (FPEG)	13.02%	13.82%	11.43%	6.89%	6.90%
Graphic Communications Group (GCG)	6.72%	4.59%	4.36%	-0.39%	6.64%
Total Continuing EBITDA Margin	5.60%	7.22%	10.39%	0.18%	5.21%
Total EBITDA	5.66%	7.51%	10.39%	0.18%	5.21%
Capital Expenditures					
Consumer Digital Imaging Group (CDG)	96.0	61.0	59.0	60.0	60.0
Film, Photofinishing and Entertainment Group (FPEG)	40.0	23.0	26.0	20.0	15.0
Graphic Communications Group (GCG)	118.0	67.0	64.0	75.0	90.0
All Other	-	1.0	-	-	-
Total Capital Expenditures	$ 254.0	152.0	149.0	$ 155.0	$ 165.0
EBITDA Less Capital Expenditures					
Consumer Digital Imaging Group (CDG)	(168.0)	60.0	361.0	(143.5)	(33.9)
Film, Photofinishing and Entertainment Group (FPEG)	349.0	289.0	176.0	86.0	77.4
Graphic Communications Group (GCG)	106.0	58.0	53.0	(86.0)	115.4
All Other	(14.0)	(10.0)	8.0	-	1.0
Total EBITDA Less Capital Expenditures	$ 273.0	$ 419.0	$ 598.0	$ (143.5)	$ 159.9
Other Non-Cash Expenses (Income)					
Pension Charges	(121.0)	(46.0)	(106.0)	35.0	140.0
OPEB expenses	16.0	45.0	25.0	22.0	25.0
Total Other Non-Cash Expenses (Income)	$ (105.0)	$ (1.0)	$ (81.0)	$ 57.0	$ 165.0
Other Cash Charges					
Restructuring Payments	133.0	177.0	88.0	76.0	80.0
Pension Contributions	101.0	121.0	112.0	112.0	110.0
OPEB Contributions	230.0	192.0	168.0	120.0	115.0
Cash Taxes	145.0	225.0	197.0	80.0	80.0
Cash Interest	85.0	70.0	115.0	120.0	130.0
Total Other Cash Charges	$ 694.0	$ 785.0	$ 680.0	$ 508.0	$ 515.0
Free Cash Flow before W/C & Other Changes	$ (526.0)	$ (367.0)	$ (163.0)	$ (594.5)	$ (190.1)
Working Capital & Other Changes					
Assets Sales	54.0	139.0	32.0	200.0	-
Working Capital & Other Asset Changes	416.0	172.0	(207.0)	(172.6)	25.0
Total Free Cash Flow	$ (56.0)	$ (56.0)	$ (338.0)	$ (567.1)	$ (165.1)
Debt Retirement (Additions)	306.0	63.0	62.0	(251.0)	50.0
Dividends	139.0	-	-	-	-
Share Repurchases	301.0	-	-	-	-
Net Change in Cash Position:	$ (802.0)	$ (119.0)	$ (400.0)	$ (316.1)	$ (215.1)

Source: Company, Bloomberg and Rafferty Capital Markets LLC.

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Execute asset divestures and patent license transactions to gain funding for its growth businesses.
Secure additional lines of credit to fund its growth businesses.

Valuation Methodology
50% Discount to Net Asset Value.

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Buy: 100% Hold: 0% Sell: 0%	Buy: 0% Hold: 0% Sell: 0%

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Hold: Fairly valued; total return in the next 12 months expected to be ± 15%.
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EK

1) 04/26/10	2) 03/22/11
Buy $15	Buy $9.50

Additional information on recommended securities is available on request

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RAFFERTY CAPITAL MARKETS, LLC

Company FLASH

US Equity Research Photographic
Equipment & Supplies

December 28, 2011

Eastman Kodak Co.

Mark Kaufman, CFA
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kaufmanm@raffcap.com

(EK: $0.65, Buy, US$5.50)

The Elevation of Laura Quatela to President Likely Signals A Corporate Restructuring to Raise Liquidity and Unlock Kodak's Asset Values.

- **The appointment last week of a Co-President reporting to the CEO, Antonio Perez, signals Kodak may be positioning itself for a major corporate restructuring to simultaneously unlock its asset value and provide added liquidity.** Elevating Laura Quatela, who has lead Kodak's patent monetization strategy, from Chief Counsel to President to serve with the existing President, Phil Faraci, could pave the way to raising additional liquidity in the near term for the Company. Kodak's Intellectual Property (IP), which consists of approximately 10,000 patents, various copyrights and trademarks, is already in a separate subsidiary as part of the collateral package for its secured notes and revolver liquidity totaling $1.15 billion. With Laura Quatela at the helm of Kodak's Intellectual Property operations and with Phil Faraci continuing to head up its tangible consumer and commercial operations, Kodak could seek to raise money by selling up to a 20% stake or entering into a joint venture for either the IP business or the tangible operations. The choice would likely depend on how Kodak's advisors see how best to maximize the value of the $3.6 billion domestic NOL. Kodak's patents have a zero cost basis, as research and development costs are expensed as they are incurred. As a result, in either a sale or a license of a patent, the proceeds are almost purely profit. Although the patents are currently collateral, Kodak can use the proceeds from any license of or claims settlement related to its Intellectual Property.

- In an effort to accelerate the monetization of it intellectual property, Kodak has been seeking the sale of its 1,100 digital imaging patents since late summer. There has been serious interest by various companies, but delays in the final determination by the U.S. ITC in the patent infringement action brought by Kodak against Apple (AAPL; $406.89, NR) and RIMM (RIMM; $14.78, NR), has potentially delayed a meeting of the minds on price. **However, Kodak and its advisors are likely also looking at intermediate steps to raise cash. Aside from the outright sale of the digital imaging patents at this juncture, Kodak could possibly first sell up to a 20% stake in its new IP business to the public, or structure a partnership with a strategic or financial investor. A private transaction could take the form of a joint venture, where Kodak contributes its operations and the partner contributes cash for liquidity to the partnership. A portion of the partner's cash contribution could be paid out to Kodak, in the form of a note or dividend, and the joint venture owners would share in the future IP license and royalty streams. Either strategy should not only improve Kodak's liquidity but also bring other potential licensees back to the bargaining table to execute license agreements with the new Kodak JV.**

- Intellectual Property Management Firms currently trade at approximately 10X EBITDA, and based on Kodak's annualized EBTIDA potential of approximately $250.0 million, its Intellectual Property business could be valued at $2.5 billion. Kodak would still own at least 80% of the IP business as well as its other business lines, which would appear to be more than ample collateral for its secured debt. Kodak could instead potentially sell up to a 20% stake in its commercial printing operations, the proceeds of which could be injected directly into the business to fund its 2012 liquidity needs. Again, Kodak's large NOL would have an influence on the direction the Company will likely take. **(Please see our September 9th and December 20th Notes for estimated values of Kodak's businesses.)**

- Kodak has other liquidity options that are not mutually exclusive to the strategies mentioned above: 1) replace its existing first lien secured revolver with a new secured loan up to the inter creditor agreement limit of $600.0 million, 2) enter into separate patent license agreements or settle existing infringement suits, the proceeds of which could be used for general corporate purposes and, 3) the sale of non-core businesses. The recent sale of its Eastman Gelatine Corporation business to Rousselot for an undisclosed amount, that will close in the next few weeks, is such a transaction. Potential license agreements and non-core asset sales could be sufficient to retire the outstanding $160.0 million balance on Kodak's $400.0 million revolver, which could then be replaced by the new $600.0 million first lien loan to provide additional liquidity. **Whatever form Kodak's restructuring will actually take, we expect the details to be revealed in the next month.**

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Valuation Methodology
50% Discount to Net Asset Value.

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EK

1) 04/26/10	2) 03/22/11
Buy $15	Buy $9.50

Additional information on recommended securities is available on request

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Company FLASH

US Equity Research Photographic Equipment & Supplies

January 5, 2012

Eastman Kodak Co.

Mark Kaufman, CFA
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kaufmanm@raffcap.com

(EK: $0.42, Hold, US$2.75)

Lowering Kodak to Hold and Target to $2.75 due to Uncertain Timing of the Patent Portfolio Sale and Potential for Strategic Chapter 11 Reorganization

- Yesterday, the Wall Street Journal ("WSJ") reported that Kodak explored the option of a Chapter 11 bankruptcy filing in December should its efforts to receive a fair price for its digital patent portfolio falls short in the near term. The story is more complicated, it has been no secret that Kodak has been seeking shore up its liquidity to support its digital printing operations through the sale of its patents or other means, which we highlighted in a 12/27/2011 Note. **At this juncture a Chapter 11 bankruptcy would amount to a strategic maneuver, which perverse as it may seem, could actually preserve more value for all of Kodak's investment constituents including the equity than other options it is likely considering.** Should Kodak file for a Chapter 11 Reorganization it would enable the Company to borrow more than the $600.0 million that is currently allowed under its debt indentures. Under that scenario, the WSJ also suggested Kodak could raise a Debtor in Possession ("DIP") credit line of a $1.0 billion dollars from a consortium of banks, which should be more than ample liquidity for 2012. Kodak foreign subsidiaries where the majority of its tangible assets and cash reside would not be placed in bankruptcy or receivership. Some or all of Kodak's domestic operations would be placed in Chapter 11, which would still operate normally and continue to pay their vendors.

- Although we believe Kodak could replace its existing secured revolver with a new secured loan up to the aforementioned limit of $600.0 million, it may consider the amount of the equity those private lenders are seeking as part of the loan package to be too high a price to pay. A DIP credit line in a Chapter 11 Reorganization would receive a super priority lien over the pre-bankruptcy creditors on all of Kodak's assets. If Kodak were to realize full value for its patent portfolio later this year, which we continue to estimate at $2.4 billion, it should have sufficient cash to repay any outstanding DIP loan balances, retire its second lien notes, and reinstate it remaining creditors and exit bankruptcy leaving the equity intact.

- We said in our Note last week, there was serious interest for the digital patent portfolio, but delays in the final determination by the U. S. ITC in the patent infringement action brought by Kodak against Apple (AAPL; $414.95, NR) and RIMM (RIMM; $14.99, NR), has potentially delayed a meeting of the minds on price. The Administrative Law Judge ("ALJ") has said that he plans to issue his initial determination on remand by May 21st which should impact what a buyer would be willing to pay and what Kodak is willing accept for the patent portfolio. This ruling is still subject to a review before the full ITC by September 21st. We do not see a potential buyer gaining any leverage by attempting to purchase Kodak's digital patents in bankruptcy; the advantage is with the Company. In an attempt to maximize value the rules for an auction would be determined by the court where there would likely be a 'stalking horse' buyer that would be entitled to a breakup fee. Bids would also be required to increase in large increments and the bidders would be known to each other.

- **We believe Kodak's asset values are not likely to be impaired by a strategic Chapter 11 bankruptcy reorganization; however the headline risk associated with that potential event would likely hurt the shares. As a result, and as well as the heightened uncertainty about the actual timing and manner of a digital patent portfolio transaction and/or other liquidity events we are lowering our rating for Kodak to HOLD from BUY. Also to reflect these near term risks, we are lowering our Target Price to $2.75 a 75% discount to our estimate of Kodak's Net Asset Value of approximately $11.00.**

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Valuation Methodology
75% Discount to Net Asset Value.

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Buy: 100% Hold: 0% Sell: 0%	Buy: 0% Hold: 0% Sell 0%

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Buy $15	Buy $9.50

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EXHIBIT G

Bloomberg

Kodak Pushes Patent Value With Apple, HTC Lawsuits as It Seeks Turnaround

By Susan Decker - Jan 11, 2012

Eastman Kodak Co. (EK), seeking to sell or license a portfolio of more than 1,100 patents, sued Apple Inc. and HTC Corp. (2498) in an expansion of a legal strategy that may help boost the value of its inventions to fund a turnaround.

Two infringement lawsuits filed yesterday in federal court in Rochester, New York, accuse the smartphone makers of using without permission Kodak technology for image transmission, including a way for users to share images directly from cameras. Kodak also claims HTC is infringing an additional patent for a preview feature, which is at the center of a U.S. International Trade Commission case against Apple and Research In Motion Ltd. (RIM)

"They're trying to generate value for their patent portfolio," said Ron Epstein, chief executive officer of patent brokerage Epicenter IP Group LLC in Redwood City, California.

Kodak, predicted by analysts to report its fourth straight annual net loss Jan. 26, has put the company's digital-imaging patents up for sale to help fund changes to its business. CEO Antonio Perez, who is betting on digital printers for publishers, packagers, advertisers and households to lift Kodak, has said the Apple-RIM trade commission case may generate $1 billion in new revenue from settlements.

Kodak didn't say how much the new Apple and HTC cases could be worth. The company filed companion complaints at the trade commission yesterday in Washington, seeking to block U.S. imports of products including Apple's iPad and iPhone, and HTC's Flyer tablet and Wildfire S phone that are made overseas.

Bankruptcy Risk

"This is an important part of ongoing operations to get them through the transition," said Erin-Michael Gill, chief intellectual property officer for MDB Capital Group LLC, a Santa Monica, California-based investment bank. "A bad sign would be them sitting on their hands and waiting for these to sell."

Kodak rose 22 cents, or 36 percent, to 82 cents at 4:15 p.m. in New York Stock Exchange trading. That follows a 50 percent jump in shares yesterday after the company reported a restructuring of its management.

Kodak said last year it hired Lazard Ltd. to help it sell the patents and retained Jones Day among advisers helping on strategic options.

The civil suits may be put on hold while the ITC conducts its investigations. The agency seeks to complete investigations in 16 to 18 months, though it's been forced to extend that target in many cases because of the deluge of litigation over mobile devices.

Portfolio Perceptions

The Apple-RIM trade commission case filed in 2010, involving the single image-preview patent, has met with delays including the retirement of the judge handling the case, and a final decision isn't scheduled until September.

Moody's Investors Service on Jan. 5 cut ratings on about $1 billion of Kodak debt with a negative outlook, citing "a heightened probability of a bankruptcy over the near-term" as liquidity deteriorates, making a patent sale more challenging.

Adding four new patents into the mix "helps, even without litigating any of the issues, to counteract the impression that there's only one good patent" in the portfolio, said Ron Laurie, managing director of Inflexion Point Strategy LLC in Palo Alto, California, which counsels companies on intellectual property purchases. Kodak "wanted to defuse that impression."

The four patents asserted against Apple and HTC have as co-inventor Kodak researcher Kenneth Parulski, who has more than 190 patents and is "recognized as a pioneer in numerous digital camera technologies," according to the complaints.

Infringement Claims

Kodak claims infringement by Apple's iPad 2, iPhone and iPod Touch, and by HTC's tablets and phones, including the Flyer, EVO View 4G, Jetstream, Vivid, Amaze 4g, Desire, Hero S, Rezound, Rhyme, Sensation 4G and Wildfire S.

"We've had numerous discussions with both companies in an attempt to resolve this issue, and we have not been able to reach a satisfactory agreement," Laura Quatela, Kodak's chief operating officer and a president, said in a statement. "Our primary interest is not to disrupt the availability of any product but to obtain fair compensation for the unauthorized use of our technology."

HTC, based in Taoyuan, Taiwan, had no comment on the complaints. Officials with Cupertino, California-based Apple didn't reply to a request for comment.

Selling patents and debt will help determine "the company's ability to continue its operations" in the next 12 months, Kodak said in a quarterly regulatory filing in November. Kodak said then it would pursue licensing opportunities for the patents if unable to sell them at "an appropriate price."

Kodak, which lost 88 percent of its stock market value last year, has struggled since demand for photographic film began evaporating as the world embraced digital cameras. Kodak's cash and equivalents fell to $862 million at the end of its third quarter from $1.4 billion a year earlier.

Management Changes

Kodak said yesterday it was adjusting its management structure and creating a chief operating office to reduce costs as its sales decline and cash reserves dwindle.

The chief operating office will be led by Quatela and Philip Faraci, both presidents at Kodak. Faraci will focus on the commercial segment and sales and regional operations, and Quatela, who had been the company's chief intellectual property officer, will lead the consumer segment and certain corporate functions, Kodak said.

The company's $162 million market value at yesterday's close "is lower than the potential damages" the company could generate from litigation, Epstein said.

"They're looking at the mobile device companies and saying, 'The brilliance of your user interface and product integration does not detract from the fact that you have integrated my innovation into your product and you owe me something for it,'" Epstein said.

The new case against Apple is Eastman Kodak Co. v. Apple Inc. (AAPL), 12cv6020, and the case against HTC is Eastman Kodak Co. v. HTC, 12cv6021, both U.S. District Court for the Western District of New York (Rochester).

The ITC case is In the Matter of Electronic Devices for Capturing and Transmitting Images, Complaint No. 2869, U.S. International Trade Commission (Washington).

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EXHIBIT H

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Proposed Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	Case No. 12-_____ (_____)
Debtors.	(Joint Administration Requested)

DEBTORS' MOTION FOR AN ORDER AUTHORIZING RESTRICTIONS ON CERTAIN TRANSFERS OF INTERESTS IN THE DEBTORS AND ESTABLISHING NOTIFICATION PROCEDURES RELATING THERETO PURSUANT TO SECTIONS 105(a) AND 362 OF THE BANKRUPTCY CODE

Eastman Kodak Company ("**Kodak**"), on behalf of itself and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), hereby submits this motion (the "**Motion**") for entry of an order, substantially in the form attached hereto as Exhibit A (the "**Proposed Order**"), authorizing the Debtors to establish procedures to protect the potential

[1] 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.

1210202120118000000000022

Facts Specific to the Relief Requested

A. The Tax Attributes

4. The Debtors have recently incurred, and are currently incurring, significant net operating losses ("**NOLs**") for U.S. federal income tax purposes. For tax periods through the 2010 tax year, the Debtors have reported on their federal income tax returns, as adjusted to account for certain settlements, (i) approximately $1.1 billion of consolidated NOLs, and the Debtors estimate that as of December 31, 2011, they have incurred additional NOLs of approximately $800 million; (ii) approximately $592 million of foreign tax credits ("**FTCs**"), and the Debtors estimate that as of December 31, 2011, they have incurred additional FTCs of approximately $64 million; and (iii) approximately $17 million of Federal Research and Development Credits ("**R&D Credits**"), and the Debtors estimate that as of December 31, 2011, they have incurred additional R&D Credits of approximately $1.5 million. The Debtors also have additional state, local and foreign tax attributes, and may have net unrealized built-in tax losses (collectively, the "**Tax Attributes**").

B. Use of the Tax Attributes during the Pendency of these Cases

5. Kodak expects to sell significant assets during the pendency of these chapter 11 cases. Kodak may recognize substantial gain or other income in connection with certain of these transactions and may, depending on market conditions, recognize significant additional income or gain in connection with certain other events. As explained below, the Tax Attributes would contribute substantial value to the estate by offsetting such gains.

6. The Tax Attributes may be valuable assets of the estates because title 26 of the United States Code (the "**Tax Code**") generally permits corporations to carry forward their losses and tax credits to offset future income. *See, e.g.*, I.R.C. § 172 (NOLs), § 904(c) (FTCs),

EXHIBIT I

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WSJ.com

TECHNOLOGY | July 11, 2011, 3:14 p.m. ET

Nortel $4.5-Billion Patent Sale to Apple, Microsoft, Others Approved

By PEG BRICKLEY

WILMINGTON, Del.—Judges in the U.S. and Canada Monday gave the nod to a $4.5 billion patent sale that marks a shift in the balance of power in the technology wars over mobile applications and a major improvement in the fortunes of creditors of Nortel Networks Corp.

The sale of Nortel's portfolio of technology patents means the liquidating telecommunications maker will have more than $7.5 billion in cash to cover its bills, a few billion more than anyone expected just weeks ago. A four-day auction in New York closed with a price five times the stalking-horse bid, sending the prices on Nortel's bonds above 100 cents on the dollar.

"It's been record-breaking both in term of this case and in the patent industry generally," said Lisa Schweitzer, an attorney for Nortel, speaking at a joint hearing of the U.S. Bankruptcy Court in Wilmington, Del., and the Ontario Superior Court of Justice.

Apple Inc. , Microsoft Corp. , Research in Motion Ltd. , EMC Corp. , L.M. Ericsson Telephone Co., and Sony Corp. will divide Nortel's trove of intellectual property among themselves. They drove up the bidding at a four-day bankruptcy auction where they vied with Google Inc. , Intel Corp. and RPX Corp.

Nortel's patents, they hope, will help them build strongholds in the mobile wireless industry. Ms. Schweitzer, who is with Cleary Gottlieb Steen & Hamilton LLP, dismissed speculation that the sale was vulnerable to attack as anti-competitive.

"There's no antitrust risk to the deal," she told Judge Kevin Gross in the U.S. and Justice Geoffrey Morawetz in Canada. The sale will close in about a month, she estimated.

At 6,000 patents and patent applications, Nortel's was the largest intellectual property portfolio ever sold. The starting offer of $900 million was considered remarkable. The final price was a triumph for Nortel's strategy of selling its operating businesses first but holding back its patents to be sold separately.

Monday's court hearing was a test of whether the auction was a fair fight and produced the best possible result for creditors. Only a few objections remained unresolved Monday, and the few left were overruled.

"I don't believe a dollar was left on the table," said Derrick Tay of Norton Rose, Nortel's Canadian attorney. Nortel's patents are being sold in a way that preserves the license rights of users, preventing an immediate upset in the industry, Mr. Tay said.

Nortel filed for insolvency protection around the world in January 2009, awash in debt. It raised $3.2 billion by selling its operating businesses over the next two years, as the world economy struggled.

The Toronto company's problems were exacerbated by the recession, but it had been on a downward slide for some time. Technology's rising stars and survivors had been eyeing the patent collection for years. Nortel's patents cover a wide range of technology, including social networking, Internet search applications and optical networks.

Nortel's creditors, led by bondholders in the U.S. and pension trustees in the U.K., have been fighting over the cash, the last money the Toronto company will see. The judges have pushed the creditors back into mediation in an effort to force them to a settlement. The wrangling over the cash took place behind closed doors until the sales were done, as Nortel's U.S., Canadian, British and European units made an effort to assure potential buyers wouldn't be scared off by intercompany strife.

"I'm not sure how long that's going to last, but right now we're one big happy family," Mr. Tay said Monday.

Write to Peg Brickley at peg.brickley@dowjones.com

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EXHIBIT J

10-K 1 ek2011_10k.htm EASTMAN KODAK COMPANY 10-K FILING

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

X Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the year ended December 31, 2011 or

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from to

Commission File Number 1-87

EASTMAN KODAK COMPANY
(Exact name of registrant as specified in its charter)

NEW JERSEY (State of incorporation)	**16-0417150** (IRS Employer Identification No.)
343 STATE STREET, ROCHESTER, NEW YORK (Address of principal executive offices)	**14650** (Zip Code)
Registrant's telephone number, including area code:	**585-724-4000**

Securities registered pursuant to Section 12(b) of the Act:

Title of each Class	**Name of each exchange on which registered**
Common Stock, $2.50 par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes [X] No [ ]

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes [ ] No [X]

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days.
Yes [X] No [ ]

Contractual Obligations

The impact that contractual obligations are expected to have on the Company's cash flow in future periods is as follows:

		As of December 31, 2011					
(in millions)	Total	2012	2013	2014	2015	2016	2017
Long-term debt (1)	$ 1,618	$ 52	$ 402	$ -	$ -	$ -	$ 1,164
Interest payments on debt (1)	684	123	120	105	105	105	126
Operating lease obligations	241	68	51	33	25	21	43
Purchase obligations (2)	310	109	69	47	41	18	26
Total (3) (4) (5) (6)	$ 2,853	$ 352	$ 642	$ 185	$ 171	$ 144	$ 1,359

Pre-petition obligations are being administered by the Bankruptcy Court. A portion of the contractual obligations relate to non-U.S. entities and, therefore, are not subject to the bankruptcy proceedings.

(1) Long-term debt represents the maturity values of the Company's long-term debt obligations as of December 31, 2011 (pre-petition debt). Interest payments on debt represent payments related to pre-petition debt. See Note 9, "Short-Term Borrowings and Long-Term Debt", in the Notes to Financial Statements.

(2) Purchase obligations include agreements related to raw materials, supplies, production and administrative services, as well as marketing and advertising, that are enforceable and legally binding on the Company and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. Purchase obligations exclude agreements that are cancelable without penalty. The terms of these agreements cover the next one to eleven years.

(3) Due to uncertainty regarding the completion of tax audits and possible outcomes, the remaining estimate of the timing of payments related to uncertain tax positions and interest cannot be made. See Note 16, "Income Taxes," in the Notes to Financial Statements for additional information regarding the Company's uncertain tax positions.

(4) Kodak Limited, a wholly owned subsidiary of the Company, has agreed with the Trustees of the Kodak Pension Plan of the United Kingdom (the "Plan" or "KPP") to make certain contributions to the Plan. Under the terms of this agreement, Kodak Limited is obligated to pay a minimum amount of $50 million to the KPP in each of the years 2012 through 2014, and a minimum amount of $90 million to the KPP in each of the years 2015 through 2022. The payment amounts for the years 2015 through 2022 could be lower, and the payment amounts for 2012 through 2022 could be higher by up to $5 million per year, based on the exchange rate between the U.S. dollar and British pound. The minimum amounts do not include certain potential contributions which could be required if Kodak Limited received a cash tax benefit as a result of the minimum contributed amount. These amounts of future contributions have not been included in the table above, as in total they are dependent on the funded status of the KPP as it fluctuates over the term of the agreement. A funding valuation and funding plan is required to be submitted to and approved by the United Kingdom Pension Regulator every three years. The 2010 valuation is currently ongoing.

(5) In addition to the pension contributions related to the KPP noted in (4) above, funding requirements for the Company's other major defined benefit retirement plans and other postretirement benefit plans have not been determined, therefore, they have not been included. In 2011, the Company made contributions to its major defined benefit retirement plans and benefit payments for its other postretirement benefit plans including the KPP of $103 million ($25 million relating to its U.S. defined benefit plans) and $115 million ($110 million relating to its U.S. other postretirement benefits plan), respectively. The Company expects to contribute approximately $97 million ($15 million relating to its U.S. defined benefit plans) and $119 million ($118 million relating to its U.S. other postretirement benefits plan), respectively, to its defined benefit plans and other postretirement benefit plans in 2012, including KPP contributions noted in (4) above.

(6) Because their future cash outflows are uncertain, the other long-term liabilities presented in Note 10, "Other Long-Term Liabilities," in the Notes to Financial Statements are excluded from this table.

Off-Balance Sheet Arrangements

The Company guarantees debt and other obligations of certain customers. The debt and other obligations are primarily due to banks and leasing companies in connection with financing of customers' purchases of equipment and product from the Company. At December 31, 2011, the maximum potential amount of future payments (undiscounted) that the Company could be required to make under these customer-related guarantees was $25 million and the carrying amount of the liability related to these customer guarantees was not material.

The customer financing agreements and related guarantees, which mature between 2012 and 2016, typically have a term of 90 days for product and short-term equipment financing arrangements, and up to five years for long-term equipment financing arrangements. These guarantees would require payment from the Company only in the event of default on payment by the respective debtor. In some cases, particularly for guarantees related to equipment financing, the Company has collateral or recourse provisions to recover and sell the equipment to reduce any losses that might be incurred in connection with the guarantees. However, any proceeds received from the liquidation of these assets may not cover the maximum potential loss under these guarantees.

Eastman Kodak Company ("EKC") also guarantees potential indebtedness to banks and other third parties for some of its consolidated subsidiaries. The maximum amount guaranteed is $185 million, and the outstanding amount for those guarantees is $161 million. Of this outstanding amount, $75 million is recorded within Short-term borrowings and current portion of long-term debt, and Long-term debt, net of current portion. Additionally $12 million is recorded within Other current liabilities and Other long-term liabilities. The remaining $74 million of outstanding guarantees represent parent guarantees providing financial assurance to third parties that the Company's subsidiaries will fulfill their future performance or financial obligations under various contracts, and do not represent recorded liabilities. These guarantees expire in 2012 through 2019. Pursuant to the terms of the Company's Amended Credit Agreement, obligations of the Borrowers to the Lenders under the Amended Credit Agreement, as well as secured agreements in an amount not to exceed $125 million, are guaranteed by the Company and the Company's U.S. subsidiaries and included in the above amounts. As of December 31, 2011, these secured agreements totaled $63 million.

EKC has issued a guarantee to Kodak Limited (the "Subsidiary") and the Trustees (the "Trustees") of the Kodak Pension Plan of the United Kingdom (the "Plan"). Under that arrangement, EKC guaranteed to the Subsidiary and the Trustees the ability of the Subsidiary, only to the extent it becomes necessary to do so, to (1) make contributions to the Plan to ensure sufficient assets exist to make plan benefit payments, and (2) make contributions to the Plan such that it will achieve full funded status by the funding valuation for the period ending December 31, 2022. The guarantee expires (a) upon the conclusion of the funding valuation for the period ending December 31, 2022 if the Plan achieves full funded status or on payment of the balance if the Plan is underfunded by no more than 60 million British pounds by that date, (b) earlier in the event that the Plan achieves full funded status for two consecutive funding valuation cycles which are typically performed at least every three years, or (c) June 30, 2024 on payment of the balance in the event that the Plan is underfunded by more than 60 million British pounds upon conclusion of the funding valuation for the period ending December 31, 2022. The amount of potential future contributions is dependent on the funding status of the Plan as it fluctuates over the term of the guarantee. The funded status of the plan may be materially impacted by future changes in key assumptions used in the valuation of the plan, particularly the discount rate and expected rate of return on plan assets. The funded status of the Plan (calculated in accordance with U.S. GAAP) is included in Pension and other postretirement liabilities presented in the Consolidated Statement of Financial Position.

The Company issues indemnifications in certain instances when it sells businesses and real estate, and in the ordinary course of business with its customers, suppliers, service providers and business partners. Further, the Company indemnifies its directors and officers who are, or were, serving at the Company's request in such capacities. Historically, costs incurred to settle claims related to these indemnifications have not been material to the Company's financial position, results of operations or cash flows. Additionally, the fair value of the indemnifications that the Company issued during the year ended December 31, 2011 was not material to the Company's financial position, results of operations or cash flows.

Eastman Kodak Company
CONSOLIDATED STATEMENT OF FINANCIAL POSITION

(in millions, except share and per share data)	As of December 31, 2011	2010
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 861	$ 1,624
Receivables, net	1,103	1,196
Inventories, net	607	746
Deferred income taxes	58	120
Other current assets	74	100
Total current assets	2,703	3,786
Property, plant and equipment, net	895	1,037
Goodwill	277	294
Other long-term assets	803	1,109
TOTAL ASSETS	$ 4,678	$ 6,226
LIABILITIES AND E UITY		
CURRENT LIABILITIES		
Accounts payable, trade	$ 706	$ 959
Short-term borrowings and current portion of long-term debt	152	50
Accrued income taxes	40	343
Other current liabilities	1,252	1,468
Total current liabilities	2,150	2,820
Long-term debt, net of current portion	1,363	1,195
Pension and other postretirement liabilities	3,053	2,661
Other long-term liabilities	462	625
Total liabilities	7,028	7,301
Commitments and Contingencies (Note 11)		
E UITY (DEFICIT)		
Common stock, $2.50 par value, 950,000,000 shares authorized; 391,292,760 shares issued as of December 31, 2011 and 2010; 271,379,883 and 268,898,978 shares outstanding as of December 31, 2011 and 2010	978	978
Additional paid in capital	1,108	1,105
Retained earnings	4,071	4,969
Accumulated other comprehensive loss	(2,666)	(2,135)
	3,491	4,917
Treasury stock, at cost; 119,912,877 shares as of December 31, 2011 and 122,393,782 shares as of December 31, 2010	(5,843)	(5,994)
Total Eastman Kodak Company shareholders' (deficit) equity	(2,352)	(1,077)
Noncontrolling interests	2	2
Total (deficit) equity	(2,350)	(1,075)
TOTAL LIABILITIES AND E UITY (DEFICIT)	$ 4,678	$ 6,226

The accompanying notes are an integral part of these consolidated financial statements.

Information regarding the major funded and unfunded U.S. and Non-U.S. defined benefit plans follows:

(in millions)	2011		2010	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Change in Benefit Obligation				
Projected benefit obligation at January 1	$ 5,071	$ 3,636	$ 4,842	$ 3,527
Acquisitions/divestitures/other transfers	(1)	2	-	-
Service cost	50	16	48	14
Interest cost	254	180	263	177
Participant contributions	-	4	-	3
Plan amendments	-	(4)	-	45
Benefit payments	(535)	(226)	(511)	(218)
Actuarial loss	392	160	402	181
Curtailments	-	-	-	(5)
Settlements	-	(86)	-	(2)
Special termination benefits	28	1	27	1
Currency adjustments	-	(31)	-	(87)
Projected benefit obligation at December 31	$ 5,259	$ 3,652	$ 5,071	$ 3,636
Change in Plan Assets				
Fair value of plan assets at January 1	$ 4,861	$ 2,634	$ 4,758	$ 2,502
Acquisitions/divestitures	-	1	-	-
Actual gain on plan assets	413	47	592	320
Employer contributions	25	78	22	90
Participant contributions	-	4	-	3
Settlements	-	(86)	-	(2)
Benefit payments	(536)	(226)	(511)	(218)
Currency adjustments	-	(16)	-	(61)
Fair value of plan assets at December 31	$ 4,763	$ 2,436	$ 4,861	$ 2,634
Under Funded Status at December 31	$ (496)	$ (1,216)	$ (210)	$ (1,002)
Accumulated benefit obligation at December 31	$ 5,112	$ 3,584	$ 4,881	$ 3,545

As a result of a legislative change in November 2010, a French defined benefit pension plan was amended to reflect a change in the Social Security retirement age. The legislative change requires the minimum retirement age be extended up to 2 years, phasing in at a rate of 4 months per year until 2018. This amendment increased the projected benefit obligation in 2010 by $33 million, which is reflected in the plan amendments line in the table above.

Amounts recognized in the Consolidated Statement of Financial Position for all major funded and unfunded U.S. and Non-U.S. defined benefit plans were as follows:

(in millions)	As of December 31,			
	2011		2010	
	U.S.	Non-U.S.	U.S.	Non-U.S.
Other long-term assets	$ -	$ -	$ 18	$ 21
Other current liabilities	(18)	-	(19)	-
Pension and other postretirement liabilities	(478)	(1,216)	(209)	(1,023)
Net amount recognized	$ (496)	$ (1,216)	$ (210)	$ (1,002)

EXHIBIT K

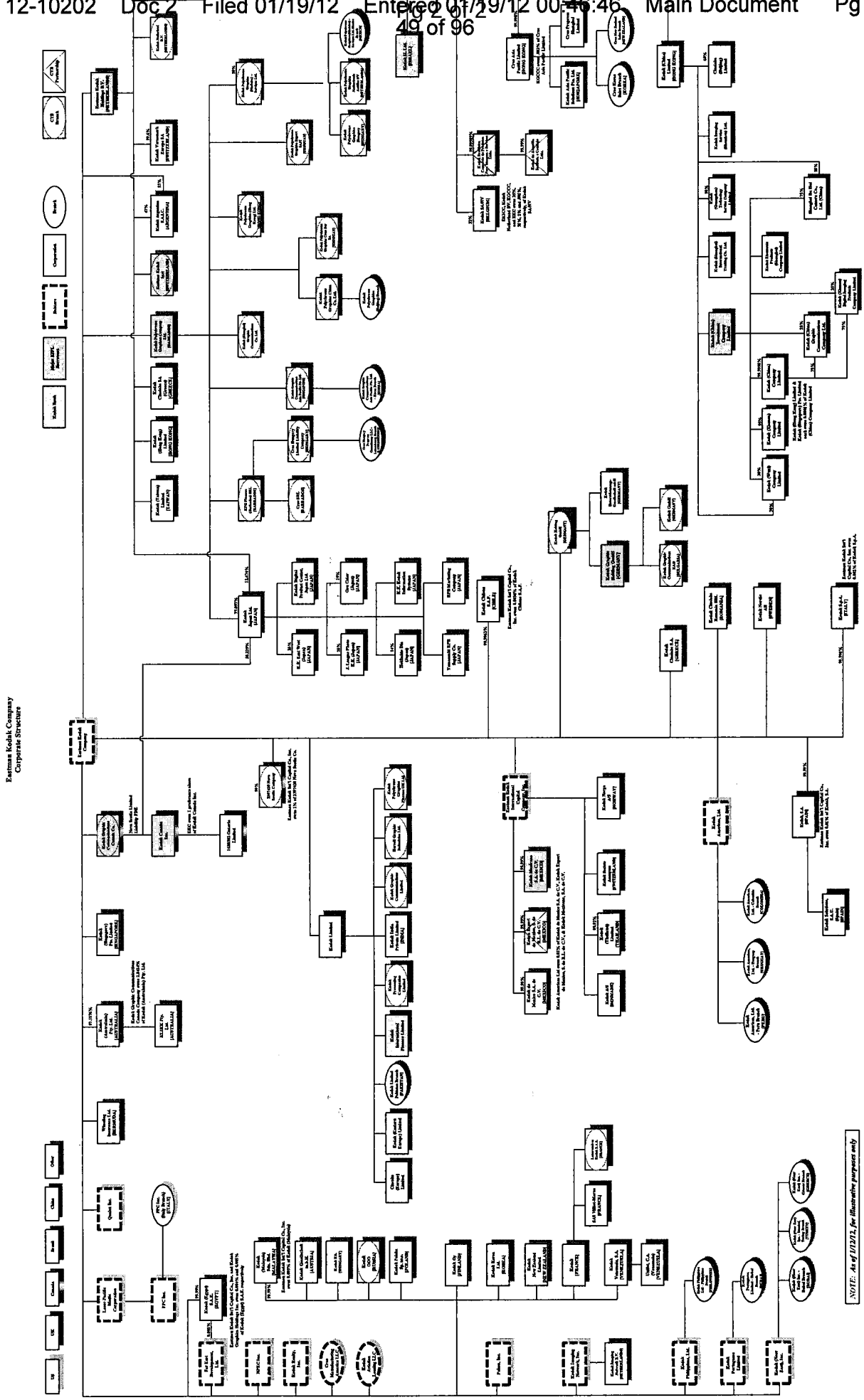
Eastman Kodak Company
Corporate Structure
NOTE: As of 1/13/11, for illustrative purposes only

EXHIBIT L

Making Company Directors Liable: A Comparative Analysis of Wrongful Trading in the United Kingdom and Insolvent Trading in Australia

Andrew Keay[a,*] *and Michael Murray*[b,†]

[a]*Professor of Corporate and Commercial Law and Director of the Centre for Business Law and Practice, School of Law, University of Leeds, UK*
[b]*Faculty of Law, University of Sydney, Australia*

Abstract

The separate legal entity doctrine in corporate law means that directors are not generally liable for their company's liabilities. However, there have been actions taken by governments and courts to make directors liable in certain cases. This article examines and compares legislative provisions in the United Kingdom and Australia to make directors liable for the debts of their companies. These provisions, namely section 214 of the UK's Insolvency Act 1986 (wrongful trading) and section 588G of the Australian Corporations Act 2001 (insolvent trading), had the same starting point, but now differ substantially, even though, arguably, they retain very similar objectives. The article investigates: the reasons for these differences; the criteria on which each of the provisions focus; and the ramifications for the different approaches. It also endeavours to evaluate the strengths and weaknesses of the respective approaches adopted in each country. Copyright © 2005 John Wiley & Sons, Ltd.

I. Introduction

Notwithstanding the longevity of the separate legal entity doctrine in corporate law around the world, the law in many countries has come under pressure from various parts of society to make directors personally liable, in certain cases, for some or all of the liabilities of their companies.[1] This is well exemplified in the United Kingdom and Australia. This article examines and compares the most publicised and signifi-

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1. Of course this is not necessarily limited to the non-payment of company debts, but also embraces other issues, such as environmental and tortious claims.

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Int. Insolv. Rev., Vol. 14: 27–55 (2005)
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cant provisions that have been enacted in these countries to make directors liable for the debts of their companies, namely section 214 of the UK Insolvency Act 1986 (wrongful trading) and section 588G of the Australian Corporations Act 2001 (insolvent trading). Although having the same starting point, the laws in the UK and Australia now differ substantially, although arguably having similar objectives. Both jurisdictions have, over the years, moved away from relying upon fraudulent trading, based on criminal intent, and introduced their own distinctive provisions to address the failure of directors to deal with their companies' financial malaise. In doing this they have focused on different criteria. Comparing the legislation in the two jurisdictions is helpful and instructive as the UK and Australia are both common law jurisdictions with similar corporate law regimes, and this enables us to focus on the differences in the respective laws without the impediment of having to take into account differences in the structure of the respective legal systems.[2] For ease of exposition, this article refers to wrongful trading and insolvent trading collectively as "illicit trading." There has been a change in focus of the law on illicit trading over the last 50 years, initially from one of being limited in scope and merely reactive to the ills of illicit trading to one of imposing an all pervasive obligation on directors to be proactive in ensuring that illicit trading does not occur.

The provisions discussed in the article remain exceptions to the fundamental principle of corporate law that a company, and it alone, is liable for its debts. This rule is based on the inveterate principle emanating from the House of Lords' decision in *Salomon v. Salomon & Co Ltd*[3] that a company is a legal entity which is separate from its members and controllers and consequently it, and not its directors, is liable, *inter alia*, for its contracts and debts generally. But the provisions discussed here now encroach significantly on that principle in the context of a company's insolvency.

II. Background

The legislative history of the present law is instructive in demonstrating what issues have been discarded, and adopted, in seeking to implement insolvency law policy. That history reveals an initial focus on a criminal standard, with relevant intent required to be proved. Even when civil liability was introduced, there was a

2. The article does not seek to discuss the theoretical justification for the respective provisions. For theoretical examinations of the provisions, see J. Mannolini, "Creditors" Interest in the Corporate Contract : A Case for the Reform of our Insolvent Trading Provisions' (1996) 6 *Australian Journal of Corporate Law* 14; M. Whincop, 'Taking the Corporate Contract More Seriously: The Economic Cases Against, and a Transaction Cost Rationale for, the Insolvent Trading Provisions' (1996) 5 *Griffith Law Review* 1; D. Oesterle, "Corporate Directors' Personal Liability for 'Insolvent Trading in Australia, 'Reckless Trading' in New Zealand and 'Wrongful Trading' in England: A Recipe for Timid Directors, Hamstrung Controlling Shareholders and Skittish Lenders" in I. M. Ramsay (ed), *Company Directors' Liability for Insolvent Trading* (Melbourne, Centre for Corporate Law and Securities Regulation and CCH Australia, 2000); D. Morrison, "The Economic Necessity for the Australian Insolvent Trading Prohibition" (2003) 12 *International Insolvency Review* 171; R. J. Mokal, "An Agency Cost Analysis of the Wrongful Trading Provisions: Redistribution, Perverse Incentives and the Creditors' Bargain" (2000) 59 CLJ 335.

3. [1897] AC 22.

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requirement that a criminal conviction must first be obtained. Also, civil liability was first restricted as being available only to each creditor, in respect of its own losses, and not available to the liquidator, or creditors generally. Finally, the law gave a reactive emphasis to the problem of illicit trading; only in recent times has there been the duty imposed on directors to prevent illicit trading occurring. That latter element is significant. The present law primarily seeks not to have creditors compensated through laws proscribing illicit trading, but to try to ensure that illicit trading does not occur in the first place so that such compensation is unnecessary.

The history of the provisions reveals that as early as the first quarter of the twentieth century there was dissatisfaction at the ease with which the protection of limited liability could be abused by those who managed companies. In 1926 in the UK the Greene Committee on Company Law Reform[4] recommended that a new section should be inserted in companies' legislation providing that where, in the course of winding up a company, it appeared that any business of the company had been carried on with intent to defraud creditors of the company, the court should have power, on application by the liquidator or any creditor or contributory, to declare that the directors responsible should be subjected to unlimited personal liability in respect of the debts or other liabilities of the company. Nevertheless, the elements necessary for personal liability to be imposed on directors were high, with an intent to defraud creditors being required to be proved, at the criminal standard. A similar fraudulent trading provision was enacted in Australia at that time, in the State of Queensland in 1931, and later in other Australian states.[5]

By the 1960s, there was a change in emphasis in Australia in respect of fraudulent trading. The criminal element remained, but there was no need to prove a fraudulent intent. The new criminal offence of a company officer being "knowingly a party to the contracting of a debt" who "had no reasonable or probable ground of expectation . . . of the company being able to pay the debt . . . " was enacted. This was introduced into the Uniform Companies Act 1961.[6] It was not until 1964 that civil liability for such conduct was introduced, in the State of New South Wales,[7] but it was dependent on a criminal conviction being first obtained. The liquidator, any creditor or any contributory was entitled to apply for relief against a director.

In the 1980s, in both the UK and Australia, corporate insolvency law was subject to major review. That review included appraisal of the laws on illicit and fraudulent trading. In the UK, the Insolvency Law Review Committee, in its 1982 report, *Insolvency Law and Practice* (generally referred to as "the Cork Report"),[8] was of the opinion that the fraudulent trading provision as then set out in section 332 of the 1948 Companies Act, possessed significant inadequacies in dealing with irresponsible trading.[9] These inadequacies included the fact that the criminal burden of

4. Report of the Company Law Amendment Committee, Cmnd 2697, HMSO, London, 1926. See, in particular, para 61.

5. See the Australian Law Reform Commission, *General Insolvency Inquiry*, Report No 45, Canberra, 1988, (known as "the Harmer Report") at para 278.

6. The actual date of the UCA for each state differed.

7. Section 304(1A) of the Companies Act 1961.

8. Cmnd 858, HMSO, (1982).

9. Paras 1776–1780.

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proof applied to civil actions and, also, that applicants for orders against directors were required to establish actual dishonesty.[10] Consequently the Cork Committee recommended that a new provision be introduced to allow for civil actions for unreasonable trading where only the civil burden of proof would apply.[11] The concern of the Committee was to provide in legislation that the director, otherwise honest but who sees insolvency coming and does nothing to arrest it, should lose the benefits of limited liability along with those directors who are fraudulent.[12] To this end the Committee advocated an objective test to determine liability.[13] Criminal liability would continue to apply in relation to fraudulent trading. The UK government resisted the inclusion in a new Insolvency Act (in 1985) of a section in the terms actually envisaged by the Cork Report, for the reason that it was regarded as imposing too severe a responsibility on directors for their companies' liabilities. When a civil liability provision was finally enacted, in the form of section 214 of the Insolvency Act 1986, it introduced liability for "wrongful trading," but this concept was more limited than that recommended by the Cork Committee and reflected a legislative caution against watering down the law of limited company liability. The provision focused on the making of directors liable for creditor losses when the former failed to take appropriate steps where the avoidance of insolvent liquidation was not a reasonable prospect.

Although Australia had abandoned the concept of fraudulent trading in the early 1960s, it also encountered substantial difficulty with its illicit trading provision. The difficulties and deficiencies of the provision introduced in the 1960s, led to its repeal and ultimate replacement by section 374D[14] which, despite its obvious connection with the earlier provision, differed from it in certain important respects.

Section 374D(1) maintained the power of the court to impose on individuals a personal liability for debts of the company, but it remained the case that this applied only where there had first been a conviction for an offence under section 374C. Under section 374C,[15] this criminal liability was imposed if the company officer was "knowingly a party to the contracting of a debt," and at that time had "no reasonable or probable grounds or expectation . . . of the company being able to pay the debt."[16] Section 374D allowed an application by the relevant Minister or a prescribed person, which included a creditor; and the court had a discretion "if it thinks proper to do so" to declare that the defendant is "personally responsible- . . . for amounts up to the payment to the company of such amount as is required to satisfy all or any of the debts of the company as the Court directs."

10. *Re Patrick and Lyon Ltd* [1933] Ch 786.
11. Para 1777.
12. A Walters, "Enforcing Wrongful Trading—Substantive Problems and Practical Incentives" in BAK Rider (ed), *The Corporate Dimension* (Bristol, Jordans, 1998) at 146.
13. Paras 1782–1783.
14. Tasmania retained the original provision, but in an amended form.
15. See UCA, section 374E. This included (but is not confined to) a company which was in the course of being wound up: see *MacPherson v. Carrigan; Ex parte Carrigan* (1978) 3 ACLR 880. It was not necessary that the debtor company be in liquidation: *3M Aust. Pty Ltd v. Watt* (1984) 2 ACLC 621.
16. See UCA, section 374C(1). See *Corporate Affairs Commission v. Karounos* (1985) 3 ACLC 410.

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This was followed by section 556 of the Companies Code that was introduced into the companies' legislation of each Australian state from 1981 until the advent of the Corporations Law in 1990. This section provided that if the company incurred a debt when there were reasonable grounds to expect that the company would not be able to pay all its debts as and when they fell due, a director of the company or any person who took part in the management of the company at the time, was guilty of an offence.[17] Criminal penalties, including imprisonment, were imposed. In addition, the company and that person were jointly and severally liable for the payment of the debt. The section then gave creditors of the company a personal civil right of action against the directors[18] whether or not any criminal conviction had been obtained, provable on the balance of probabilities.[19] The right of action of creditors was theirs alone—it could not be exercised by the liquidator on their behalf.[20]

Australian insolvency law was substantially reviewed by the Australian Law Reform Commission in its 1988 *General Insolvency Inquiry*.[21] The Commission's report (commonly known as 'the Harmer Report') criticised the Australian law as it then stood, and stated:

> "At no stage since its introduction in 1961 has the liability of a director for incurring debts without a reasonable prospect of payment been in a form appropriate for giving creditors (considered as a class) a suitable remedy."[22]

The Harmer Report listed the various deficiencies, including: that there was a need to obtain a criminal conviction before civil liability could be imposed; that criminal and civil proceedings were lengthy; the liquidator could not take action for all creditors; and that there could therefore be the prospect of a multiplicity of actions by each creditor in respect of their particular debts.

The Report stated the philosophy that has become the cornerstone of Australian insolvent trading law, by saying that the responsibility of a director for insolvent trading:

> "has not, thus far, [in 1988] been expressed as a positive duty owed to the company to prevent the company from engaging in that activity. Former and existing legislation has centred upon the incurring of a particular debt or debts and subjecting a director to notional joint responsibility for the debt or debts. This produces a series of isolated examinations of each instance of the incurring of a debt. Yet the real abuse is permitting the company to trade after a point where, on an objectively considered basis, the company is unable to pay all its debts."[23]

A new provision, now section 588G, was enacted to provide primarily for civil liability, with criminal liability being retained for actual dishonesty. Insolvent

17. Section 556(1).
18. *Watt v. 3M Aust. Pty Ltd* (1984) 9 ACLR 524. The creditors concerned had no cause of action under section 556 of the Code until the company was wound up or was in the course of being wound up: *Bush v. Wright* (1984) 3 ACLC 311.
19. Section 556(3).
20. *Ross McConnel Kitchen & Co. Pty Ltd (in liq.) v. Ross (No. 2)* (1985) 3 ACLC 326.
21. Report No 45, 1988—see <www.alrc.gov.au>
22. Para 279.
23. Para 280.

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trading is also subject to a civil penalty regime whereby the corporate regulator [the Australian Securities and Investments Commission ("ASIC")] may itself pursue an insolvent trading claim against directors for the imposition of a civil penalty, up to A$200 000, as well as civil compensation. Such claims are required to be proved at the civil standard only.[24]

One of the main features of section 588G is that it imposes a positive duty on directors to prevent debts being incurred by the company whilst it is insolvent. Hence, it imposes an obligation on directors to be proactive in monitoring the company's performance and ensuring that debts are not being improperly incurred, to prevent the company from engaging in insolvent trading.

This imposition of a positive duty on directors goes beyond the mere lifting of the corporate veil. A director who has no or limited involvement in the company's incurring of a debt, may not have been liable under the old law if there was no positive action on their part upon which liability could be attached. Under the current Australian law, inactivity or lack of involvement will not matter, if the director cannot show that positive steps were taken to prevent the insolvent trading occurring. Likewise under the UK provision, a director might be held liable for failing to do something that seeks to minimise the potential loss to the company's creditors.[25]

III. The Provisions

It is appropriate and helpful for purposes of exposition to briefly explain the critical parts of the respective provisions.

Section 214 provides, in effect, that the liquidator of a company that is in insolvent liquidation (effectively a company's assets are not sufficient to pay its debts at the time of liquidation[26]) may commence proceedings against any of the company's directors, and these proceedings may seek an order that the director(s) against whom proceedings are brought make such contribution to the company's assets as the court thinks proper.[27] A director may only be liable where at some time before the commencement of the winding up of the company, he or she knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation.[28] Courts are not to make an order against directors if satisfied that after the directors first concluded or ought to have concluded that there was no reasonable prospect that the company would avoid going

24. A recent example is *ASIC v Plymin* [2003] VSC 123, and [2003] VSC 230.

25. Mannolini (above n 2 at 18) has said this shows that Australia has been "far bolder than the United Kingdom in adopting an interventionist strategy in the regulation of managerial misconduct in corporations." However, while that might be true as far as the way that the courts have interpreted the Australian provision, that conclusion cannot be drawn just from a study of the respective legislation.

26. Section 214(6). "Insolvent liquidation" in this sub-section means that the company is insolvent on a balance sheet basis. This involves the company's assets being less in value than its debts and the costs of its liquidation. Hence, for a director to escape liability the company must be able to discharge all of its debts and cover the costs of its liquidation.

27. See section 214(1).

28. See section 214(2).

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into insolvent liquidation, they took every step with a view to minimising the potential loss to the company's creditors as they ought to have taken.

In contrast, section 588G is but one of many sections that deals with insolvent trading. Section 588H through to section 588Y provide the legislative regime that seeks to regulate insolvent trading. The legislation provides that directors have a duty to prevent their companies incurring debts at the time of insolvency. The broad scheme of the insolvent trading regime is that the liquidator of the company may recover from the director "an amount equal to the amount of the loss or damage" suffered by the company as a result of the insolvent trading.[29] Such an amount is then available for the company's unsecured creditors, that is, in priority to any secured claims.[30] Significantly, a creditor may itself pursue the directors for insolvent trading, with the liquidator's consent or with leave of the court.[31] A further significant feature of the insolvent trading regime is that it contains provisions imposing liability on a holding company for the insolvent trading of its subsidiary. Australian law, like that in the UK and many other jurisdictions, makes no allowance for the insolvency of a corporate group—insolvent trading has to be assessed on a company by company basis.[32]

One comparison worth noting at the outset is that while the Australian provisions actually refer to insolvent trading, there is no reference to "wrongful trading" in the UK provision, save in the heading to the section. Further, while the Australian provisions establish what insolvent trading amounts to, the UK provision does not explain what constitutes wrongful trading. The provision does set out what will lead to an action under section 214, but it is highly debatable as to whether a breach of section 214 involves trading that is "wrongful". As Marion Simmons QC has noted,[33] the Oxford Dictionary definition of "wrongful" is "full of wrong, injustice, or injury; marked . . . by wrong, unfairness or violation of equity." This definition seems to suggest that there is a need to establish blame, something that the Cork Committee never envisaged.

While each jurisdiction started virtually from the same place, each has gone off on its own journey, and while there are clear similarities between the provisions, there are patent differences that we wish to explore in the following parts of the article. Leaving aside fraudulent trading, while the UK, since 1980, has only had one attempt at constructing an acceptable wrongful trading provision, the Australian legislatures have made several attempts. This could mean a number of things. It could mean that the UK lawmakers are content with the provision that applies and that it is just about right, or they have neglected the need to change. The state of affairs existing in Australia could mean that the tack on which the legislature has set itself is wrong or that the legislature has been gradually perfecting the insolvent trading provision.

29. Section 588M(2).
30. Section 588Y.
31. Section 588R.
32. Section 588V, which can impose liability on the holding company.
33. "Wrongful Trading" (2001) 14 *Insolvency Intelligence* 12.

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IV. The Legislative Aims

The aim of the illicit trading provisions in the UK and Australia is to stop directors from continuing to trade while their companies are on the slide into insolvency, thereby, hopefully, reducing the potential loss suffered by creditors.

The intention behind the legislation in both countries was to place greater responsibility on directors when their company is in financial strife,[34] and to permit liquidators to seek recompense for creditors in relation to the actions of honest, but reckless and cavalier, directors[35] when they failed to demonstrate responsibility, or where directors merely sat passively while their company collapsed around them. It is also probably permissible to see the introduction of the provisions as a deterrent: to deter directors, by threat of civil liability or civil or criminal penalty, from allowing their company to incur debts and otherwise failing to take action to prevent or limit damage to creditors.[36] The intention of the respective legislatures was to encourage directors to monitor the financial affairs of their companies.

So, there is with both approaches a positive requirement of directors that they are to prevent losses, which may well damage the interests of creditors. The provisions exist to encourage a commercially moral standard of conduct from directors of companies,[37] and by so doing improve the standards of directors,[38] and to protect creditors from the abuse of the limited liability principle.

V. Conditions for Liability

The Australian provisions focus on the incurring of debts by the director against whom insolvent trading proceedings have been mounted. The Cork Committee had in fact recommended something akin to section 588G. But this approach was rejected by the UK government, with the end result that a person may be held liable for wrongful trading without incurring further debts, or conversely a director might not be held liable even if further debts were incurred. The latter situation might occur where directors reasonably believe that if there was a halt to business and a forced sale of assets, creditors would be prejudiced, and it would be better to go on and either take action to rescue the company's business or sell assets in any orderly, and beneficial, fashion. The fact is that the UK provision is potentially broader and can encompass a greater range of conduct, because all sorts of activity can lead to liability, such as selling company assets at an undervalue and the payment of excessive remuneration to directors,[39] as well as inactivity.

To be liable pursuant to the Australian provisions, several elements need to be proved, namely:

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34. For example, see Explanatory Memorandum to the Companies Bill 1982 (Cth) at para 1219.
35. Cork Report at para 1782.
36. D. Morrison, "The Australian Insolvent Trading Prohibition—Why Does It Exist?" (2002) 11 *International Insolvency Review* 153 at 161.
37. See *Re D'Jan of London Ltd* [1993] BCC 646; *Woodgate v. Davis* [2002] NSWSC 616.
38. P. Godfrey and S. Nield, 'The wrongful trading provisions—all bark and no bite' (1995) 11 *Insolvency Law & Practice* 139.
39. S. Griffin, *Personal Liability and Disqualification of Company Directors* (Oxford, Hart Publishing, 1999) at 64.

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- A respondent was a director when the company incurred the debt;[40] the section is limited to directors, although the definition of directors is broad enough to encompass *de facto* and shadow directors;[41]
- the company was insolvent at the time when the debt was incurred or became insolvent as a result of the incurring of the debt;[42]
- at the time when the debt was incurred there were reasonable grounds for suspecting that the company was insolvent or would become insolvent as a result of the debt incurred. Suspicion must involve "a positive feeling of actual fear or misgiving amounting to an opinion which is not supported by sufficient evidence"[43] and is a lower threshold than expecting or knowing that the company was insolvent;[44]
- the director was aware at the time of the incurring of the debt that there were grounds for suspecting the insolvency of the company or a reasonable person in a like position in a company in the company's circumstances would have been aware of the company's insolvency.[45]

The section is contravened by the director "failing to prevent the company from incurring the debt" in the circumstances described.

The conditions for liability in the UK counterpart are:[46]

- The company is in insolvent liquidation.[47]
- At some time prior to the commencement of winding up, the respondent knew or ought to have concluded, that there was no reasonable prospect of the company avoiding going into insolvent liquidation; and
- the respondent was at that time a director of the company. Like the Australian provision, *de facto*[48] and shadow directors[49] are covered.

The second of these conditions warrants some comment. It means that the conclusions which a director ought to reach, are those which would be known or ascertained by a reasonably diligent person having both the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as carried out by the director in relation to the company, and the general knowledge, skill and experience that the director personally possesses.[50]

Both the UK and Australian provisions factor objective elements into the liability question. In Australia a director will be liable if there were, when debts were

40. Section 588G(1)(a).
41. See for example *Deputy Commissioner of Taxation v. Austin* (1998) 16 ACLC 1555.
42. Section 588G(1)(b). Insolvency in Australia is based on the cash flow test, being an inability to pay all debts as and when they fall due. For a discussion of the provision that provides for a definition of insolvency (section 95A of the Corporations Act), see A Keay, "The Insolvency Factor in the Avoidance of Antecedent Transactions in Corporate Liquidations" (1995) 21 *Monash University Law Review* 305; J. Duns, "Insolvency: Problems of Concept, Definition and Proof" (2000) 28 *Australian Business Law Review* 20; A. Keay and M. Murray, *Insolvency: Personal and Corporate Law and Practice*, 4th ed, (Sydney, Law Book Co, 2002) at 13–17.
43. *Queensland Bacon Pty Ltd v. Rees* (1966) 115 CLR 266.
44. Section 588G(1)(c).
45. Section 588G(2).
46. Section 214(2).
47. Although it is not stated in the Australian provisions, liability for insolvent trading can only arise on the formal insolvency of the company.
48. *Re Hydrodam (Corby) Ltd* [1994] BCC 161.
49. Section 214(7).
50. Section 214(4).

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incurred, reasonable grounds merely to suspect that the company was or would become insolvent.[51] The UK standard is higher, in that it must be demonstrated that the director ought to have concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation. In determining what standard has to be adhered to, the following can be taken into account by a court in determining liability: the facts which a director ought to know or ascertain, the conclusions which ought to have been reached, and the steps that ought to have been taken are those which would be known, ascertained or taken by a reasonably diligent person who has the knowledge, skill and experience that may be reasonably expected of a person carrying out similar functions.[52]

But, besides the objective element just adverted to, UK courts are also to take into account a subjective element, namely the general knowledge, skill and experience of the director. The inclusion of the subjective element does not serve to reduce the standard of knowing or ascertaining, rather it heightens it if the director is experienced. Hence, a director who is well-qualified and with significant experience cannot escape liability simply by demonstrating that a reasonable director would not have concluded that insolvent liquidation was inevitable, if a person with his or her credentials would have seen insolvent liquidation coming. Conversely, if a director is not very experienced or has qualities that do not match that of the reasonable director, he or she is not able to take advantage of that and be protected from liability. All of this means that a director will be judged by two tests and the director has to attain the higher standard set by the tests. There is no subjective element present in the Australian provisions, (save for the defences available, which we discuss late), with the result that provided a director meets the objective standard, it matters not that he or she was a very experienced director and did not do what a reasonably diligent person with his or her experience would have done. Nevertheless the Australian provisions are based on the lower level of needing to prove only that there was reasonable suspicion in the mind of the director that the company was insolvent.

As we have discussed, both the UK and the Australian provisions require positive action from directors. However, the positive action required is, of course, different in each case. A reasonable step for directors to take in the UK might well be refraining from incurring any more debts, while failing to do so in Australia would constitute a breach of section 588G. However, the UK provision appears to allow some greater latitude to directors in determining their company's fate without the danger of personal liability as they are not specifically forbidden from incurring further debts.

That latitude also has the potential for producing uncertainty for UK directors. Put another way, the point at which liability is attracted seems to be more definite in the Australian provisions. They identify it as either the point where a debt is incurred at a time when the company is insolvent, or the point where a debt is

51. Section 588G(1)(c).
52. Section 214(4).

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incurred that will cause the company to become insolvent.[53] In contrast, the point of liability under the UK provision is most imprecise, being when the director knew or ought to have concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation.[54]

While the threshold point at which liability is attracted seems to be more definite in the Australian provisions, this is perhaps illusory given the potential lack of precision of the two elements involved. The particular point in time that insolvency occurs, on a cash flow basis, can be difficult to establish,[55] as much in retrospect by a liquidator in a claim for insolvent trading as at the time when the company is experiencing financial difficulties, and the directors have to assess the company's position. It will often be a matter of establishing the insolvency of the company through expert evidence, given by the liquidator in the insolvent trading proceedings; and it will often be a matter of directors obtaining expert guidance and advice, if they so choose, at the time that debts are being incurred.

In addition, even if the point of insolvency can be proved, there are other uncertainties in the Australian provisions. Proof of reasonable grounds for suspecting the company's insolvency, of which the director is or reasonably should have been aware, can be difficult, although these will often readily flow from proof of the company's insolvency. As well, the actual time of the incurring of a debt can be difficult to establish, for example in relation to the entry into a guarantee, or an insurance contract, or the incurring of tax liabilities.[56] Nevertheless, these are matters of commercial and legal reality. Australian law in effect is definite as to when liability will arise; it expects that directors will take heed of this potential liability in their conduct. This would properly involve a conservative approach to any assessment of insolvency and a proactive and continued assessment of the financial position of the company. A director's duty is to prevent insolvent trading occurring and, taken alone, the law allows little scope for directors to do other than cease trading.

In that regard, it may be said, and in comparison with the UK provision, that the Australian approach unduly restricts the ability of directors to deal with their company's financial situation in a flexible and entrepreneurial manner. Perhaps, there should be some latitude allowed to a director to continue to trade in a reasonable expectation that, although the company is insolvent, it is most likely to be able to trade out of its difficulties. With particular reference to the UK provision, the latitude allowed to the UK director is that, despite immediate insolvency, if there were some prospect, even if minor, that the company would avoid going into insolvent liquidation, the director could continue to allow the company to incur debts without being concerned about personal liability. Further, that concern could be allayed even if there were no reasonable prospects of avoiding liquidation, if, in allowing the company to continue to trade, the directors "took every step with a view to minimising the potential loss to the company's creditors as . . . (they)

53. Section 588G(3)(b). See text above accompanying notes 39–44.
54. Section 214(2)(b).
55. See Keay, "The Insolvency Factor" above n 42.
56. N. Coburn, *Insolvent Trading: A Practical Guide*, 2nd edn, (Sydney, Law Book Co, 2003) at 45–52.

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ought to have taken." The strictness of the obligation on a director to prove that "every step" was taken is discussed later.

The question may really come down to how severely law and society should regard illicit trading. In Australia, where the provisions most clearly state that a company shall not be allowed to incur one debt whilst it is insolvent, the law obviously takes a severe view. Whilst that restrictive regime may serve to provide some clear protection to creditors, it may not ultimately serve their purposes if some other more flexible arrangement would have produced a financially more favourable result.

At this point we should explain the broader context in which the Australian insolvent trading provision operates. This may serve to counter any criticism of perceived inflexibility of the Australian provisions.

A. The Australian context

The Australian provisions should really be seen in the broader context of legal policy and of Australian attitudes to insolvency. To a large extent, these are the same as in the UK. Thus, whilst insolvency is accepted as an inevitable occurrence, and a "fresh start"[57] ought to be allowed to those who suffer it, Australian law expects those who seek to benefit from the discharge of their liabilities to have acted properly during their company's demise. If that conduct was not acceptable, the benefits of formal insolvency may be foregone. The UK position is no different.

But while Australian law has high expectations of what is expected of directors, and is relatively inflexible in terms of when that liability arises, it also has sympathetic and readily accessible arrangements whereby directors can be assisted when their company is in distress. That assistance is provided through the voluntary administration processes of Part 5.3A of the Corporations Act.

In Part 5.3A, section 435A provides:

> "The object of this Part is to provide for the business, property and affairs of an insolvent company to be administered in a way that:
>
> (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
> (b) if it is not possible for the company or its business to continue in existence—results in a better return for the company's creditors and members than would result from an immediate winding up of the company."

Directors of an insolvent company, or even a company that is 'likely' to become insolvent, can place their company into administration on a board resolution being passed. The company immediately comes under the control of the administrator (a registered company liquidator) who, in consultation with the directors

57. This is a concept of insolvency law that is aimed at ensuring that the insolvent's debts are discharged in exchange for some benefit for creditors. It has its genesis in the English Act of 1705 (3 Anne c 17).

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and the creditors, seeks to save the company or otherwise resolve its fate. Any personal liability of the directors for the company's trading after that date may be negated; any liabilities for insolvent trading or other liabilities incurred in the period leading up to the company's entry into administration may also be stopped.

In contrast, while the threshold of liability being imposed on UK directors appears to be higher and more flexible in scope as to the timing of its application, there have been, certainly hitherto, less flexible arrangements available for those directors when they do decide to respond to their companies' financial stress.

Thus, while insolvent trading in Australia is seen as a significant breach of the law, enough to warrant high civil damages, and civil and criminal penalties, and is more precisely imposed, the voluntary administration processes give significant recourse to directors to address the insolvency in an ordered way.

In terms of the purposes of insolvency law, the Australian provisions, and the context in which they operate, may in fact be seen as more flexible and useful than the UK equivalent. This may change, depending on the way that the new administration scheme introduced in the UK recently, by the Enterprise Act 2002, works out in practice. The new scheme does embrace some of the aspects of the Australian voluntary administration regime, including the possibility of the appointment of administrators without the need for a court order.

There is a further legislative context in which the insolvent trading provisions operate in Australia. This context relates to other legislative prohibitions on directors allowing their companies to trade, in effect, whilst insolvent, even in the absence of incurring additional debt. Australian taxation legislation imposes personal liability on company directors in respect of their unpaid company taxes payable in respect of their employees' income tax. This personal liability of directors was introduced in l993 as, in effect, a trade-off for the loss of the Commissioner of Taxation's right to priority in insolvencies.[58] The liability is imposed on company directors personally if the company's tax is unpaid. The regime provides for the issue of a notice by the Commissioner of Taxation—a "director's penalty notice"—which specifies the liability and gives the directors four options: to have the company pay the tax; to compromise the payment of tax owed; to place the company into liquidation; or to place the company into voluntary administration. If any of those four options are not adopted, within the l4 days, the directors may then be sued personally for the liability.[59]

Under this regime, there is therefore a definite incentive for directors to at least ensure their companies' taxes are paid. The fact that they are not paid may or may not indicate insolvency. In Australia, and in the UK, it is not uncommon for directors to use the collected taxes of their employees as a float or "cash cow" before remitting them, somewhat delayed, to the Tax Commissioner. That may indicate an unwillingness to pay rather than an inability to pay, in terms of the definition of insolvency in Australia. Nevertheless, it is also often the case, and is the subject of

58. This is something that has recently occurred in the UK: Enterprise Act 2002, section 251.

59. See Income Tax Assessment Act 1936 Part VI Division 9.

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frequent judicial comment, that unpaid tax liabilities are often an early indicator of insolvency.[60]

In the context of our assessment of insolvent trading, these tax provisions are significant in the sense that they provide another overlay of responsibility for directors, enforced by the threat of personal liability, for the financial distress of their companies. Not only must directors be aware of their potential liability for insolvent trading, but also for non payment of tax liabilities.

That tax regime in itself can operate beneficially. Whilst there is limited direct regulation of insolvent trading at the time of its occurrence,[61] the Tax Commissioner will often serve notices on the directors at any time in the company's financial history. In that regard, the Tax Commissioner often serves as a *de facto* regulator of the insolvency laws. The notices serve as a reminder to the directors that in respect of that creditor at least, they must act financially correctly, and this includes acting in accord with what is expected of directors of an insolvent, or likely to become insolvent, company. That is, on being served with a penalty notice, a director may well focus on the fact that the company is in fact insolvent, and respond by putting the company into some formal insolvency regime. The reality often is that service of such penalty notices will often coincide with the company's more general financial difficulties which the actions of the Commissioner will bring to the fore.

Whilst this tax provision appears to be severe, it must be seen in the context of what Australian law seeks to achieve, that is, the proper and measured response of directors to their company's financial difficulties.[62]

This broader context in which insolvent trading sits in Australia should be further explained in terms of available defences to insolvent trading and tax liability provisions. These reinforce the emphasis that Australian law gives to ensuring directors seek to prevent insolvent trading by providing defences linked to the decision to put the company into administration. They are discussed later in section VIII, under the "Defences."

While under Australian law there is the "stick" of severe consequences for directors who fail to respond to their company's insolvency, the law also provides the "carrot" for directors, that is, the ready access to Part 5.3A, however unpalatable that may be in terms of facing up to the company's poor financial position. With this "carrot and stick" approach of Australian law, it may be little wonder that voluntary administrations exceed liquidations in number.[63]

In sum, if Australian law on insolvent trading existed on its own with no refinement, it may be, in comparison to its UK counterpart, fairly criticised for unduly

60. See *Didovich v. ASIC* [1998] NSWSC 534.

61. ASIC's insolvent trading program, based in part on analysis of accounts of trading companies, is one attempt to enforce and regulate insolvent trading in the period before any liquidation: see <www.asic.gov.au> The ASIC will itself wind up an insolvent company: *ASIC v. ACN 102556098 Pty Ltd* (2004) 48 ACSR 350.

62. An additional provision in respect of tax liabilities is section 588FGA of the Corporations Act, by which directors indemnify the Commissioner in respect of any repayments he may be ordered to make to a liquidator that were made by the company as avoidable preferences.

63. There were 638 administrations in the three months from January to March 2004, compared with 500 court-ordered liquidations: see <www.asic.gov.au>

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restricting directors, or at least be criticised for not adequately pursuing the policy aims of insolvency law in seeking to uphold proper conduct of directors, but that is, as explained earlier, not the case.

B. The UK approach

This positive comment on Australian law should be tested by an examination of the UK provision in its best light. There is some validity in the comment that the UK provision:

> "provides directors with more latitude to continue with the company's activities where the company has fallen on hard times. It allows them to take a long-term view of the situation and, so long as there is reasonable prospect of recovery, there will be no contravention of the provision even though the company continues while insolvent."[64]

The recent decision in the English High Court in *Re Continental Assurance Co Ltd*[65] seems to bear this out. This was a case that lasted for 72 days and "required the court to grapple with a welter of complex issues, both factual and legal".[66] The result was a mammoth judgement delivered by Park J. The company involved, a small insurance company, entered liquidation in early 1992. It had experienced heavy losses during 1990. The liquidator's argument against the directors was that the company should have terminated trading in mid-1991, which was about the time when the losses were first reported. The question in the case was whether in mid-1991 the directors knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation. Park J found for the directors. He held, *inter alia*, that the company was not technically insolvent in mid-1991 and that the directors had acted reasonably in taking the view that the company could continue to trade while a buyer for its insurance business was sought.

Theoretically directors in the UK are able to engage in more risk-taking and a longer term view than those in Australia, and in fact are able to continue to trade while insolvent, carefully juggling their companies' competing liabilities. With financially intelligent directors, and some good luck, the UK regime will often work. The directors may properly and sensibly seek financial assistance and advice as they tread the fine lines set for them by section 214. But the reality may be that many UK directors will fail in this task, and this will be so for many because they will not be able to deal with the difficulties encountered. This contrasts with the Australian position that in effect puts an insolvency administrator in charge of that financial juggling, bringing to bear on the company the benefit of his or her insolvency experience and expertise and in circumstances where creditors are required to stand back while a solution is examined. Nevertheless this does involve a formal insolvency administration the entry into which, in itself, may bring about the untimely end of the company. It must be noted that the UK has had an

64. VCS Yeo and JLS Lin, 'Insolvent trading—a comparative and economic approach' (1999) 10 *Australian Journal of Corporate Law* 216 at 220–221.

65. [2001] BPIR 733.

66. A. Walters, "Wrongful Trading: Two Recent Cases" [2001] *Insolvency Lawyer* 211 at 211.

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administration regime[67] available to struggling companies, that are either insolvent or likely to become so, but it has not been used frequently, compared with the scheme in Australia, because it has not been readily accessible, due to the need for a court order. Things are likely to change as the law has been amended to permit appointments of administrators extra-judicially,[68] and there has been an increase in the number of administrations since the advent of the new type of regime.[69] But in contrast to Australia it has not been a deliberate policy of government to see administration as a way-out for directors who are concerned about wrongful trading. We must add that putting the company into administration may not save directors from being liable for illicit trading in either the UK or Australia if liquidation follows administration, as it might well do.

VI. Compensation

Under section 214 the compensation that may be ordered by a court has been said to be the amount by which the net deficiency of the company increased between two dates. First, the date when the directors know or ought to have known that insolvent liquidation was unavoidable, and second, the date of the start of the liquidation.[70] The fact of the matter is that judges are granted a wide discretion by section 214. They do not have to order that the director make a payment, even if he or she has engaged in wrongful trading. A judge may, if deciding that a payment should be made, determine the actual amount. All of this makes it difficult for a liquidator to gauge a likely award by a court.[71]

It has been suggested that as the court has been given a wide discretion under section 214 in deciding on the amount of contribution that is to be paid,[72] it could consider the culpability of the director in the wrongful trading, with the effect that an honest, naïve director might be viewed with leniency while a reckless director might evoke little sympathy. With respect, this is questionable as the intention behind section 214 is to provide compensation for creditors rather than penalise directors, and in *Re Produce Marketing Consortium Ltd*,[73] while the court said that the amount of compensation to be ordered to be paid is in the discretion of the courts,[74] it was said that the section 214 jurisdiction was compensatory and not penal.

67. Part II of the Insolvency Act. The scheme has been amended substantially by the Enterprise Act 2002.
68. Pursuant to the Enterprise Act 2002. Now see Insolvency Act, paras 14 and 22 of Schedule B1.
69. The new scheme for administrations became operative on 15 September 2003. In the last quarter of 2003 (in England and Wales) there were 233 administrations. In the first quarter of 2004 there were 331 administrations, with 392 administrations in the second quarter and in the third quarter there have been 421 administrations. (See <http://www.dtistats.net/sd/insolv/table3. htm>). In the quarters preceding the introduction of the corporate insolvency provisions of the Enterprise Act there was a steady increase in the use of administrations (from 1997), but the highest numbers were in 2001 with 698 administrations. If the figures for the rest of 2004 continue in the same vein as for the first three quarters, there will be nearly twice as many administrations in 2004 as there were in 2001.
70. *Re Produce Marketing Consortium Ltd* (1989) 5 BCC 569.
71. Above n 12 at 152.
72. Above n 39 at 83.
73. (1989) 5 BCC 569.
74. *Ibid.* at 597.

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Hence, it is likely that the amount of compensation will not depend on the state of mind of directors, but on the loss sustained by the company, and the ultimate prejudice to creditors.[75]

The criticism of the present system of compensation in the UK has been that the persons who have been the real victims of the wrongful trading, namely those who became creditors subsequent to the time when wrongful trading commenced, do not receive all of the compensation, for some of it will go to persons who had become creditors prior to the advent of wrongful trading.[76] The same position applies in Australia. That is, moneys recovered in respect of an insolvent trading claim go to meet all unsecured creditors of the company, not only those creditors who have suffered the loss or damage in respect of which the claim was brought. However the Australian provision allows less latitude to the courts in how the loss or damage is assessed, compared with the broad discretion given under section 214.

VII. **Applicants**

Although the Cork Report recommended that applications should be made by liquidators, receivers and administrators, the fact is that the only person who is able to act as the applicant for an order under section 214 is the liquidator. In practice this is the case in Australia. However, as indicated earlier, it is possible in Australia, where no application has been made by a liquidator, for a creditor to seek to take proceedings. To do so the creditor must obtain the consent of the liquidator[77] or give notice to the liquidator after six months from the commencement of the winding up that it is intended to begin proceedings against a director and asking the liquidator to give to the creditor, within three months, either a consent or a statement of reasons why the liquidator is of the opinion that proceedings should not be initiated.[78] If no consent is given within the three months the creditor may proceed against the director.[79] If a reason for not proceeding is given by the liquidator, it must be produced to the Court in the action in which proceedings have been or are initiated.[80]

At least under the Australian provision a creditor may be able to take action if the liquidator fails to do so,[81] but in the UK there is no such opportunity and this might prejudice creditors, for instance where a liquidator is unduly cautious about

75. Note that Dr Fidelis Oditah says that "the absence of a fraudulent intent is not, on its own, a reason for fixing the amount at a nominal or low figure." ("Wrongful Trading" [1990] LMCLQ 205 at 215).
76. A. Hicks, "Advising on Wrongful Trading: Part 1" (1993) 14 *Company Lawyer* 16 at 17.
77. Section 588R. An example of a case where a creditor obtained the consent of the liquidator is *Fabric Dyeworks (Aust) Pty Ltd v. Benharron* (unrep, Vic Sup Ct, Smith J, 29 May 1998). Under the predecessor provision, section 592, creditors were permitted to bring proceedings.
78. Section 588S.
79. Section 588T(2). For a case where proceedings were initiated by a creditor, see *Metropolitan Fire Systems Pty Ltd v. Miller* (1997) 23 ACSR 699.
80. Section 588T(3).
81. Although such claims by individual creditors are rarely pursued in practice.

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instituting proceedings.[82] As well, the corporate regulator in Australia, ASIC, may itself institute proceedings for insolvent trading, and obtain not only civil penalties against the directors, but also orders for civil compensation that will benefit the creditors.

A further drawback with only the liquidator being permitted to initiate proceedings is that he or she will only be concerned about how much money can be obtained to benefit the creditors. Consequently, the public function of the provisions (discussed later[83]) will not be fulfilled.

VIII. **Defences**

The defences that are provided for in the provisions in both countries are based on objective tests. The solitary defence to wrongful trading proceedings is found in section 214(3) and involves the director having to satisfy the court that after becoming aware that the company was bound for insolvent liquidation, he or she took "every step with a view to minimising the potential loss to the company's creditors as ought to have been taken."

In contrast, under the Australian provision there are four alternative defences available. These are contained in section 588H. To defend successfully an action a director must prove *one* of the following:

- that when the debt was incurred the director had reasonable grounds to expect (not merely suspect) that the company was solvent and would remain solvent even if the debt was incurred;[84]
- that when the debt was incurred the director had reasonable grounds to believe, and he or she did believe, that a subordinate was competent, reliable and responsible for providing adequate information about the company's solvency and the director expected, on the basis of this information, that the company was solvent and would remain solvent;[85]
- that when the debt was incurred the director, because of illness or for some other good reason, did not take part in the management of the company at that time;[86] or
- that the director took all reasonable steps to stop the company from incurring the debt.[87]

82. It is possible that creditors could apply to the courts for a review of the decision of the liquidator not to proceed with an action. This could be done pursuant to section 168(5) of the Insolvency Act 1986 for compulsory liquidations, and under section 112 of the Act for voluntary liquidations. See, A Keay, "The Supervision and Control of Liquidators" [2000] *The Conveyancer and Property Lawyer* 295.
83. See text late relating to notes 119–128.
84. Section 588H(2). Coburn submits that the standard of reasonableness likely to be applied is the level of competence and care of a director for the relevant corporate position: above n 56 at 72. The section 588H(2) defence was first considered in *Stargard Security Systems Pty Ltd v. Goldie* (1994) 13 ACSR 805; see also *Fryer v. Powell* (2002) 139 *Federal Law Reports* 433.
85. Section 588H(3). As Coburn notes, the defence does not indicate what inquiries should be made of a person's competence (above n 56 at 82).
86. Section 588H(4).
87. Section 588H(5).

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The UK provision seems to be considerably less generous. The use of the words 'every step' in section 214(3) might be said to be too strong, for if one wanted to be strict, the defence is, except in rare cases, almost impossible to establish. For instance, if a company has entered into insolvent liquidation it is quite possible that while a director took steps to minimise creditor loss, he or she did not take 'every possible step' or else insolvent liquidation would not have occurred. The provision fails to cater for the position where a director is unable to take every step to minimise potential loss to creditors. For example, what if a director is ill or overseas? In the Australian case of *Androvin v. Figliomeni*,[88] a director was held not to be liable for debts incurred while he was overseas. The director had indicated to the other directors, before his departure, that he would not be in a position to act as a director or accept any responsibilities during his absence. As a result there had been a fundamental change in the working operations of the company. It is very likely that a British director would not, in similar circumstances, be saved from liability.

The Australian provision sets out the circumstances where a defence might be sustained while the UK's is extremely vague. What constitutes "every step"? There is no indication whatsoever from the legislation as to its meaning and, in any event, it is likely to depend on each facts situation. Taking advice (and recording the fact that meetings took place) from appropriate professionals, and acting on it, is probably a good starting point.[89] Resignation might be considered by individual directors, but it is not guaranteed to extricate a director from liability because if he or she resigns then it is not possible for the director to take action to minimise losses for creditors.[90] The termination of business, while it may seem to be the most sensible and proper thing to do, can in fact be the worst thing, especially in the short term, as it may be detrimental for all concerned, particularly the creditors. Trading on the basis of cash purchases may well not be regarded as sufficient as overheads will still mount up.[91] Commentators have hazarded suggestions as to what might be sufficient to excuse a director, but the fact is that they can only be seen as suggestions and nothing more than that.[92]

A Cork Report recommendation that was disregarded by the government, would have attenuated the strictness of section 214. This was that a director should be able to apply to a judge in Chambers for relief in advance.

> "The Court will have power to declare that, however matters turn out, future trading of the kind which it has sanctioned should not be capable of giving rise to any claim for wrongful trading."[93]

One can understand why the government was apprehensive about implementing such a recommendation. It might well have been seen to be unworkable and

88. (1996) 14 ACLC 1461.
89. Especially in light of the recent case of *The Liquidator of Marini Ltd v. Dickensen* [2003] EWHC 334 (Ch); [2004] BCC 172.
90. A. Hicks, "Advising on Wrongful Trading: Part 2" (1993) 14 *The Company Lawer* 55 at 58.
91. Above n 75 at 214.
92. For example, see R. Goode, *Principles of Corporate Insolvency Law*, 2nd edn., (London, Sweet and Maxwell, 1997) at 472–473.
93. Para 1798.

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holding a court as a hostage to fortune, but it would have had the advantage of providing comfort to an honest and conscientious director.

Perhaps it would be fairer if the UK provision adopted the Australian wording of "reasonable steps" rather than the stricter and more severe, "every step." The Australian provision also has the further definition that the taking of reasonable steps is to be assessed in terms of the directors' availing themselves of the Part 5.3A administration regime. Now that the UK has introduced what appears to be a more flexible and accessible administration regime, this option is now viable.

Notwithstanding all of this, there is, it would appear from the recent case law, and somewhat ironically, more chance of making out a defence under section 214 compared with section 588H.[94] Speaking generally, Australian courts have tended to be strict in interpreting the defences available under section 588H,[95] while UK courts have been rather liberal, erring on the side of directors.

IX. Relief from Liability

A further contrast may be drawn between the respective legislation when one considers whether courts can relieve a director who has been found to be liable for wrongful or insolvent trading. Both the Companies Act 1985 in the UK (section 727) and the Corporations Act 2001 (section 1317S) in Australia permit courts, in their discretion, to relieve directors of liability where they have acted honestly and reasonably and ought to be given relief.[96] Yet this provision, whilst able to be employed in Australia, cannot be invoked in the UK,[97] because the tests applied to section 214 and 727 are not compatible. This is, it has been asserted, because the former involves, essentially, an objective test while the latter involves an essentially subjective approach. Yet section 214 and 727 in fact both involve subjective and objective tests, and so there should be no bar to the application of section 727 and 214.

X. Funding[98]

Mounting and prosecuting wrongful trading actions in the UK is not a cheap process. Anecdotal evidence indicates that a sum in the region of £50 000 is needed, even for relatively small claims.[99] Liquidators will, understandably, refrain from commencing legal proceedings unless there are funds available to cover not only

94. This is manifested somewhat by the decisions in *Re Continental Assurance Co Ltd* [2001] BPIR 733 and *The Liquidator of Marini Ltd v. Dickensen* [2003] EWHC 334 (Ch); [2004] BCC 172.

95. See *Fryer v. Powell* (2002) 139 FLR 433; *Tourprint International Pty Ltd v. Bott* (1999) 32 ACSR 201.

96. Somewhat significantly the appointment by directors in Australia of a voluntary administrator is a relevant issue in the exercise of the court's discretion (section 1317S(3)).

97. *Re Produce Marketing Consortium Ltd* (1989) 5 BCC 569.

98. Much of the discussion that follows is not limited to claims under section 214 or 588G. It applies equally to other actions available to liquidators, e.g. claims in relation to preferences. See A. Keay, "Pursuing the Resolution of the Funding Problem in Insolvency Litigation" [2002] *Insolvency Lawyer* 90.

99. P. Fidler, "Wrongful trading after Continental Assurance" (2001) 17 *Insolvency Law & Practice* 212 at 212.

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the costs incurred by the liquidator himself or herself, but also the costs of the party from whom recovery is sought in case the liquidator's case fails.

As far as liquidations entered into after 1 January 2003, liquidators in the UK are able to claim their own expenses of running litigation under section 214 from company funds (ranking with the liquidation costs and expenses).[100] Liquidators must not, however, engage in litigation without creditor approval.[101] Whether an adverse costs order made against the liquidator or the company in favour of the director against whom proceedings were brought, will be able to paid out of company funds is not clear.[102] Given the present uncertainty, liquidators will probably want to ensure that they are covered in case of an adverse costs order. There are avenues that liquidators can pursue in order to protect themselves, but they are limited. These avenues might also be considered even if an adverse costs order could be paid out of company funds, where the funds might not be sufficient to meet a future award.[103]

Secured creditors with floating charges over company property are not entitled to the proceeds of a successful claim under section 214, at least in priority to the unsecured creditors, so they are unlikely to offer to cover any liability. It is open to the liquidator to call for indemnities from creditors in relation to costs, and prudent liquidators have in the past obtained indemnities.[104] However, creditors are not always keen, or able, to provide such indemnities.[105] Another avenue is where a person or company agrees to cover the costs of the liquidator's litigation in exchange for a premium. There are various packages that are arranged but the most common one involves the premium payable being a specified portion of any moneys recovered by the liquidator pursuant to the litigation. This kind of funding has been used successfully by Australian liquidators seeking to bring insolvent trading cases, but in relation to wrongful trading cases, in particular, UK liquidators have struck snags.

The problem which confronts liquidators in both the UK and Australia, where this type of cover is arranged, is, *inter alia*, that it may be able to be categorised as indulging in maintenance and/or champerty. The former is the assistance or encouragement of proceedings by someone who has no interest in the proceedings nor any motive recognised by the law as justifying interference in the proceedings. The latter is a form of maintenance in that assistance or encouragement of proceedings is provided in exchange for a promise to provide a share of the proceeds of the

100. Insolvency Rules 1986, r 4.218(1)(a)(i) as amended by r 23 of Insolvency (Amendment) (No2) Rules 2002.

101. Insolvency Act 1986, Schedule 4, cl 3A.

102. For a discussion of this point, see Gleghorn, "Re MT Realisations Ltd; recovering costs from an insolvent company" (2004) 20 *Insolvency Law & Practice* 105; Gregorian and Butler, "Liquidators litigation expenses, funding arrangements and the amendment to rule 4.218" (2004) 20 *Insolvency Law & Practice* 151.

103. Of course, determining the quantum of any adverse costs order is notoriously difficult to estimate.

104. The Court of Appeal in *Re Exchange Travel (Holdings) Ltd (in liq) (No3)* ([1997] 2 BCLC 579 at 588) sanctioned the giving of indemnities by creditors and said that it was permissible for the liquidator to agree that any fruits of the litigation would be used first to defray litigation costs paid for by creditors giving indemnities.

105. See Keay n 98 for a discussion of the ways that a liquidator can secure funding support.

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action. The policy behind the outlawing of champerty is to stop a person from intermeddling in others' disputes where he or she has no interest, is not justified in intermeddling and does so with a view to obtaining a part of the spoils.[106] While these doctrines may be archaic[107] they still hold some sway. However, over time some exceptions to the doctrines have developed. One of these exceptions is the rule that an insolvency administrator, such as a liquidator or a bankruptcy trustee, is able to assign lawfully any of the bare causes of action of the insolvent on the basis that the administrator is to receive a share of any proceeds of ensuing litigation.[108] This exception is based on the idea that the legislature has granted to the insolvency administrator the power to realise the assets of the insolvent, and the transfer of an action to an underwriter in return for the financing of it and the payment of a part of the proceeds has been treated as a sale of property.[109] The House of Lords in *Norglen Ltd (in liq) v. Reeds Rains Prudential Ltd*[110] and various Australian courts[111] have clearly accepted that the assignment of a chose in action involves an exception to the law against champerty.

The problems that UK liquidators have encountered in relation to funding are encapsulated in the case of *Re Oasis Merchandising Services Ltd.*[112] In this case Robert Walker J. refused to permit the purported assignment of a share of the recoveries in a wrongful trading action on the basis that the action did not belong to the company (it was not company property and was not, therefore, within the liquidator's power to sell company property[113]), but to the liquidator. As a consequence an action under section 214 is incapable of outright assignment.[114] Robert Walker J. took this view notwithstanding the fact that there was not a purported assignment of the claim but only an assignment of a portion of the fruits of the action. It made no difference to his Lordship whether the assignment was of the bare cause of action or a share in the fruits of the action. His Lordship's decision was upheld by the Court of Appeal.[115] In sum, an assignment of a bare cause of action is unquestionably possible[116] and falls within the insolvency exception, but not where the action could not be considered to be part of the property of the company, but was given to the liquidator by legislation, such as under section 214.

Contrast the position in Australia. In the case of *Re Movitor Pty Ltd*[117] the liquidator wished to commence proceedings against the company's directors and the company's holding company for a breach of the insolvent trading provisions, and it was argued that the proceedings fell foul of the rule against champerty. The

106. *British Cash and Parcel Conveyors Ltd v. Lamson Store Service Co Ltd* [1908] 1 KB 1006.
107. See the comments of L. J. Oliver in *Trendtex Trading v. Credit Suisse* [1980] QB 629 at 674 (CA).
108. *Seear v. Lawson* (1880) 15 Ch D 426; *Re Park Gate Waggon Works Co* (1881) 17 Ch D 234 (CA); *Ramsey v. Hartley* [1977] 1 WLR 686 (CA); *Bang & Olufsen UK Ltd v. Ton Systeme Ltd* (unrep, 16 July 1993 (CA); *Stein v. Blake* [1996] 2 AC 243 (HL); *Norglen Ltd v. Reeds Rains Prudential* [1998] 1 All ER 218 at 232 (HL).
109. Recognised by J. Lightman in *Grovewood Holdings Plc v. James Capel & Co Ltd* [1995] BCC 760 at 764.
110. [1998] BCC 44.
111. For instance, *Re Movitor* (1996) 14 ACLC 587.
112. [1995] BCC 911.
113. See, Schedules 4 and 5; section 436.
114. *Re Movitor* (1996) 14 ACLC 587 at 919.
115. *Re Oasis Merchandising Services Ltd* [1998] Ch 170; [1997] 1 All ER 1009; [1997] BCC 282; [1997] 1 BCLC 689 (CA).
116. For a recent case holding so, see *Empire Resolution Ltd v. MPW Insurance Brokers Ltd* [1999] BPIR 486.
117. (1996) 14 ACLC 587.

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accounting firm of which the liquidator was a partner had some litigation insurance with an insurance company (known as a "Debt Retrieval Agreement") and this permitted the firm to propose to the insurance company an arrangement in relation to the provision of support for litigation. Under this arrangement the liquidator entered into an agreement with the insurance company whereby the latter agreed to cover 50% of the liquidator's costs of the proceedings and 50% of the costs of the defendants if the proceedings failed, in exchange, if the proceedings succeeded, for a premium of 12% of the amount recovered. The liquidator sought the opinion of the court as to whether the agreement was void as constituting champerty or maintenance. Drummond J. of the Federal Court of Australia said that while the overall arrangement was champertous and was void as against public policy,[118] he said that there was no reason why the insolvency exception should not apply to an agreement to sell a share of the proceeds of an action owned by the company in liquidation.[119]

Interestingly, Drummond J. distinguished the insolvent trading provisions from section 214.[120] The former enables a recovery from a director of an amount equal to the loss or damage suffered as a result of the insolvent trading 'as a debt due to the company'. The debt obviously arose once the insolvent trading occurred and this happened before winding up commenced. So, while a liquidator may, in Australia, agree to share the fruits of an action with an underwriter, no matter what the basis for the action, and can assign an action to which the company is entitled, a liquidator in the UK is not permitted to assign an action, such as one for wrongful trading, as it is granted to him or her personally by legislation.

The upshot is that in the UK it is likely that many liquidators are going to refrain from taking proceedings for wrongful trading because it is uncertain as to whether they will be liable for an adverse costs order and they might not be able to secure some sort of financial cover.

XI. **Burden of Proof**

One of the benefits of wrongful trading and insolvent trading in the respective jurisdictions providing for civil liability is that the claimant is only required to establish his or her case on the balance of probabilities. This is to be contrasted with the criminal offence of fraudulent trading under section 458 of the Companies Act 1985 in the UK, and the offence of insolvent trading provided for in Australia under section 588G(3) of the Corporations Act where the defendant is alleged to have acted dishonestly. In these latter cases, the criminal standard of proof has to be discharged.

If a claimant in the UK is able to establish, on the balance of probabilities, that the director, at some time prior to the commencement of winding up, knew or

118. Ibid. at 593.

119. Ibid. at 595, 596. In this respect his Honour was declining to follow the English decision in *Grovewood Holdings Plc v. James Capel & Co Ltd* [1995] 2 WLR 70; [1995] BCC 760. See *UTSA Pty Ltd (in liq) v. UltraTune Australia Pty Ltd* (1996) 14 ACLC 1262 at 1285–1286; (1996) 21 ACSR 251 at 279–280 and *Re Tosich Construction Pty Ltd* (1997) 23 ACSR 126 at 141 where the same view as in *Re Movitor* was expressed.

120. Ibid. at 595–596.

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ought to have concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation, then the burden of proof shifts to the director who has the onus of establishing that he or she took every step with a view to minimising the potential loss to the company's creditors as ought to have been taken.

In Australia, the same applies to the extent that once the liquidator proves the necessary elements of section 588G, the onus falls upon the director to make good one of the defences under section 588H. But one difference in Australia is that if civil penalty proceedings are brought by the corporate regulator, although the elements of section 588G need only be proved on the balance of probabilities, the courts have imposed a slightly higher standard of proof in such cases as a civil penalty is in issue.[121]

XII. **The Public Element**

While the provisions under consideration have, provided as their main thrust, for compensation to creditors of companies in insolvent liquidation, they also play a public role. First, section 588G can be used as the basis for criminal liability, where a director has engaged in insolvent trading dishonestly, as well as a basis for civil penalty liability. Section 214 does not provide for criminal liability. If it is thought that criminal proceedings are warranted they have to be initiated on the basis of fraudulent trading under section 458 of the Companies Act 1985 which retains criminal liability, for fraudulent trading.[122]

The fact that wrongful trading does not lead to criminal liability should not be seen as an indication that section 214 has no public role to play. On the contrary, it is intended to play a public as well as a private role. In *Re Oasis Merchandising Services Ltd*[123] Robert Walker J. adverted to the public element in section 214 proceedings, which involves an attempt to prescribe a minimum standard of conduct of directors in managing the affairs of companies. The public function is marked by the fact that it is linked to directors' disqualification, and is a process intended to protect the public from reckless and/or dishonest directors. If a court hearing a wrongful trading claim decides that the case is proven, it may, of its own volition, disqualify the respondent from acting as a director[124] for a period of up to 15 years.[125] Further, even if the court does not decide to make a disqualification order after finding wrongful trading established, the Secretary of State for Trade and Industry may base an application under section 6 of the Company Directors' Disqualification Act 1986 for a disqualification order on the finding.

121. See *Briginshaw v. Briginshaw* (1938) 60 CLR 336 on the standard of proof required where civil penalties can be ordered.

122. Section 213 of the Insolvency Act also provides for liability for fraudulent trading, but this liability is only civil.

123. [1995] BCC 911 at 918.

124. Company Directors' Disqualification Act 1986, section 10(2).

125. Company Directors' Disqualification Act 1986, section 10(1).

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The position in Australia is different and the policy issues associated with insolvent trading are emphasised by the legislature, the courts and the regulators, both the ASIC[126] and the Commissioner of Taxation. We have explained that insolvent trading is proscribed by section 588G, and that its occurrence is more clearly defined than is wrongful trading under section 214. However, this comparative lack of flexibility in section 588G is countered by a greater accessibility for directors to structured and protective insolvency restructuring arrangements, under Part 5.3A. The tax provisions also induce directors to act. The policy of requiring directors to address the insolvency of their company earlier rather than later, or too late, is evident. The threat of insolvent trading claims is but one element of the implementation of that policy. Australian courts will often make clear statements of the wrong occasioned by insolvent trading and how directors should be attentive to its prevention. In *Woodgate v. Davis*,[127] Barrett J. of the New South Wales Supreme Court said:

> "Section 588G and related provisions serve an important social purpose. They are intended to engender in directors of companies experiencing financial stress a proper sense of attentiveness and responsible conduct directed towards the avoidance of any increase in the company's debt burden. The provisions are based on a concern for the welfare of creditors exposed to the operation of the principle of limited liability at a time when the prospect of that principle resulting in loss to creditors has become real."

In *Tourprint v. Bott*,[128] Austin J. opened his judgement with these words:

> "This case is a cautionary tale for company directors, especially in the small business sector. The defendant, Geoffrey Bott, joined the board of directors of the plaintiff company less than a year before it went into voluntary administration. He received no remuneration as a director. For at least a substantial part of that period, the company was hopelessly insolvent. For the reasons I shall give, the consequence for the defendant is that he is liable to the company's liquidator under the insolvent trading provisions of the Corporations Law [now the Corporations Act] in a sum in excess of $500 000, plus interest."

As well, apart from civil liability for damages, Australian law allows civil penalties to be imposed, for insolvent trading and other such "white collar" corporate misconduct. The purpose behind that policy was to allow corporate regulation to be pursued unconstrained by the real difficulty, indeed near impossibility in many cases, of proving complex commercial claims to the high criminal standard. Whilst the breach of a civil penalty provision is not a criminal breach, and no prison sentence can be ordered, civil penalties can be considerable—over A$200 000 for each breach—and various banning orders can be made as a consequence of a civil penalty breach being found.[129]

In addition, section 588G(3) defines the additional elements of insolvent trading at a criminal level, that is, that there is a subjective suspicion of insolvency on the

126. Details of ASIC's insolvent trading enforcement program are to be found at <www.asic.gov.au>

127. (2002) 42 ACSR 286 at 294.

128. (1999) 17 ACLC 1543 at 1545.

129. Corporations Act 2001, Part 2D.6.

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part of the director, and that the director's "failure to prevent the company incurring of the debt was dishonest." Whilst there are the inevitable difficulties of proof of such an issue as insolvency to the criminal standard, there have been a number of such prosecutions brought, to which in many cases there have been pleas of guilty.[130]

It is difficult for any provision to fulfil both private and public functions, and it is doubtful whether, in the UK, section 214 comes near to doing so.[131] It may be argued that the inclusion of a public function in section 214 attenuates its potency as a weapon in civil litigation; it is difficult to distinguish the private and public functions and the extent of improper behaviour needed to fulfil the latter function, which would be more stringent than in relation to the former, that could be required before a court would be willing to hold that a civil action should succeed. Also, director disqualification might well depend on whether success can be secured in a wrongful trading action, and it seems anomalous that a public function is dependent on success in a civil case.[132]

In contrast, in Australia, the prohibition against insolvent trading is more readily enforced against directors by liquidators on behalf of creditors, and by ASIC and the Director of Public Prosecutions on behalf of both creditors and the State. That regulation has been supported in the past by the more sympathetic administration regime for dealing with insolvent companies.

XIII. Assessment

Undoubtedly both provisions have flaws. With the Australian provision a liquidator has to establish insolvency and that debts were incurred when the company was insolvent, and both of these points can be difficult to prove. Arguably the UK provision has more drawbacks. Shortly after the advent of section 214, a number of academics regarded wrongful trading as a significant weapon in the arsenal of liquidators. Academics and practitioners alike saw section 214 as having a bright future in providing much needed protection for creditors.[133] In the early days of the provision Prentice said that it was "unquestionably one of the most important developments in company law this century."[134] Oditah said that section 214 was a "welcome additional weapon in the fight against abuse of the privilege of limited liability by directors of trading companies."[135] Since these statements other commentators have been more circumspect and less optimistic about its potential and impact. It is probably fair to say that section 214 has not lived up to its early promise. There seems to be several shortcomings endemic to the wrongful trading provision, and that might be the reason why courts in recent years in the UK have tended to

130. See <www.asic.gov.au>
131. See the comments in R. Schulte, "Enforcing wrongful trading as a standard of conduct for directors and a remedy for creditors: the special case of corporate insolvency" (1999) 20 *The Company Lawyer* 80.
132. For some very interesting discussion of this issue, see *ibid*.
133. *Ibid*.
134. "Creditor's Interests and Director's Duties" (1990) 10 OJLS 265 at 277.
135. Above n 75 at 222.

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place a benevolent interpretation on what directors have done,[136] and why there appear to be relatively few actions brought by liquidators.[137] Hicks found, in conducting empirical research amongst directors, that actions for wrongful trading are rarely brought against directors who are disqualified under section 6 of the Company Directors' Disqualification Act 1986.[138] While it is not possible to gauge the effect of threats to bring wrongful trading actions have on directors, from a consideration of the case law it appears that the provision has been a "paper tiger,"[139] a view reflected in the business community.[140] This is somewhat ironic given that the provision is, *prima facie*, tougher than the Australian provision. The ineffectiveness of section 214 is not due alone to the provision itself. It has probably got as much to do with the fact that the archaic champerty rule still exists and effectively prevents liquidators obtaining appropriate funding for wrongful trading (and other) actions. It might be thought that in tying wrongful trading to director disqualification and even using the word "wrongful" that there must be a degree of blameworthiness required before a person can be held liable for a breach of section 214. Certainly it might be argued that in several cases the courts have seemed to require an element of moral wrongdoing before finding against a director.[141] This is something that was not envisaged by the Cork Committee, which saw wrongful trading as effecting a balance between encouraging the growth of enterprises and discouraging downright irresponsibility.[142]

Besides the fact that section 214 actions appear to be few and far between, it has been asserted,[143] with some justification, that there is no evidence to suggest that directors' conduct has become more responsible in relation to their companies' affairs as a consequence of the advent of the provision.

Other problems encountered with section 214 have surrounded the two main elements of the provision. The problems are: when can it be said that there is no reasonable prospect of the company avoiding insolvent liquidation; and what can constitute "every step" taken to minimise losses to creditors?

Perhaps section 214 would have been more successful if it has been based on insolvency, namely directors would be liable if they traded when the company was insolvent. This is the approach taken in Australia, which has amended its counterpart of section 214 on several occasions. It seems that Australia may have now got it right. The present section, 588G of the Corporations Act, while still producing some debates over interpretation and application, appears to be quite successful. While the definition of insolvency has caused some difficulties in Australia, because it can be seen as somewhat imprecise, it is not as imprecise as the test set out in section 214. Arguably, directors might be able to detect insolvency before they could

136. For example, in *Re Continental Assurance Co Ltd* [2001] BPIR 733 and *The Liquidator of Marini Ltd v. Dickensen* [2003] EWHC 334 (Ch); [2004] BCC 172.
137. Above n 39 at 97.
138. *Disqualification of Directors: No Hiding Place for the Unfit* (Chartered Association of Certified Accountants, Research Report No 59, London, 1998) at 125.
139. C. Cook, "Wrongful Trading—Is it a Real Threat to Directors or a Paper Tiger" [1999] *Insolvency Lawyer* 99 at 100.
140. "Wrongful Trading Laws that Directors Ignore" *Accountancy Age*, 29 October 1992 at 8.
141. Above n 36 at 140.
142. At para 1805.
143. Above n 139 at 104.

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be expected to conclude that there was no reasonable prospect of the company avoiding insolvent liquidation.[144]

Nevertheless, a review of the significant insolvent trading decisions in Australia shows that where the action is successful, the directors have invariably blatantly breached the law to a significant financial degree, and for an extended period.[145] The suggestion is made that even though the law may seek to be precise at the point in time at which directors are required to act, the commercial and legal reality is such that only clear cases are pursued, where there is substantial money to be obtained and hence, or invariably, the insolvent trading has continued for some time. A director who, in a vain attempt to trade out of the company's difficulties, continues to incur debts to the value of A$10 000 will find in reality that such a claim is not pursued. This may be because of the amount of the claim, or that the liquidator or creditors see little blame attaching to such conduct.

The number of insolvent liquidations in Australia have decreased in the past decade, while the number of administrations have increased significantly.[146] This could be due to a number of reasons, one being that directors, cognisant of the prohibition of insolvent trading, have initiated the administration process. Whereas in the UK insolvent liquidations have remained at a relatively high level, with few administrations, and this might be suggestive of the fact that wrongful trading has not induced directors to initiate actions to stop the slide into insolvency.

XIV. Conclusion

Undoubtedly it is true to say that both provisions discussed here require awareness on the part of directors as to their companies' financial state, something that has not been the norm in company law.[147] Certainly, it is a difficult task to introduce a provision that effectively sets aside the inveterate separate legal entity concept and all that flows from it, and to do so in such a way that ensures that values such as certainty, efficiency and fairness are fostered. There will always be those who would argue that such a provision as those under study here do not enhance efficiency as they are applied *ex post* to contractual dealings and they overly-compensate unsecured creditors. Others will point to the lack of teeth that the provisions have and want to see the provision strengthened in some way.

While the UK and Australia started from virtually the same position in the twentieth century, with very similar fraudulent trading provisions that were relatively impotent, each jurisdiction has gone, certainly since the mid-1980s, its own way. The Australian regime involves several provisions against the UK's one provision, and it might be thought that the former's law is more complex. Yet this is not the case. The Australian provisions seek to define critical elements of its scheme, such as the meaning of "insolvent" and what defences may be relied on. But there

144. But note the criticism of the Australian criteria of insolvency in Morrison, above n 38 at 166–169.

145. For example, *Fryer v. Powell* (2002) 139 FLR 433.

146. See <www.asic.gov.au>

147. Whincop, above n 2 at 25.

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remains significant unanswered questions concerning aspects of the UK provision, such as what is involved in directors taking "every step" to minimise creditor losses.

Of course, in relation to both wrongful trading and insolvent trading, liquidators will generally refrain from taking any action unless they can be assured to some reasonable degree that respondents are not impecunious. It will often be of little value if a case succeeds but the liquidator only has a claim in a director's bankruptcy. Hence, no matter how effective an illicit trading provision appears to be, it might not matter if directors have no funds.

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EXHIBIT M

Pension Benefit Guaranty Corporation
A U.S. Government Agency

Statement from PBGC on Bankruptcy Filing of Kodak Corporation

FOR IMMEDIATE RELEASE
January 19, 2012

WASHINGTON—Pension Benefit Guaranty Corporation released the following statement today on the bankruptcy filing by Kodak Corporation:

"Kodak's U.S. pension plans are reasonably well funded and we want to make sure they stay that way. We will actively participate in Kodak's bankruptcy to protect Kodak's pension plans for their workers and retirees."

Kodak sponsors two traditional pension plans that cover nearly 63,000 people. The plans are 86% funded, with about $4.9 billion in assets to cover about $5.6 billion in benefits.

NOTE TO KODAK WORKERS AND RETIREES:

Your pension plan is ongoing, under the sponsorship of Kodak. PBGC cannot answer specific questions about your individual benefit. For information on the status of your benefit, contact your Kodak plan administrator.

UPDATE:

On January 25, the bankruptcy court appointed PBGC to the Kodak creditors' committee, where the agency will work to protect Kodak's pension plans.
Read full story at Bloomberg.com.

About PBGC

PBGC protects the pension benefits of 44 million Americans in 27,500 private-sector pension plans. The agency is directly responsible for paying the benefits of more than 1.5 million people in failed pension plans. PBGC receives no taxpayer dollars and never has. Its operations are financed by insurance premiums and with assets and recoveries from failed plans.

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PBGC No. 12-13

EXHIBIT N

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	Case No. 12-10202 (ALG)
Debtors.	Jointly Administered

INTERIM ORDER AUTHORIZING RESTRICTIONS ON CERTAIN TRANSFERS OF INTERESTS IN THE DEBTORS AND ESTABLISHING NOTIFICATION PROCEDURES RELATING THERETO PURSUANT TO SECTIONS 105(A) AND 362 OF THE BANKRUPTCY CODE

Upon the motion (the "**Motion**")[2] of Eastman Kodak Company ("**Kodak**"), on behalf of itself and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), for interim and final orders authorizing restrictions on certain transfers of interests in the Debtors and establishing notification procedures relating thereto pursuant to sections 105(a) and 362 of the Bankruptcy Code; and upon consideration of the First Day Declaration; and 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 it

[1] 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.

[2] All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Motion.

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appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS FOUND THAT:

1. Kodak's consolidated net operating loss tax carryforwards ("**NOLs**") and certain other tax attributes described in the Motion (together with NOLs, the "**Tax Attributes**") are property of the Debtors' estates and are protected by the automatic stay prescribed in section 362 of the Bankruptcy Code;

2. Unrestricted trading of certain equity interests in Kodak during the pendency of the bankruptcy could severely limit the Debtors' ability to utilize the Tax Attributes for purposes of title 26 of the United States Code (the "**Tax Code**");

3. Under certain circumstances, the accumulation of Debt Securities prior to the Debtors' (or their successors') potential emergence of the Debtors from chapter 11 could, following any such emergence, severely limit the Debtors' (or successors') ability to use the Tax Attributes;

4. The notification procedures and restrictions on transfers of Kodak common stock and options to acquire such stock (including securities convertible into such stock) are necessary and proper to preserve the Tax Attributes and therefore are in the best interests of the Debtors, their estates, and their creditors;

5. The restrictions and procedures applicable to the accumulation of Debt Securities are necessary and proper to preserve the availability of the Tax Attributes following the Debtor's (or their successors') emergence, and are therefore in the best interests of the Debtors, their estates, and their creditors; and

6. The relief requested in the Motion is authorized under sections 105(a) and 362 of the Bankruptcy Code.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Final Hearing shall be held on **February 15, 2012 at 11:00 a.m.** prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before **February 8, 2012 at 4:00 p.m** (the "**Objection Deadline**") and served on parties in interest as required by the Local Rules. An objection shall be considered timely if it is (a) filed with the United States Bankruptcy Court for the Southern District of New York, and (b) served upon (i) the Debtors, c/o Eastman Kodak Company, 343 State Street, Rochester, New York 14650 (Attn: Patrick M. Sheller, Esq.); (ii) Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 (Attn: Michael H. Torkin, Esq. and Noam B. Katz, Esq.), attorneys for the Debtors; and (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 before the Objection Deadline. This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

3. The provisions of this Order shall be effective, *nunc pro tunc*, to the date of the Motion.

4. Any acquisition, disposition or other transfer in violation of the restrictions set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay prescribed in section 362 of the Bankruptcy Code and pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code. For purposes of this Order, any trades made before the filing of the Motion shall not be subject to this Order.

5. The following procedures and restrictions shall apply to trading in Kodak Stock and are approved:

(1) Acquisition of Kodak Stock or Options. At least 20 calendar days prior to the proposed date of any transfer of equity securities (including Options, as defined below, to acquire such securities) that would result in an increase in the amount of Kodak Stock beneficially owned by any person or Entity (as defined below) who currently is or becomes a Substantial Equityholder (as defined below) or that would result in a person or Entity becoming a Substantial Equityholder (a "**Proposed Equity Acquisition Transaction**"), such person, Entity or Substantial Equityholder (a "**Proposed Equity Transferee**") shall file with the Court, and serve upon the Debtors and Debtors' counsel, and upon Davis Polk & Wardwell LLP, counsel to the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a Notice of Intent to Purchase, Acquire or Otherwise Accumulate Kodak Stock (an "**Equity Acquisition Notice**"), in the form attached to the Motion as Exhibit C, specifically and in detail describing the proposed transaction in which Kodak Stock would be acquired. At the holder's election, the Equity Acquisition Notice to be filed with the Court may be redacted to exclude such holder's taxpayer identification number and the number of shares of Kodak Stock that such holder beneficially owns and proposes to purchase or otherwise acquire.

(2) Disposition of Kodak Stock or Options. At least 20 calendar days prior to the proposed date of any transfer of equity securities (including Options to acquire such securities) that would result in a decrease in the amount of Kodak Stock beneficially owned by a Substantial Equityholder or that would result in a person or Entity ceasing to be a Substantial Equityholder (a "**Proposed Equity Disposition Transaction**" and, together with a Proposed Equity Acquisition Transaction, a "**Proposed Equity Transaction**"), such person, Entity or Substantial Equityholder (a "**Proposed Equity Transferor**") shall file with the Court, and serve upon the Debtors and Debtors' counsel, and upon Davis Polk & Wardwell LLP, counsel to the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a Notice of Intent to Sell, Trade or Otherwise Transfer Kodak Stock (an "**Equity Disposition Notice**", and together with an Equity Acquisition Notice, an "**Equity Trading Notice**"), in the form attached to the Motion as Exhibit D, specifically and in detail describing the proposed transaction in which Kodak Stock would be transferred. At the holder's election, the Equity Disposition Notice to be filed with the Court may be redacted to exclude such holder's taxpayer identification number and the number of shares of Kodak Stock that such holder beneficially owns and proposes to sell or otherwise transfer.

(3) Objection Procedures. The Debtors shall have 15 calendar days after the filing of an Equity Trading Notice (the "**Equity Objection Deadline**") to file with the

Court and serve on a Proposed Equity Transferee or a Proposed Equity Transferor, as the case may be, and upon Davis Polk & Wardwell LLP, counsel to the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, an objection to any proposed transfer of Kodak Stock described in such Equity Trading Notice on the grounds that such transfer may adversely affect the Debtors' ability to utilize the Tax Attributes (an "**Equity Objection**") as a result of an ownership change under section 382 or section 383 of the Tax Code.

a) If the Debtors file an Equity Objection by the Equity Objection Deadline, then the Proposed Equity Acquisition Transaction or the Proposed Equity Disposition Transaction shall not be effective unless approved by a final and nonappealable order of this Court.

b) If the Debtors do not file an Equity Objection by the Equity Objection Deadline, or if the Debtors provide written authorization to the Proposed Equity Transferor approving the Proposed Equity Acquisition Transaction or the Proposed Equity Disposition Transaction, as the case may be, prior to the Equity Objection Deadline, then such Proposed Equity Acquisition Transaction or the Proposed Equity Disposition Transaction, as the case may be, may proceed solely as specifically described in the Equity Trading Notice. Any further Proposed Equity Transaction must be the subject of additional notices as set forth herein, with an additional 20 calendar day waiting period.

(4) Unauthorized Transactions in Kodak Stock or Options. Effective as of the filing of the Motion and until further order of the Court to the contrary, any acquisition, disposition or other transfer of Kodak Stock, including Options to acquire Kodak Stock, in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under sections 362 and 105(a) of the Bankruptcy Code.

(5) Definitions. For purposes of the Order:

a) Substantial Equityholder. Means any person or entity that beneficially owns at least:

(i) 4.50% of all outstanding shares of Kodak common stock, as defined for federal income tax purposes;

(ii) 4.50% of the outstanding shares of any class of Kodak securities convertible into Kodak common stock, as defined for federal income tax purposes.

b) Entity. Has the meaning given to such term under Treasury Regulation section 1.382-3(a), including a group of persons who have a formal or

informal understanding among themselves to make a coordinated acquisition.

c) Beneficial Ownership. Beneficial ownership (or any variation thereof of Kodak Stock and Options to acquire Kodak Stock) shall be determined in accordance with applicable rules under section 382 of the Tax Code, the U.S. Department of Treasury regulations ("**Treasury Regulations**") promulgated thereunder and rulings issued by the Internal Revenue Service (the "**IRS**"), and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (i) direct and indirect ownership (*e.g.*, a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (ii) ownership by a holder's family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock and (iii) in certain cases, the ownership of an Option to acquire Kodak Stock.

d) Option. An Option to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.

e) Kodak Stock. Means Kodak common stock. For the avoidance of doubt, by operation of the definition of beneficial ownership, an owner of an Option to acquire Kodak Stock may be treated as the owner of such Kodak Stock.

(6) The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in the Order.

7. The following restrictions and procedures applicable to certain transfers of Debt Securities are approved:

(1) Notice of 382(l)(5) Plan; Amended Notice of 382(l)(5) Plan.[3]

a) Notice of 382(l)(5) Plan. Upon filing a chapter 11 plan and disclosure statement that contemplates the potential utilization of section 382(l)(5) of the Tax Code (a "**382(l)(5) Plan**"), the Debtors may, if, after consultation with their counsel and advisors and counsel and advisors for the Creditors' Committee and the agent for the Debtors' postpetition secured debtor-in-possession financing, they determine that the application of section

[3] Capitalized terms used in Paragraphs 1-9 have the meaning ascribed in Paragraph 7, if not otherwise defined herein.

382(l)(5) of the Tax Code is reasonably likely to be beneficial to the reorganized Debtors (or any successors thereto), (i) publish (or arrange for publication of) a notice and provide a written notice to the Debt Notice Parties, disclosing the filing of such 382(l)(5) Plan and the potential issuance of a Sell-Down Notice (as defined in Paragraph 3(a) below) in connection therewith on the website established by Debtors' claims agent: http://www.kccllc.com/kodak and in the national editions of *The Wall Street Journal* and *The New York Times* (a "**Notice of 382(l)(5) Plan**"), (ii) identify the classes of Debt Securities that are potentially subject to a Sell-Down Notice and (iii) identify the applicable Threshold Amounts (by class or other applicable breakdown) for status as a Substantial Securityholder.

b) Amended Notice of 382(l)(5) Plan. The Debtors may determine subsequent to the date of the Notice of 382(l)(5) Plan or an Amended Notice of 382(l)(5) Plan (as defined below), to (i) adjust the Threshold Amount or (ii) identify additional classes of Debt Securities that are potentially subject to a Sell-Down Notice. In that case, the Debtors shall publish and provide notice of such additional amount and/or such additional class of Debt Securities in the same manner as the Notice of 382(l)(5) Plan and such notice shall be an "**Amended Notice of 382(l)(5) Plan.**" The Amended Notice of 382(l)(5) Plan shall require (x) any person or Entity that previously served a Notice of Substantial Securityholder Status to update information regarding such Substantial Securityholder's Beneficial Ownership of Debt Securities and (y) any person or Entity that is a Substantial Securityholder as of the date of the most recent Amended Notice of 382(l)(5) Plan, but that was not previously required to serve a Notice of Substantial Securityholder Status (an "**Additional Substantial Securityholder**"), to serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a notice of such status in the manner prescribed in Paragraph 2 below within fifteen calendar days of the date of the Amended Notice of 382(l)(5) Plan.

c) Early Notice. The Debtors reserve the right, in order to assist in determining their eligibility for section 382(l)(5) of the Tax Code, to request in a manner consistent with the publication of the Notice of 382(l)(5) Plan described above, information regarding the Beneficial Ownership of Debt Securities prior to the filing of the Notice of 382(l)(5) Plan.

(2) Notice of Substantial Securityholder Status. Following a request for Beneficial Ownership information pursuant to (i) a Notice of 382(l)(5) Plan, (ii) an Amended Notice of 382(l)(5) Plan or (iii) Paragraph 1(c) above, any person or Entity that as

of the date such request is made (the "**Request Date**") is or becomes a Substantial Securityholder shall serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a notice of such status (a "**Notice of Substantial Securityholder Status**"), in the form attached to the Motion as Exhibit E, within 15 calendar days of the later of (i) the Request Date and (ii) the date such person becomes a Substantial Securityholder.

(3) Sell-Down Notices.

a) Sell-Down Notices. Following the issuance of a Notice of 382(l)(5) Plan, but no earlier than 60 days prior to the then-scheduled hearing with respect to the 382(l)(5) Plan, if the Debtors determine it to be reasonably necessary to require the sale or transfer of all or a portion of the Beneficial Ownership of Debt Securities held by a Substantial Securityholder on the basis that such sale or transfer is appropriate to reasonably ensure that the requirements of section 382(l)(5) of the Tax Code will be satisfied, and either the Creditors' Committee or the Court similarly so determines, the Debtors may file a motion (the "**Sell-Down Motion**") requesting that the Court enter an order (the "**Sell-Down Order**") approving the issuance of a notice (the "**Sell-Down Notice**") that such Substantial Securityholder must sell, cause to sell or otherwise transfer all or a portion of its Beneficial Ownership of Debt Securities (by class or other applicable breakdown) in excess of the Maximum Amount for such Substantial Securityholder (such excess amount, an "**Excess Amount**") to Permitted Transferees. The Debtors shall provide a copy of the Sell-Down Motion to each person described in clause (h) of the definition of "Notice Parties." If the Court enters a Sell- Down Order approving the Debtors' issuance of a Sell-Down Notice, the Debtors shall provide a copy of such Sell-Down Order to each person described in clause (h) of the definition of "Notice Parties."

b) Requirement to Sell Down. Prior to (i) the effective date of the 382(l)(5) Plan or (ii) such earlier date set forth in the Sell-Down Order, which shall not be earlier than the day after the entry of the order confirming the 382(l)(5) Plan as may be specified by the Debtors (the "**Sell-Down Date**"), each Substantial Securityholder shall sell, cause to sell or otherwise transfer an amount of the Beneficial Ownership of Debt Securities (if any) necessary to comply with the Sell-Down Notice (the "**Sell-Down**"); *provided, however*, that notwithstanding anything to the contrary in the Order and for the avoidance of doubt, no Substantial Securityholder shall be required to sell, cause to sell or otherwise transfer any Beneficial Ownership of Debt Securities if such sale would result in such holder having Beneficial Ownership of an aggregate amount of Debt Securities (by class or other applicable breakdown) that is less than such

holder's Protected Amount (as hereinafter defined). Each Substantial Securityholder shall sell, cause to sell or otherwise transfer its Beneficial Ownership of Debt Securities subject to the Sell-Down to Permitted Transferees; *provided, however*, that such Substantial Securityholder shall not have a reasonable basis to believe that any such Permitted Transferee would own, immediately after the contemplated transfer, an Excess Amount of Debt Securities.

c) Notice of Compliance. A Substantial Securityholder subject to the Sell-Down shall, within seven calendar days after the later of (i) entry of an order approving the 382(l)(5) Plan, (ii) the Sell-Down Date, and (iii) such other date specified in the Sell-Down Notice, as applicable, but in all events before the effective date of the 382(l)(5) Plan, and as a condition to receiving Affected Equity, serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a notice substantially in the form attached to the Motion as Exhibit F that such Substantial Securityholder has complied with the terms and conditions set forth in this Paragraph 3 and that such Substantial Securityholder does not and will not hold an Excess Amount of Debt Securities as of the Sell-Down Date and at all times through the effective date of the 382(l)(5) Plan (the "**Notice of Compliance**"); *provided, however*, that if the Substantial Securityholder has complied but for the fact that the Substantial Securityholder still holds an Excess Amount of Debt Securities as of the Sell-Down Date, the Notice of Compliance shall disclose such Excess Amount. Any Substantial Securityholder who fails to comply with this provision shall not receive Affected Equity with respect to the entirety of its Excess Amount of Debt Securities as determined under Paragraph 3(a), regardless of any sales made in accordance with this Paragraph 3.

(4) Advance Approval of Acquisitions. Any proposed transfer or acquisition of Debt Securities from and after the date of the Sell-Down Order shall be subject to the following advance approval procedures:

a) Acquisition of Securities. At least 20 calendar days prior to the proposed date of any transfer of Debt Securities that would result in (i) an increase in the dollar amount of Debt Securities Beneficially Owned by a Substantial Securityholder or (ii) any person or Entity becoming a Substantial Securityholder (a "**Proposed Securities Acquisition Transaction**"), such person, Entity, or Substantial Securityholder (each a "**Proposed Securities Transferee**") must serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a Notice of Request

to Purchase, Acquire, or Otherwise Accumulate a Security (a "**Securities Acquisition Request**"), in the form attached to the Motion as Exhibit G, which describes specifically and in detail the intended acquisition of Debt Securities, regardless of whether such transfer would be subject to the filing, notice, and hearing requirements of Bankruptcy Rule 3001.

b) Approval Procedures. The Debtors may determine, in furtherance of the purposes of the provisions herein and after consultation with the attorneys for the Creditors' Committee, whether or not to approve a Securities Acquisition Request. A Securities Acquisition Request that is not approved in writing by the Debtors within 15 calendar days after the filing of a Securities Acquisition Request shall be deemed rejected.

(5) Equity Forfeiture Provision.

a) Equity Forfeiture Provision. Any Substantial Securityholder that violates its obligations under the Sell-Down Notice shall, pursuant to the Order, be precluded from receiving, directly or indirectly, any consideration consisting of a beneficial ownership of equity (as determined in accordance with the applicable rules of section 382 of the Tax Code, including Options, whether or not treated as exercised under Treasury Regulation section 1.382-4) of the Debtors (or any successor to the Debtors, including as determined for U.S. federal income tax purposes) that is attributable to the Excess Amount of Debt Securities for such Substantial Securityholder as of the Sell-Down Date, including any consideration in lieu thereof, *provided, however*, that the forfeiture shall only apply to any Excess Amount of Debt Securities still owned as of the Sell-Down Date if the holder has complied with Paragraph 3(c); *provided further* that such Substantial Securityholder may be entitled to receive any other consideration to which such holder may be entitled by virtue of holding Debt Securities (the "**Equity Forfeiture Provision**"). Any purported acquisition of, or other increase in the Beneficial Ownership of, equity of the Debtors (or any successor) that is precluded by the Equity Forfeiture Provision will be an acquisition of "**Forfeited Equity**." Any acquirer of Forfeited Equity shall, immediately upon becoming aware of such fact, return or cause to return the Forfeited Equity to the Debtors (or any successor to the Debtors) or, if all of the equity consideration properly issued to such acquirer and all or any portion of such Forfeited Equity shall have been sold prior to the time such acquirer becomes aware of such fact, such acquirer shall return or cause to return to the Debtors (or any successor to the Debtors) (i) any Forfeited Equity still held by such acquirer and (ii) the proceeds attributable to the sale of Forfeited Equity, calculated by treating the most recently sold equity as Forfeited Equity. Any acquirer that receives Forfeited Equity and deliberately fails to comply with the preceding sentence shall be subject to such additional

sanctions as the Court may determine. Any Forfeited Equity returned to the Debtors shall be distributed (including a transfer to charity) or extinguished, in the Debtors' sole discretion, in furtherance of the 382(l)(5) Plan.

b) Notification Requirement. In effecting any sale or other transfer of Debt Securities pursuant to a Sell-Down Notice, a Substantial Securityholder shall, to the extent that it is reasonably feasible to do so within the normal constraints of the market in which such sale takes place, notify the acquirer of such Debt Securities of the existence of the Order and the Equity Forfeiture Provision (it being understood that, in all cases in which there is direct communication between a salesperson and a customer, including, without limitation, communication via telephone, e-mail, and instant messaging, the existence of the Order and the Equity Forfeiture Provision shall be included in such salesperson's summary of the transaction).

(6) Miscellaneous.

a) No Disclosure of Participation. To permit reliance by the Debtors on Treasury Regulation section 1.382-9(d)(3), any person or Entity that participates in formulating any chapter 11 plan of or on behalf of the Debtors (which shall include, without limitation, making any suggestions or proposals to the Debtors or their advisors with regard to such a plan), shall not, and shall not be asked to, disclose (or otherwise make evident unless compelled to do so by an order of a court of competent jurisdiction or some other applicable legal requirement) to the Debtors that any Debt Securities in which such person or Entity has a Beneficial Ownership are Newly Traded Securities. For this purpose, the Debtors acknowledge and agree that the following activities shall not constitute participation in formulating a chapter 11 plan if, in pursuing such activities, the relevant person or Entity does not disclose (or otherwise make evident) to the Debtors that such person or Entity has Beneficial Ownership of Newly Traded Securities: filing an objection to a proposed disclosure statement or to confirmation of a proposed chapter 11 plan; voting to accept or reject a proposed chapter 11 plan; reviewing or commenting on a proposed business plan; providing information on a confidential basis to the attorneys for the Debtors or attorneys for the Creditors' Committee unconnected with the formulation of the chapter 11 plan; general membership on an official committee or an *ad hoc* committee; or taking any action required by the order of the Court.

b) Confidentiality. Except to the extent necessary to demonstrate to the Court the need for the issuance of a Sell-Down Notice, other than information contained in the Notice of Substantial Securityholder Status

that is public or in connection with an audit or other investigation by the IRS or other taxing authority, the Debtors and the Creditors' Committee shall keep such notices and any additional information provided by a Substantial Securityholder pursuant to the Order strictly confidential and shall not disclose the identity of the Substantial Securityholder to any other person or Entity; *provided, however*, that the Debtors and the Creditors Committee may disclose the identity of the Substantial Securityholder to their respective counsel and professional advisors and those of any other person(s) that are subject to a nondisclosure agreement with the Debtors or the Creditors' Committee (as applicable), each of whom shall keep all such notices strictly confidential and shall not disclose the identity of the Substantial Securityholder to any other person or Entity subject to further order of the Court; and *provided, further*, that to the extent the Debtors reasonably determine such confidential information is necessary to demonstrate to the Court the need for the issuance of a Sell-Down Notice, the Debtors shall seek to file such confidential information (determined by, among other things, whether such information was redacted in any public filing) under seal.

c) Exception. No person or Entity shall be subject to the aforementioned provisions with respect to any transfer described in Treasury Regulation section 1.382-9(d)(5)(ii), *provided* that such transfer is not for a principal purpose of obtaining stock in the reorganized Debtors (or any successor) or permitting the transferee to benefit from the losses of the Debtors within the meaning of Treasury Regulation section 1.382-9(d)(5)(iii) (a "**Qualified Transfer**"); *provided, further*, that any such transferee who becomes a Substantial Securityholder shall serve upon the Debtors, counsel for the Debtors, counsel for the Creditors' Committee and Davis Polk & Wardwell LLP, counsel for the agent for the Debtors' proposed postpetition secured debtor-in-possession financing, a statement that the transfer is a Qualified Transfer and a notice of such Substantial Securityholder status in the manner prescribed in Paragraph 2 above within 20 calendar days of the later of (i) the day of the entry of the Order by the Court and (ii) the date on which such person or Entity becomes a Substantial Securityholder.

(7) Definitions. For purposes of the Order, the following terms have the following meanings:

a) Affected Equity. Means the stock or other equity of the reorganized Debtors (or their successors), including Options, to be issued and distributed pursuant to the 382(l)(5) Plan but shall not include stock described in section 1504(a)(4) of the Tax Code.

b) Applicable Percentage. Means, if only one class of Affected Equity is to be issued pursuant to the terms of the 382(l)(5) Plan and holders within any class of Debt Securities will receive a pro-rata distribution of the Affected Equity, 4.5% of the number of such shares or equity interests that the Debtors reasonably estimate will be issued at the effective date of such 382(l)(5) Plan, as determined for U.S. federal income tax purposes. If more than one class of Affected Equity is to be distributed pursuant to the terms of the 382(l)(5) Plan or holders with a class of Debt Securities may receive a disproportionate distribution of such Affected Equity relative to other holders in the same class, the Applicable Percentage shall be determined by the Debtors in their reasonable judgment in a manner consistent with the estimated range of values for the equity to be distributed reflected in the valuation analysis set forth in the 382(l)(5) Plan and disclosure statement, and shall be expressed in a manner that makes clear the number of shares or other equity interests in each class of Affected Equity that would constitute the Applicable Percentage.

c) Beneficial Ownership of a Security. Means:

(x) the beneficial ownership of a Debt Security as determined in accordance with applicable rules under section 382 of the Tax Code (for such purpose, treating a Debt Security as if it is stock), and, to the extent provided in those rules from time to time, shall include (A) direct and indirect ownership (determined without regard to the rule that treats stock of an Entity to which the constructive ownership rules apply as no longer owned by that Entity); and (B) ownership by a holder's family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of Debt Securities and/or stock; and

(y) the beneficial ownership of an Option (irrespective of the purpose for which such option was issued, created or acquired).

For the avoidance of doubt, beneficial ownership of a Debt Security also includes the beneficial ownership of any right to receive any equity consideration to be distributed in respect of a Debt Security pursuant to a chapter 11 plan or applicable bankruptcy court order. Variations of the term "Beneficial Ownership" shall have correlative meanings.

d) Creditors' Committee. Means any official committee of holders of unsecured Debt Securities appointed pursuant to section 1102 of the Bankruptcy Code in the Debtors' chapter 11 cases.

e) Debt Notice Parties. Means (a) the United States Trustee for the Southern District of New York; (b) the indenture trustee for the prepetition 9.2%

Senior Notes due June 1, 2021; (c) the indenture trustee for the prepetition 10.625% Senior Secured Notes due March 15, 2019; (d) the indenture trustee for the prepetition 9.95% Senior Notes due July 1, 2018; (e) the indenture trustee for the prepetition 9.75% Senior Secured Notes due March 1, 2018; (f) the indenture trustee for the prepetition 7.00% Convertible Senior Notes due April 1, 2017; (g) any Substantial Securityholder or Additional Substantial Securityholder who has properly given notice of such status; and (h) the agent for the Debtors' proposed postpetition secured debtor-in-possession financing.

f) Entity. Has the meaning given to such term under Treasury Regulation section 1.382-3(a), including a group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition.

g) Maximum Amount. Means for each person or Entity and by class or other applicable breakdown of Securities, the greater of (A) the applicable Threshold Amount and (B) the Protected Amount (if any) for such Substantial Securityholder.

h) Newly Traded Securities. Means Debt Securities (i) with respect to which an Entity acquired Beneficial Ownership after the date that was 18 months before the Commencement Date; and (ii) that are not "ordinary course" claims, within the meaning of Treasury Regulations section 1.382-9(d)(2)(iv), of which the same Entity has always had Beneficial Ownership.

i) Option. Has the meaning given to such term under Treasury Regulation section 1.382-4(d)(9)(i), with respect to the acquisition of a Debt Security or any consideration (including equity) distributed in respect of any Debt Security pursuant to a chapter 11 plan or applicable bankruptcy court order.

j) Permitted Transferee. Means with respect to a Substantial Securityholder is a person that is not a Related Person and whose holding of a Security would not result in such Substantial Securityholder having Beneficial Ownership of such Security.

k) Protected Amount. Means the amount of Debt Securities (by class or other applicable breakdown) of which a holder had Beneficial Ownership on the Motion Date, increased by the amount of Debt Securities of which such holder acquires, directly or indirectly, Beneficial Ownership pursuant to trades entered into before the Motion Date that had not yet closed as of the Motion Date minus the amount of Debt Securities of which such holder sells, directly or indirectly, Beneficial Ownership pursuant to trades

entered into before the Motion Date that had not yet closed as of the Motion Date.

l) Related Person. Persons (including Entities) are "Related Persons" if: (A) the person bears a relationship to the other person described in section 267(b) or 707(b) of the Tax Code, or (B) the persons are members of a group acting in concert with respect to the acquisition of Debt Securities or equity in the reorganized Debtors.

m) Security or Debt Security. Means any claim against any of the Debtors, including, without limitation any claim against any of the Debtors as a guarantor by any party with respect to Debt Securities of the Debtors.

n) Substantial Securityholder. Means any person or Entity that Beneficially Owns an aggregate dollar amount of Securities, or any Entity controlled by such person or Entity through which such person or Entity Beneficially Owns Securities, of more than the Threshold Amount.

For the avoidance of doubt, section 382 of the Tax Code, the Treasury Regulations promulgated thereunder, and all relevant IRS and judicial authority shall apply in determining whether the Debt Securities of several persons and/or Entities must be aggregated when testing for Substantial Securityholder status, treating Debt Securities as if they were stock.

o) Threshold Amount. Means the amount of Securities, as set forth in the Notice of 382(l)(5) Plan (as revised by any Amended Notice of 382(l)(5) Plan, as applicable) sufficient, in the determination of the Debtors, to entitle the Beneficial Owner thereof to the Applicable Percentage of the Affected Equity. The amount determined in the preceding sentence shall be disclosed in the Notice of 382(l)(5) Plan and may be adjusted thereafter as contemplated by this Order or any future order of the Court.

p) Treasury Regulations. Means the U.S. Department of Treasury regulations promulgated under the Tax Code, as amended from time to time.

(8) Noncompliance with the Trading Procedures. Any purchase, sale, or other transfer of Debt Securities in violation of the procedures set forth herein shall be null and void *ab initio* and shall confer no rights on the transferee.

(9) Debtors' Right to Waive. The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in this Motion.

8. Any person or Entity acquiring, disposing of or transferring Kodak Stock in violation of the restrictions set forth herein, or failing to comply with the "Equity Acquisition

Notice" or "Equity Disposition Notice" requirements, as may be the case, shall be subject to such sanctions as the Court may consider appropriate pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code.

9. Any person or Entity acquiring and/or failing to dispose of Debt Securities in violation of the restrictions set forth herein, or failing to comply with the "Notice of Substantial Securityholder Status," "Securities Acquisition Request," and/or "Notice of Compliance" requirements, as may be the case, shall be subject to such sanctions as the Court may consider appropriate pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code.

10. The notices substantially in the form attached to the Motion as Exhibit C, Exhibit D, Exhibit E, Exhibit F and Exhibit G are approved.

11. The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in this Order.

12. The Debtors shall serve notice of the entry of this Order substantially in the form attached to the Motion as Exhibit B (the "**Procedures Notice**") describing the authorized trading restrictions and notification requirements on the Notice Parties to the extent such parties have not previously been served with the Procedures Notice. Upon receipt of Procedures Notice, any transfer agents or indenture trustees shall send the Procedures Notice to all holders of Kodak Stock or Debt Securities registered with the transfer agent or indenture trustee. Any registered holder shall, in turn, provide the Procedures Notice to any holder for whose account the registered holder holds Kodak Stock or Debt Securities. Any holder shall, in turn, provide the Procedures Notice to any person or entity for whom the holder holds Kodak Stock or Debt Securities.

13. Any transfer agent or indenture trustee that executes a transfer as instructed, in its capacity as transfer agent or indenture trustee, shall not incur liability to any party in the event such transfer is determined to be in violation of this Order.

14. The Debtors are hereby authorized to pay, within five (5) business days of receipt of a detailed invoice from a transfer agent or indenture trustee, such transfer agent's or indenture trustee's reasonable and documented costs, fees and expenses incurred at the request of the Debtors in furtherance of the Motion or this Order, including, but not limited to, costs, fees and expenses arising from and related to the distribution of the documents specified in this Order.

15. The Debtors shall post the Procedures Notice on the Bloomberg newswire service, in the national editions of The Wall Street Journal and The New York Times, and on the website established by the Debtors' claims agent: www.kccllc.com/kodak.

16. Nothing herein shall preclude any person or entity that desires to purchase or transfer any Kodak Stock or Debt Securities from requesting relief from this Order in this Court subject to the Debtors' rights to oppose such relief.

17. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e), applicable securities, corporate, and other laws, and do not excuse compliance therewith.

18. The relief granted in this Order is intended solely to permit the Debtors to protect, preserve and maximize the value of the Tax Attributes. Accordingly, except to the extent the Order expressly conditions or restricts trading in Kodak Stock or Debt Securities, nothing in this Order or in the Motion shall or shall be deemed to prejudice, impair or otherwise

alter or affect the rights of any holders of interests in the Debtors, including in connection with the treatment of any such interests during the pendency of the Debtors' bankruptcy cases.

19. The requirements set forth in Local Rule 9013-1(b) are satisfied.

20. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: January 20, 2012
New York, New York

/s/Allan L. Gropper
United States Bankruptcy Judge