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Hearing Date: October 29, 2012 at 2:30 p.m. (Eastern Time)  
Objection Deadline: October 24, 2012 at 4:00 p.m. (Eastern Time)

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

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

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 363 AND 1114  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 APPROVING  
THE SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND  
THE OFFICIAL COMMITTEE OF RETIRED EMPLOYEES**

Eastman Kodak Company (“**Kodak**”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), file this motion (the “**Motion**”) for the entry of an order pursuant to sections 105, 363 and 1114 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing and approving a comprehensive settlement

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



agreement (the “**Proposed Agreement**”) between the Debtors and the Official Committee of Retired Employees appointed pursuant to section 1114 of the Bankruptcy Code (the “**1114 Committee**” and together with the Debtors, the “**Parties**”), the material terms of which are attached hereto as Exhibit 1 (“the **Term Sheet**”).<sup>2</sup> In support of the Motion, the Debtors respectfully state as follows:

### **Preliminary Statement**

1. From the outset of these chapter 11 cases, the Debtors were aware that the resolution of the Debtors’ retiree medical, dental, life insurance, and survivor income benefits (the “**Retiree Welfare Benefits**”) was a crucial step towards the Debtors’ successful emergence from chapter 11. After months of negotiation and discovery, the Debtors and the 1114 Committee have agreed on a global solution for the modification of the Retiree Welfare Benefits. Importantly, the Proposed Agreement and the relief requested herein is supported by the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”). The negotiation process has been protracted and lengthy, and at times, turbulent, and polarizing. The 1114 Committee has fought hard for all retirees and for the maximum amount of recovery possible to benefit the retirees. The reality of the situation, however, is that the Debtors cannot continue the Retiree Welfare Benefits. The Proposed Agreement marks a core milestone in the Debtors’ chapter 11 proceedings and is a critical and necessary step toward successfully emerging from chapter 11. The Proposed Agreement appropriately curtails one of the Debtors’ most substantial legacy liabilities and eliminates the need for costly and lengthy litigation, allowing the Debtors and their management to focus on other pressing restructuring initiatives, such as pursuing announced

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<sup>2</sup> The Debtors will file the proposed order and a copy of the definitive agreement prior to the objection deadline.

business dispositions and formulating and implementing their emergence plan. Litigation would have been risky and distracting for both the Debtors and the Retirees.

2. The Debtors are cognizant and appreciative of the sacrifice being made by the 56,000 retired employees, long-term disabled former employees, spouses, dependents, and survivors receiving Retiree Welfare Benefits (collectively, the “**Retirees**”) and are empathetic to the difficulties they face, yet the Debtors believe and have provided information to the 1114 Committee demonstrating that a modification of the Retiree Welfare Benefits is necessary for the Debtors to reorganize and emerge from chapter 11. There was no easy answer as to how to fairly resolve the Debtors’ Retiree Welfare Benefits costs. In fact, since the Petition Date, the Debtors have paid 100% of their share of the costs for Retiree Welfare Benefits while seeking a negotiated solution with the 1114 Committee – at a cash expenditure in excess of \$90 million. Pending greater clarity on other aspects of its reorganization strategy, the Debtors attempted to offset this cost with other savings – this is no longer viable. In fact, the Debtors believe that it would be imprudent for the Debtors to continue to pay approximately \$10 million per month in Retiree Welfare Benefits going forward. Ultimately, the Retirees’ recovery (as well as the extent of future benefits) is linked inextricably to the Debtors’ successful reorganization. The terms of the Proposed Agreement are designed to achieve this objective.

3. Based on the Debtors’ publicly stated operational restructuring aspirations, projected operating cash flow and emergence capital structure scenarios, the Debtors cannot continue to provide costly Retiree Welfare Benefits. It is clear that the current and future costs of Retiree Welfare Benefits are misaligned with companies of the Debtors’ size and financial wherewithal. For example, the monthly cost of the Retiree Welfare Benefits is approximately \$10 million, and the projected 2012 aggregate cash cost exceeds \$110 million. The Proposed

Agreement results in significant cost savings and liquidity enhancement for the Debtors – the Debtors are projected to save approximately \$10 million per month by the end of the first quarter of 2013 and, assuming a June 2013 emergence, a total of approximately \$100 million for 2013 (after funding an initial \$7.5 million of “start-up” capital and stipulating to a \$15 million allowed administrative expense claim to be paid pursuant to a confirmed plan).

4. To put the cost of the Debtors’ current Retiree Welfare Benefits obligation in perspective, each current employee of Kodak and its debtor subsidiaries must support the Retiree Welfare Benefits of seven Retirees, and each current U.S. employee of the Debtors would be required to generate approximately \$16,900 in earnings solely to pay for Retiree Welfare Benefits (based on 2012 figures). After the completion of the Debtors’ announced business dispositions and planned restructuring, these figures increase exponentially. There is no reasonable liquidity, balance sheet, or operational scenario that supports the continued payment of Retiree Welfare Benefits beyond the scope of the Proposed Agreement.

5. As part of the Debtors’ overall liquidity and expense management and in addition to reducing these Retiree Welfare Benefit liabilities, the Debtors have implemented an extensive operational restructuring. The Debtors have closed multiple manufacturing facilities, reduced excess manufacturing capacity worldwide, consolidated business lines and streamlined corporate overhead. As a result, the Debtors also lowered their human resource costs through a staggered program reducing their global workforce by over 2,700 positions, including over 70 executive positions, since January 1, 2012. A further reduction of approximately 1,200 positions will be implemented by the end of this year. Still, even with these cost reductions, the Debtors believe that the savings to be realized from the Proposed Agreement are necessary for the Debtors’ successful emergence from chapter 11.

### **Background**

6. On January 19, 2012 (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered.

7. On January 25, 2012, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed the Creditors’ Committee pursuant to section 1102 of the Bankruptcy Code (Docket No. 115.)

8. Founded in 1880 and long one of the world’s leading material science companies, the Debtors and their non-Debtor affiliates operate an integrated global business involving a diverse collection of mature and growth businesses with an array of valuable intellectual property. In order to address a shortfall in liquidity in the United States, monetize non-strategic intellectual property, fairly resolve legacy liabilities and focus on their most valuable business lines, the Debtors commenced these chapter 11 cases.

### **Facts Specific to the Relief Requested**

#### **A. Debtors’ Retiree Welfare Benefits Costs**

9. Historically, the Debtors provided generous welfare benefits to its Retirees pursuant to multiple benefit plans and programs.

10. The following chart summarizes the Retiree Welfare Benefits that the Debtors currently provide:

	<b>Approximate # of Retirees</b>	<b>Estimated Balance Sheet Liability (millions of \$)</b>	<b>Estimated Five Year Cash Cost (millions of \$)</b>
<b>Medical Benefits</b>			
Medicare-eligible coverage	31,895	\$440	\$201

	Approximate # of Retirees	Estimated Balance Sheet Liability (millions of \$)	Estimated Five Year Cash Cost (millions of \$)
Pre-65 coverage	6,270	\$69	\$54
<b>Dental Benefits</b>	14,835	\$24	\$12
<b>Life Insurance</b>	9,426	\$180	\$113
<b>Survivor Income Benefits (SIB)</b>			
<b>Asset SIB</b>	3,048	\$479	\$112
<b>Insured SIB</b>	3,493	\$31	\$26
<b>TOTAL</b>		\$1,223	\$518

11. The cost of providing these benefits, however, has become unsustainable. As of December 31, 2011, the Debtors' total OPEB (defined below) liability exceeded \$1.2 billion. The Debtors' projected cash costs for Retiree Welfare Benefits (Other-Post-Employment Benefits ("OPEB") for accounting purposes) for 2012 exceeds \$112 million. Of this amount, approximately \$65 million reflects medical benefits, \$3 million for dental benefits, \$23 million for life insurance benefits, and \$26 million for survivor income benefits.<sup>3</sup>

#### **B. Formation of the 1114 Committee**

12. Shortly after the Debtors commenced these chapter 11 proceedings, they sought to reduce their Retiree Welfare Benefits, consistent with their stated goal of fairly resolving legacy liabilities. On February 27, 2012, the Debtors filed a Motion for an Order Authorizing Debtors to Terminate Non-Vested Medicare Enhancement Benefits for Post-1991 Retirees (the "**Termination Motion**"). (Docket No. 432.) The Termination Motion sought Court approval under section 363 of the Bankruptcy Code for the Debtors to terminate Medicare Advantage plan benefits and supplemental Medicare benefits for employees who retired or became eligible for

<sup>3</sup> The Early Retiree Reinsurance Program subsidy from the federal government covered approximately \$5 million of these costs.

long-term disability benefits on or after October 1, 1991 and their spouses, dependents, and survivors. (*Id.*) In response to objections by several retiree groups and after a hearing, the Debtors withdrew the Termination Motion without prejudice, but expressly reserved their right to seek termination of these and/or any other benefits in future. The Debtors also consented to the formation of an 1114 Committee in order to attempt to negotiate a resolution of their Retiree Welfare Benefits liability consensually.

13. On May 17, 2012, the U.S. Trustee appointed the 1114 Committee to negotiate with the Debtors regarding the modification of Retiree Welfare Benefits as the “authorized representative” of the retirees under section 1114 of the Bankruptcy Code. (Docket No. 1206.)

**C. Negotiation Process**

14. Since the appointment of the 1114 Committee, the Debtors engaged in extensive good faith negotiations with the 1114 Committee and responded to the 1114 Committee professionals’ numerous document and information requests.

15. The process began with the exchange of preliminary information, as the 1114 Committee submitted requests for documents and information, dated June 7, 8, and 28, and July 13. The Debtors populated an “electronic data room” to provide documents responsive to these requests as well as anticipated future requests.

16. On July 19, 2012, the Debtors presented an initial proposal to the advisors of the 1114 Committee at an in-person meeting.

17. Thereafter, the 1114 Committee, through its advisors or consultants, submitted additional information and document requests on July 27, August 5, 10, 17, 22, 23, 27, and 30, and September 12, 13, 20, and 24, 2012. The Debtors provided access to over a million pages of documents concerning the Debtors and their operations, financial condition, and employee benefit plans.

18. In addition to responding to the numerous document requests, the Debtors also arranged due diligence meetings with, among other participants, the 1114 Committee's financial advisors and the Debtors' financial advisors. Meetings were held on June 14, July 10, 11, 12, 13, 16, and 18, and August 8, 10, and 21, 2012 to explain the Debtors' financial situation and to answer questions. The Debtors' and 1114 Committee's actuarial advisors also met on August 30, 2012 to discuss the 1114 Committee's actuarial advisors' specific questions.

19. In response to the 1114 Committee's questions and concerns, the Debtors revised the terms of the initial proposal and submitted a revised proposal to the 1114 Committee's advisors on August 10, 2012. On August 22, 2012, the Debtors and the 1114 Committee's advisors conferred by telephone to discuss the revised proposal. In addition to discussing the terms of the revised proposal, the Debtors also provided details regarding its financial position and recent efforts to improve it, as well as the status of its intellectual property sale process, and responded to questions regarding the proposal and initiatives toward emergence.

20. The Debtors' and the 1114 Committee's advisors subsequently met again on September 6, 2012. The 1114 Committee provided a counter-proposal. Since the September 6 meeting, the Debtors and the 1114 Committee's professionals exchanged numerous revised drafts of a proposal. On October 3, the Debtors and the 1114 Committee finally reached an agreement in principle and on October 10, 2012, finalized the agreement set forth on the Term Sheet.

21. At all times during the negotiation process, the Debtors and the 1114 Committee engaged in good faith negotiations, consistent with section 1114(f)(2) of the Bankruptcy Code.



22. The Creditors' Committee and the professionals to the Ad Hoc Committee of Second Lien Noteholders were informed of the status of the negotiations between the Debtors and the 1114 Committee at all times during the negotiation process.

**D. Terms of the Proposed Agreement**

23. Set forth below is a summary of the principal terms of the Proposed Agreement:<sup>4</sup>

(a) The Debtors will continue all Retiree Welfare Benefits through December 31, 2012 (the "**Termination Date**").

(b) At the Termination Date, eligible Retirees will be entitled to exercise any and all conversion rights provided by any employee welfare benefit plan in which they are a participant.

(c) Retirees who lose medical (and dental, if applicable) coverage as a result of the termination of Retiree Welfare Benefits may continue coverage under COBRA at their own cost.

(d) The 1114 Committee may establish a tax-exempt voluntary employees' beneficiary association trust (the "**VEBA**") or other fund or account. The Debtors will provide to the 1114 Committee, on the settlement approval date, an initial cash payment of \$7.5 million to support the initial administration and benefits obligations of the VEBA or other fund established by the 1114 Committee. The Debtors will assist the 1114 Committee in organizing and establishing any VEBA, including by providing reasonable professional and informational assistance.

(e) The 1114 Committee will file a single proof of claim against the Debtors' estates. The Debtors will agree to an allowed, non-priority, general unsecured claim in the amount of \$635 million. The 1114 Committee or the VEBA shall have the right to sell, assign or convey such general unsecured claim.

(f) The 1114 Committee will receive an allowed administrative claim in the amount of \$15 million to be paid pursuant to a confirmed plan.

(g) The 1114 Committee will dismiss the Adversary Proceeding<sup>5</sup> with prejudice.

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<sup>4</sup> The following is intended to provide a summary of the salient terms of the Proposed Agreement; to the extent that the summary contained in this Motion is inconsistent with the actual terms of the Proposed Agreement, the Proposed Agreement shall control.

<sup>5</sup> On July 9, 2012, the 1114 Committee commenced an adversary proceeding, Official Committee of Retired Employees of Eastman Kodak Company, *et al.* v. Eastman Kodak Company, *et al.*, Adv. Proc. No. 12-01747 (the "**Adversary Proceeding**"), seeking a declaratory judgment that section 1114 of the Bankruptcy Code applies to all "retiree benefits" (as the term is defined in section 1114(a) of the Bankruptcy Code), whether or

(h) The Debtors and the 1114 Committee agree that prompt and comprehensive communications to all retirees is of paramount importance and they will work together on communications strategies and content.

(i) The 1114 Committee and the VEBA will support a plan of reorganization that is consistent with the terms of the Proposed Agreement.

### **Jurisdiction**

24. The Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 6004(h) and 9019 and rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

### **Relief Requested**

25. By this Motion, the Debtors seek entry of the Order authorizing the Parties to enter into the Proposed Agreement and such other and further relief as is just and proper.

### **Basis for Relief**

#### **A. Bankruptcy Rule 9019**

26. The Proposed Agreement is the result of extensive and protracted negotiations. It is designed to avoid costly, uncertain, and risky litigation and enables the Debtors to take the necessary steps in order to emerge from bankruptcy. Without this settlement, the Debtors would have to continue negotiating, and potentially litigating, with the 1114 Committee, which would have distracted the Debtors from focusing on other pressing restructuring initiatives. It is in the best interests of the Debtors and their estates, and therefore can and should be approved by this Court. Bankruptcy Rule 9019(a) permits a debtor in possession to compromise and settle claims,

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not those benefits are vested. On September 11, 2012, the Debtors filed the Notice of Presentment of Stipulation Staying Adversary Proceeding No. 12-01747 (Adversary Proceeding Docket No. 11), which was so ordered by the Court on September 19, 2012. (Adversary Proceeding Docket No. 13.)

subject to bankruptcy court approval. Fed. R. Bankr. P. 9019(a). The legal standard for determining the propriety of a bankruptcy settlement is whether the settlement is in the “best interests of the estate.” *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 523 (S.D.N.Y. 1993). The United States Supreme Court has noted that “[c]ompromises are a ‘normal part of the process of reorganization.’” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (citation omitted). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 122-23 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. *Id.* at 122. The court may consider the opinions of the debtor in possession and its counsel that the settlement is fair and reasonable. *Id.*; *see also In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). This discretion should be exercised by the bankruptcy court “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *Shugrue*, 165 B.R. at 123 (“[T]he general rule [is] that settlements are favored and, in fact, encouraged.”).

27. To approve a proposed settlement, a bankruptcy court is not required to decide issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Finkelstein v. W. T. Grant Co. (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (citing *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)); *see also Purofied Down Prods.*, 150 B.R. at 522 (“the court need not conduct a ‘mini-trial’ to determine the merits of the underlying [dispute]”). In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following *Iridium* factors:

- “the balance between the litigation’s possibility of success and the settlement’s future benefits;
- the likelihood of complex and protracted litigation, ‘with its attendant expense, inconvenience, and delay,’ . . . ;
- ‘the paramount interests of creditors,’ . . . ;
- whether other parties in interest support the settlement...;
- the ‘competency and experience of counsel’ supporting, and ‘[t]he experience and knowledge of the bankruptcy court judge’ reviewing, the settlement;
- ‘the nature and breadth of releases to be obtained by officers and directors’; and
- ‘the extent to which the settlement is the product of arm’s length bargaining.’”

*Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (quoting *In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006)).

28. The Debtors believe that the Proposed Agreement represents a fair and equitable resolution of the Retiree Welfare Benefits liability that falls well within the range of reasonableness and satisfies each of the *Iridium* factors.

29. With respect to the first factor, there is no question that the Proposed Agreement passes muster. Prosecuting the Adversary Proceeding and/or litigating other complex issues related to Retiree Welfare Benefits would have been costly and distracting to the Debtors at a critical time in these chapter 11 cases. Given the inherent uncertainty of litigation in general, the sensitive nature of the issues that would need to be resolved judicially and the fair and equitable economic resolution of the Debtors’ Retiree Welfare Benefits liability, this Court should approve the Proposed Agreement under Bankruptcy Rule 9019. *See, e.g., Hibbard Brown*, 217 B.R. at 46

(approving settlement after finding that the legal issues presented were “complex” and carried “no guarantee of success”).

30. The Proposed Agreement also satisfies the second *Iridium* factor. The Adversary Proceeding and disputes regarding the modification of Retiree Welfare Benefits likely would have continued for a significant period of time and consumed a significant amount of the Debtors’ management’s attention and energy. These disputes and disruptions would have distracted the Debtors from focusing on stabilizing their business operations, negotiating and soliciting active proposals for announced sale and business dispositions, and other aspects of their restructuring at a critical time in these chapter 11 cases.

31. With respect to the third *Iridium* factor, the Proposed Agreement is beneficial to the Debtors’ estates and their stakeholders because discontinuing Retiree Welfare Benefits on December 31, 2012 is necessary for the Debtors to successfully emerge from chapter 11. The Proposed Agreement will substantially reduce the Debtors’ monthly operating costs (by approximately \$10 million a month in administrative expense claims) and increase liquidity. Modification of the Retiree Welfare Benefits preserves value for all stakeholders (including Retirees) and achieves one of the Debtors’ stated goals of the chapter 11 filing. After evaluating all available means of curtailing this Retiree Welfare Benefits liability, the Debtors have determined, in their business judgment and in consultation with their advisors and key stakeholders, that entering into the Proposed Agreement is by far the best option in terms of maximizing the anticipated return to all creditors.

32. As for the last three *Iridium* factors, the Proposed Agreement was negotiated and proposed by the Parties without collusion, in good faith, and from arm’s-length bargaining

positions. As noted above, these negotiations occurred over the course of many months, and would resolve months of expensive litigation and monthly operating costs.

33. The benefit to the Debtors' estates from entering into the Proposed Agreement is clear. The Proposed Agreement reduces the Debtors' continued payments toward Retiree Welfare Benefits, which is necessary for the Debtors to be able to reorganize. It also avoids lengthy and complex litigation and preserves value for all stakeholders. It is clear that the Proposed Agreement represents a resolution that falls well above the lowest point in the range of reasonableness.

34. In sum, the Debtors have determined, exercising their sound business judgment, that the Proposed Agreement is necessary to permit the reorganization of the Debtors, assures that all creditors, Debtors, and affected parties are treated fairly and equitably, and is favored by the balance of the equities. The Proposed Agreement is beneficial to the Debtors' estates and their stakeholders, is in the best interests of the Debtors' creditors, and the paramount interests of all parties are best served by the Court's approval of the Proposed Agreement. Accordingly, the Debtors respectfully request that the Court approve the Proposed Agreement pursuant to Bankruptcy Rule 9019.

**B. Section 363 of the Bankruptcy Code**

35. As noted above, the Proposed Agreement provides that the Debtors will provide to the 1114 Committee, on the settlement approval date, a cash payment of \$7.5 million to support the VEBA's initial administration and benefits obligations. Accordingly, consistent with Bankruptcy Rule 9019, the Debtors seek authorization pursuant to section 363(b) of the Bankruptcy Code to enter into such an agreement on the conditions set forth in the Proposed Agreement.

36. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Though section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, the Second Circuit has required that such use, sale or lease be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

37. The \$7.5 million contribution to the 1114 Committee and/or VEBA structure is an integral part of the Proposed Settlement that the Debtors believe represents a substantial effort to help continue certain benefits for Retirees beyond the Termination Date and/or pay for the administration of certain continued benefits. This cash funding obligation, coupled with the funding that will come from the \$635 million allowed general unsecured claim and the \$15 million allowed administrative claim (to be paid pursuant to a confirmed plan), will be the Debtors’ sole funding obligation toward future benefits (which benefits will be determined by the 1114 Committee). The Debtors and their estates will bear no further funding liability to the Retirees or the VEBA with respect to the establishment or maintenance of the VEBA or the provision of benefits thereunder (other than the payment of the fees and expenses of the 1114 Committee’s professionals, as and to the extent approved by the Bankruptcy Court).

38. Accordingly, the Debtors believe in their business judgment that the \$7.5 million funding into the VEBA is in the best interests of their estates and creditors, is fair and equitable, and should be approved by the Court.

**Notice**

39. Notice of this Motion shall be provided to: (a) the U.S. Trustee; (b) Milbank, Tweed, Hadley & McCloy LLP, counsel to the Creditors' Committee; (c) U.S. Bank, National Association, as indenture trustee; (d) Wilmington Trust, National Association, as indenture trustee; (e) the Securities and Exchange Commission; (f) the Internal Revenue Service; (g) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., the agent for the Debtors' post-petition secured lenders; (h) the Environmental Protection Agency; (i) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; (j) Arent Fox LLP and Haskell Slaughter Young & Rediker, LLC, counsel to the 1114 Committee; and (k) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that further notice of this Motion is neither required nor necessary.

**No Prior Request**

40. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter an order granting the relief requested herein and (b) grant such other and further relief as is just and proper.



Dated: October 10, 2012  
New York, New York

/s/ Andrew G. Dietderich  
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Counsel to the Debtors and  
Debtors in Possession

**EXHIBIT 1**

**Term Sheet**

PROVIDED AS PART OF SETTLEMENT DISCUSSIONS; SUBJECT TO FEDERAL RULE OF EVIDENCE 408, ALL BANKRUPTCY AND STATE LAW EQUIVALENTS AND EXECUTION OF DEFINITIVE DOCUMENTS

**MATERIAL TERMS OF PROPOSED GLOBAL SETTLEMENT OF RETIREE BENEFITS BETWEEN THE OFFICIAL COMMITTEE OF RETIRED EMPLOYEES (“1114 COMMITTEE”) OF EASTMAN KODAK COMPANY, ET AL. (THE “DEBTORS”) AND THE DEBTORS**

**I. Continuation of Benefits:** The Debtors will continue all currently in effect retiree benefits (as defined under section 1114 of the Bankruptcy Code, collectively, “**Retiree Benefits**”) through December 31, 2012. The plans and programs sponsored or funded by the Debtors that provide Retiree Benefits will be terminated or amended so that no Retiree Benefits will be provided for claims incurred after 11:59 p.m. Eastern Time on December 31, 2012 (the “**Termination Date**”). COBRA coverage to provide medical and dental benefits will be made available after the Termination Date for retirees, long-term disability recipients and their respective spouses, dependents, and survivors (collectively, the “**Retirees**”) who lose coverage as a result of the amendment or termination of plans or programs providing Retiree Benefits. Retirees will pay the cost of COBRA coverage.

Following the Termination Date, eligible Retirees will be entitled to exercise any and all conversion rights provided by any employee welfare benefit plan in which they are a participant.

For the avoidance of doubt, survivor income benefits paid through fully-paid MetLife annuity contracts for deaths prior to the Termination Date will not be affected or impaired by this global settlement.

As soon as practicable, the Debtors will prepare the necessary and required motion(s) and pleading(s) and take such action as is appropriate to obtain approval and consummation of the settlement. The Debtors and 1114 Committee will cooperate with each other in good faith and will coordinate their activities (to the extent possible and subject to the terms of this term sheet) with respect to the prosecution of the settlement approval motion, obtaining approval of the settlement and the consummation of the transactions contemplated under the settlement and scheduling. In the motion(s) and pleading(s) submitted to the bankruptcy court, the Debtors will set forth a detailed explanation as to how the settlement satisfies the requirements of Section 1114 of the Bankruptcy Code, including, but not limited to, the need to terminate benefits prior to emergence. Prior to filing any motion, pleading or order with respect to this settlement or term sheet, the Debtors will use their reasonable best effort to allow the 1114 Committee reasonable time to comment on any such pleading, motion or order; provided, however, any such draft will be delivered to the 1114 Committee for review and comment no later than 24 hours prior to filing of such motion, pleading or order. The Debtors and the 1114 Committee will request that the Bankruptcy Court schedule a hearing (the “**Settlement Hearing**”) prior to the end of October 2012.

The Debtors and the 1114 Committee will consult with each other and be afforded input before either party issues any press release or otherwise makes any public statements or has any communications with members of the press with respect to the term sheet, settlement and the transactions contemplated by the settlement.

PROVIDED AS PART OF SETTLEMENT DISCUSSIONS; SUBJECT TO FEDERAL RULE OF EVIDENCE 408, ALL BANKRUPTCY AND STATE LAW EQUIVALENTS AND EXECUTION OF DEFINITIVE DOCUMENTS

The Debtors and the 1114 Committee and the Official Committee of Unsecured Creditors (the “UCC”) will work together in good faith to finalize a definitive agreement memorializing the terms hereof not later than three business days prior to the objection deadline established for the Settlement Hearing, and will file a copy of such definitive agreement with the Bankruptcy Court.

**II. Cash Contribution:** In order to continue certain benefits for Retirees after the Termination Date, the 1114 Committee may establish a tax-exempt VEBA trust or similar structure, although it reserves the right to determine that another means of distributing benefits is more appropriate upon prior notice to the Debtors and the UCC. If a VEBA trust or similar structure is pursued, it will be established by the 1114 Committee. On the settlement approval date, the Debtors will immediately fund the VEBA or other fund or account as directed by the 1114 Committee with \$7.5 million in cash to support the VEBA’s or similar structure’s initial administration and/or pay benefits obligations. If a VEBA or other similar structure is not established on the settlement approval date, the payment will be remitted to and held by the 1114 Committee until such VEBA or similar structure is established or other means of distribution are determined. The nature and duration of benefits or payments that may be offered or provided to Retirees will be determined by the 1114 Committee and/or trustees of the VEBA or similar structure, in its or their sole discretion. The Debtors and their estates shall bear no liability to the Retirees, or the VEBA (or other similar structure) with respect to the establishment, design, or maintenance of the VEBA (or similar structure) or the provision of benefits thereunder, other than the obligations described and provided for in this Term Sheet.

**III. Claim Allowance:** The 1114 Committee, as the authorized representative of the Retirees, will file a single proof of claim against the Debtors’ estates. The Debtors will agree to an allowed, non-priority, general unsecured claim in the amount of \$635 million (the “**Stipulated General Unsecured Claim**”). The total amount of the Stipulated General Unsecured Claim will be provided to the 1114 Committee in multiple tranches of smaller amounts each with a minimum tranche amount of \$5 million, as designated by the 1114 Committee. If a VEBA or similar structure is established, the 1114 Committee may assign the claim (or portions thereof) or proceeds to the VEBA (or similar structure). The 1114 Committee or the VEBA (or similar structure), as applicable, shall have the right to sell, assign or convey the Stipulated General Unsecured Claim. Without further order of the Court or consent of the Debtors, the Stipulated General Unsecured Claim may be sold in tranches.

**IV. Administrative Claim:** The VEBA (or similar structure), or if not established by the settlement approval date, the 1114 Committee, as the authorized representative of the Retirees, will receive an allowed administrative claim in the amount of \$15 million (the “**Allowed Administrative Claim**”) which, at the discretion of the VEBA or 1114 Committee, as applicable, may be satisfied in cash, equity or other plan securities in the reorganized entity,<sup>1</sup> in each case, under a confirmed plan in these proceedings or as otherwise provided under the Bankruptcy Code. If the VEBA or similar structure is established, the 1114 Committee will

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<sup>1</sup> The VEBA or 1114 Committee’s ability to convert or accept a distribution other than cash will depend on the nature and structure of the confirmed plan of reorganization and whether or not cash, equities or other securities are distributed to general unsecured creditors and the value and liquidity of such securities.

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assign the Allowed Administrative Claim or its proceeds to the VEBA (or similar structure). The 1114 Committee or VEBA (or similar structure), as applicable, shall have the right to sell, assign or convey the Allowed Administrative Claim.

**V. Communication with Retirees:** The Debtors and the 1114 Committee recognize and agree that it is of paramount importance that all Retirees receive prompt advance notice and comprehensive information with respect to any changes in benefits. To that end, the Debtors and the 1114 Committee commit to forming a working group that will work together on communications issues, while the Debtors will remain principally responsible for all communications to Retirees. No later than 45 days prior to the Termination Date, the Debtors will provide reasonable written notice and use their communications lists, infrastructure, and systems to communicate with Retirees about the termination, modification and transition of retiree benefits and will fund such communications. The terms, frequency, and methods of such communications will be determined by the 1114 Committee and Debtors communications working group, in their reasonable judgment, through appropriate consultation and joint agreement. Communications to Retirees will include information regarding all changes and the circumstances surrounding the modification of benefits, the rights each Retiree may have as to remaining benefits, and any other options and alternatives the Retiree may possess. Upon provision of the notice, a call center will be maintained for the benefit of Retirees and at least 3 town hall meetings will be held during the 45-day period. The call center and town hall meetings shall be designed to reach the maximum number of Retirees and be informative and address the issues and concerns of termination and transition. The Debtors and the 1114 Committee will jointly, and in good faith, determine the appropriate scope and format of, and reasonable information to be provided at the town hall meetings.

**VI. Retired Employees Committee:** The Debtors will seek customary and typical exculpation and releases for the 1114 Committee and its members and professionals under the settlement. The 1114 Committee will continue to exist through the effective date of any confirmed chapter 11 plan or conversion of these proceedings and the 1114 Committee and its professionals will perform reasonable tasks and duties under the Clarification Order and Retention Orders, including, but not limited to, the handling and monetization of the 1114 Committee's allowed claims, whether such claims are held by the 1114 Committee or VEBA trust and the creation, funding and administration of a VEBA or similar structure. The 1114 Committee's professionals will continue to be paid by the estate under the Compensation Order and Retention Orders through the effective date of any chapter 11 plan.

**VII. Other:** The Debtors will use commercially reasonable efforts to assist the 1114 Committee in establishing the tax-free VEBA (or other similar structure), including, among other things, at the 1114 Committee's reasonable request, providing reasonable access to the Debtors' professionals, agents and employees (including the human resources department), and to the books and records of the Debtors, to the extent reasonably necessary to implement the terms of this agreement (and in compliance with all applicable law, rules and regulations).

Any chapter 11 plan filed and confirmed in these cases must be in conformity and consistent with the terms of the settlement agreement and incorporate the terms and provisions of

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the settlement. The 1114 Committee and the VEBA (if any) will support a plan of reorganization that is consistent with the terms of the settlement.

The Debtors will use their best efforts to obtain the Official Committee of Unsecured Creditors' and Second Lien Lenders' support of the settlement.

The payment and claims to be provided to the 1114 Committee or the VEBA or other fund hereunder are in consideration for the termination of Retiree Benefits prior to the conclusion of the bankruptcy cases and in satisfaction for all claims arising from the termination and modification of Retiree Benefits pursuant to this settlement. The proposed order approving the terms of the settlement shall provide the payment of the \$7.5 million and that the allowance of the Stipulated General Unsecured Claim and the Allowed Administrative Claim shall be in full and final satisfaction of the Debtors' liability with respect to Retiree Benefits and no other creditor shall be allowed a claim in respect of Retiree Benefits. As part of the settlement, the Debtors will seek releases for the plans and programs (and related fiduciaries and service providers) that provide Retiree Benefits. For the avoidance of doubt, all allowed claims provided under the settlement shall be permanently allowed and not subject to challenge, including but not limited to, re-characterization, subordination, avoidance or otherwise, and at the 1114 Committee's discretion, sold, conveyed assigned or encumbered and the holder, whether the 1114 Committee or the VEBA (or similar structure) shall be entitled to exercise any voting rights with respect to any plan filed in these proceedings. Absent the consent of the holders of the Stipulated General Unsecured Claim, the treatment of the Stipulated General Unsecured Claim shall be the same as the treatment provided to the general unsecured creditors under any confirmed plan.

#### Reservations/Limitations:

The parties hereto continue to reserve their respective rights to assert that Section 1114 of the Bankruptcy Code does or does not apply to all retiree benefits, and that benefits provided to Retirees by the Debtors are vested or unvested. Upon the Court's approval of this settlement, the 1114 Committee shall promptly dismiss the adversary proceeding commenced by it with prejudice.

This Term Sheet summarizes certain of the critical terms, elements, and conditions of the proposed settlement. Notwithstanding the foregoing, this Term Sheet remains subject to, among other things, (a) resolution of any terms or items set forth herein that are indicated as "to be determined" or "will be determined"; (b) resolution of technical and non-substantive terms not specifically set forth herein; (c) acceptable definitive documentation of all matters contemplated herein, including a settlement agreement, settlement approval order, plan of reorganization, and any agreements contemplated under this Term Sheet; and (d) the statutory and fiduciary duties of the 1114 Committee, the Debtors and the UCC.

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Counsel to the Debtors and  
Debtors in Possession

Counsel to the Debtors and  
Debtors in Possession

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

In re:

EASTMAN KODAK COMPANY, *et al.*,<sup>1</sup>  
Debtors.

)  
) Chapter 11  
)

) Case No. 12-10202 (ALG)  
)

) (Jointly Administered)  
)  
)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR AN ORDER PURSUANT TO  
SECTIONS 105, 363 AND 1114 OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULE 9019 APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE  
DEBTORS AND THE OFFICIAL COMMITTEE OF RETIRED EMPLOYEES**

**PLEASE TAKE NOTICE** that on the date hereof, Eastman Kodak Company, *et al.* (collectively, the “**Debtors**”), filed the Debtors’ Motion for Entry of an Order Pursuant to Sections 105, 363 and 1114 of the Bankruptcy Code and Bankruptcy Rule 9019 Approving the Settlement Agreement Between the Debtors and the Official Committee of Retired Employees

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

(the “**Motion**”).<sup>2</sup> The undersigned counsel will present the Motion to the Honorable Allan L. Gropper, Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), at One Bowling Green, New York, New York 10004, at a hearing to be held on **October 29, 2012 at 2:30 p.m. (ET)** (the “**Hearing**”).

**PLEASE TAKE FURTHER NOTICE** that responses or objections, if any, to the relief requested in the Motion must be filed electronically with the Court on the docket of *In re Eastman Kodak Company*, Case No. 12-10202 (ALG), pursuant to the Court’s General Order M-399 (available at <http://www.nysb.uscourts.gov/orders/m399.pdf>), by registered users of the Court’s case filing system and by all other parties in interest on a 3.5 inch disc, preferably in portable document format, Microsoft Word or any other Windows-based word processing format and served by U.S. mail, overnight delivery, hand delivery or, with the exception of the Court and the United States Trustee, facsimile upon each of the following: (a) the Chambers of the Honorable Allan L. Gropper, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (b) the Debtors and their counsel; (c) Milbank, Tweed, Hadley & McCloy LLP, counsel to the Official Committee of Unsecured Creditors; (d) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors’ postpetition secured lenders; (e) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; and (f) Arent Fox LLP and Haskell Slaughter Young & Rediker, LLC, counsel to the Official Committee of Retired Employees, so as to be actually received no later than **October 24, 2012 at 4:00 p.m. (ET)**.

**PLEASE TAKE FURTHER NOTICE** that only those objections that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection

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<sup>2</sup> All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.



may result in entry of a final order granting the Motion as requested by the Debtors without further notice. The parties are required to attend the Hearing, and failure to attend in person or by counsel may result in relief being granted or denied upon default.

**PLEASE TAKE FURTHER NOTICE** that copies of the Motion may be obtained from the Court's website at <http://ecf.nysb.uscourts.gov/> or, free of charge, the website of the Debtors' claims and noticing agent at <http://www.kccllc.net/kodak>.

Dated: October 10, 2012  
New York, New York

/s/ Andrew G. Dietderich  
\_\_\_\_\_  
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