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Hearing Date: June 13, 2013 at 11:00 a.m. (ET)
Objection Deadline: June 7, 2013 at 4:00 p.m. (ET)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EASTMAN KODAK COMPANY, *et al*.,	Case No. 12-10202 (ALG)
Debtors.	(Jointly Administered)
	Re: Doc. Nos. 3763 and 3651

OBJECTION OF MARK GEDEK, MARK J. NENNI, ANDREW J. MAUER, THOMAS W. GREENWOOD, BARRY BOLGER, JULIUS COLETTA, DALE TOAL, CLAUDE MATTE, AND ALLEN E. HARTTER TO DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Mark Gedek, Mark J. Nenni, Andrew J. Mauer, Thomas W. Greenwood, Barry Bolger, Julius Coletta, Dale Toal, Claude Matte and Allen E. Hartter ("ERISA Objectors"), on behalf of the Eastman Kodak Employees' Savings and Investment Plan (the "SIP") and the Kodak Employee Stock Ownership Plan (the "ESOP") (collectively, the "ERISA Plans"), themselves, and a

class of all others similarly situated, hereby submit this objection (the "Objection") to the adequacy of the Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated April 30, 2013 [Doc. No. 3651], and as may be amended (the "Disclosure Statement"), and state the following:

BACKGROUND

1. On September 14, 2012, the ERISA Objectors filed a Consolidated Complaint for breaches of fiduciary duties under the Employee Retirement Income Security Act of 1974 in the United States District Court for the Western District of New York (the "District Court"), Civil Action No. 6:12-CV-06051-DGL (the "ERISA Litigation"), alleging, on behalf of the ERISA Plans, themselves, and all other similarly situated participants in or beneficiaries of the ERISA Plans between January 1, 2010 and the date of the final liquidation of the ERISA Plans, inclusive (the "Class Period"), breach of fiduciary duties enumerated in ERISA § 404(a); 29 U.S.C. § 1104(a), pursuant to ERISA §§ 409, 502(a), 29 U.S.C. §§ 1109 and 1132, by certain current and former officers and directors (the "Non-Debtor Defendants") of the Eastman Kodak Company ("Kodak" or the "Company") in connection with the ERISA Plans. Kodak was not named as a defendant in the lawsuit because it was one of the Debtors[1] herein which filed for bankruptcy protection on January 19, 2012.

2. The Non-Debtor Defendants filed a motion to dismiss the Consolidated Complaint ("Complaint") on October 29, 2012. The ERISA Objectors opposed the motion to dismiss on December 13, 2012 and the Non-Debtor Defendants filed their reply in support of their motion to dismiss on January 14, 2013. The District Court held a hearing on the motion to

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement or Debtors' Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates [Doc. No. 3650] (the "Plan").

dismiss on May 23, 2013. A decision on the motion to dismiss is still pending.[2]

3. Several of the ERISA Objectors filed a proof of claim on behalf of the ERISA Plans and proposed class (*see, e.g.,* Claim No. 498 filed by Dale Toal and Claude Matte) (the "ERISA Claim") against Kodak for damages in excess of $50 million based upon ERISA violations, as set forth above and more specifically in the Complaint (a copy of the Complaint is available upon request).

THE DISCLOSURE STATEMENT

4. On April 30, 2013, the Debtors filed the Disclosure Statement and Plan.

5. As relevant hereto, the Plan classifies Claims as follows:

Class 4 – General Unsecured Claims; and
Class 10 – Section 510(b) Claims

Disclosure Statement ("D.S."), § 5B.2.d and j.

6. A "General Unsecured Claim," is defined as an unsecured claim "that is not a Retiree Settlement Unsecured Claim, Convenience Claim or Subsidiary Convenience Claim." D.S., § 5B.2.d. Class 4 Claimants are entitled to "receive New Common Stock in an amount equal to such Holder's Pro Rata share of the Unsecured Creditor Pool" in exchange for "full and final satisfaction, settlement, release, and discharge of" its claim. *Id.*

7. A "Section 510(b) Claim" is defined as a claim arising from, *inter alia,* "the rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors, for damages arising from the purchase or sale of such security." D.S., § 5B.2.j.

8. Under the Plan, Holders of Section 510(b) Claims are not entitled to vote and receive no distributions on account of their respective Claims.

[2] Bank of New York Mellon, the trustee of the SIP was also named as a defendant in the ERISA lawsuit and it too filed a motion to dismiss the Complaint at the same time as the Non-Debtor Defendants. A decision on the Bank of New York Mellon's motion to dismiss is also pending.

9. Further, the Disclosure Statement lists the SIP, but not the ESOP as a "qualified plan." D.S., § 2.C. It does not similarly list the ESOP. The Plan proposes to "continue the Qualified Plans in accordance with their terms, ERISA and the Internal Revenue Code . . . ." Therefore, the Plan concludes, "[a]ll Proofs of Claim filed on account of any Qualified Plan shall be deemed withdrawn as of the Effective Date . . . without any further action of the Debtors or the reorganized Debtors and without any further action, order or approval of the Bankruptcy Court." *Id.*

10. "Released Parties" is defined to include not only the Debtors but also, *inter alia*, their "current and former directors, officers, employees, agents" "in their capacities as such." Plan, § 2.2.138. The Plan and the Disclosure Statement indicate that Holders of Claims release all Released Parties from, *inter alia*, any and all claims, obligations, rights, suits, damages "based on or relating to, or in any manner arising from, in whole or in part . . ." "the purchase, sale or rescission of the purchase or sale of any Security of the Debtors . . . the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan" or "any action or omission as an officer, director, agent, representative, *fiduciary, controlling person, affiliate or responsible party"* except "to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, fraud, or a criminal act." D.S., § 5.K.6; Plan, § 12.6 (emphasis added).

11. The Plan and Disclosure Statement provide broad releases in favor of various non-Debtors (without demonstrating the required unusual circumstances and consideration being paid for such extraordinary relief).

PRELIMINARY STATEMENT

12. A disclosure statement may be approved as adequate if it contains "information of

a kind, and in sufficient detail, as far as is reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a). Courts have ample discretion to determine what constitutes adequate information. *In re PC Liquidation Corps.,* 383 B.R. 856, 865 (E.D.N.Y. 2008); *In re Ionosphere Clubs, Inc.,* 179 B.R. 24, 25 (Bankr. S.D.N.Y. 1995). Although adequacy is determined on a case-by-case basis under a fact-specific flexible standard, *In re Ionosphere*, 179 B.R. at 25, a disclosure statement must contain "simple and clear language delineating the consequences of the proposed plan on [creditors'] claims and the possible [Bankruptcy] Code alternatives so that [creditors] can intelligently accept or reject the Plan." *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988). A disclosure statement "must clearly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

OBJECTION

13. The ERISA Objectors submit that in certain material respects, the Disclosure Statement does not contain sufficient information to enable a reasonable person to make an "informed judgment about the Plan." The Disclosure Statement and the Plan contain broad and ambiguous provisions and/or omit material facts that may mislead holders of claims or interests from making an informed judgment about the Plan. Accordingly, the Disclosure Statement should not be approved.

14. The Disclosure Statement and Plan require modifications to bring the Disclosure Statement into compliance with 11 U.S.C. § 1125(a) and to make the Plan confirmable under the

Bankruptcy Code.

15. Specifically, the ERISA Objectors object to the adequacy of the Disclosure Statement and to the Plan on the following grounds:

(a) the Disclosure Statement fails to disclose how the ERISA Claim is to be classified and treated under the Plan;

(b) as a result of the broad and ambiguous releases provided by the Plan, it is unclear whether the claims in the Complaint are being released as against non-Debtors; the Disclosure Statement and Plan fail to disclose the requisite unusual circumstances and consideration justifying these extraordinary non-Debtor releases. Further, the Plan Injunction and Exculpation provisions (Plan, §§ 12.7 and 12.8) are likewise ambiguous and improper, and, together with the Plan releases, must affirmatively exclude the ERISA Claim against the Non-Debtor Defendants and any other non-Debtors;

(c) the proposed opt-out provision in the Ballots is potentially discriminatory.

(d) the Disclosure Statement fails to disclose whether the Plan intends to preclude the ERISA Objectors from proceeding with the ERISA claim against the Debtors to the extent of available insurance coverage, irrespective of any injunctions or distributions under the Plan; and

(e) the Disclosure Statement fails to describe, and the Plan fails to provide, an adequate protocol for the preservation and/or destruction of the Debtors' books, records or documents retained by the Reorganized Debtors.

16. *To the extent any objection, in whole or in part, contained herein is deemed to be an objection to confirmation of the Plan rather than, or in addition to, an objection to the adequacy of the Disclosure Statement, the ERISA Objectors reserve their right to assert such objection, as well as any other objections, to confirmation of the Plan. Furthermore, to the extent the ERISA Objectors or any member of the proposed ERISA class are impacted in any way by the contents of any supplements or amendments to the Disclosure Statement or the Plan, which may be filed after any Disclosure Statement or Plan confirmation objection deadline, the ERISA Objectors reserve their right to object thereto.*

A. The Disclosure Statement Fails to Disclose How The Claims In The ERISA Litigation Are To Be Classified And Treated Under the Plan

17. Nowhere in the Disclosure Statement or Plan is the ERISA Litigation defined or described. Nor is the ERISA Claim even specifically referenced. Thus, neither the Plan nor the Disclosure Statement disclose how the ERISA Claim asserted in the ERISA Litigation is to be classified and treated under the Plan. The inference is that the ERISA Claim is being treated the same as a Section 510(b) Claim. If that is the Debtors' intent, the ERISA Objectors disagree and this dispute should be fully described and disclosed in the Disclosure Statement.[3]

18. The ERISA Claim that may be asserted by the ERISA Objectors, individually, or on behalf of the ERISA Plans and the proposed ERISA class, is not and should not be subject to subordination under 11 U.S.C. § 510(b). This claim is not a securities claim as contemplated by 11 U.S.C. § 510(b), but rather is a claim for breach of fiduciary duty under ERISA against the ERISA Plans' fiduciaries for improperly investing or administering the holdings of the ERISA

[3] The fact that under the Plan "[a]ll Proofs of Claim filed on account of any Qualified Plan shall be deemed withdrawn as of the Effective Date . . . without any further action of the Debtors or the reorganized Debtors and without any further action, order or approval of the Bankruptcy Court" gives rise to another possible implication that the Debtors intend to extinguish the ERISA Claim to the extent it is brought on behalf of the SIP. *See* D.S., § 2.C. Such intent, if true, should also specifically be disclosed.

Plans, especially with respect to Kodak stock. The ERISA Objectors are not proceeding in the ERISA Litigation in any capacity other than as participants in the ERISA Plans – they are not proceeding as shareholders of Kodak.

19. Moreover, the ERISA Claim is not premised upon any allegations of fraud by Kodak in connection with the ERISA Objectors' individual purchase of Kodak stock, which allegations may trigger subordination under 11 U.S.C. § 510(b). The ERISA Litigation arises from breaches of statutorily mandated fiduciary duties by the ERISA Plans' fiduciaries, independent of and quite distinct from securities fraud causes of action. *See Rogers v. Baxter Int'l, Inc.*, 521 F.3d 702, 705 (7th Cir. 2008) (in distinguishing an ERISA suit from a securities action noted that "this is not a securities suit. It is an action against fiduciaries of a pension plan…. The sets of potentially responsible parties overlap only incidentally.") (emphasis added). Moreover, this is not an action brought by shareholders, but rather, it is brought so the proposed ERISA class may receive benefits promised to them as part and parcel of their employment through an assertion of claims for legal damages pursuant to ¶¶ 409 and 502 of ERISA. *See Graden v. Conexant Systems Inc.*, 496 F.3d 291, 296 (3d Cir. 2007) (finding a plan participant is entitled to the net value of his or her account as it should have been in the absence of any fiduciary mismanagement).[4]

20. The ERISA Objectors were employees of Kodak and participants in or beneficiaries of the ERISA Plans. The ERISA Plans held investments in Kodak stock during the Class Period. The ERISA Objectors, along with the other proposed class members (current

[4] Moreover, the ERISA Claim is different from securities fraud causes of action in as much as the ERISA Claim includes damages for participants whose accounts were invested in the imprudent Company stock fund during the Class Period as well as Kodak stock purchased by the ERISA Plans through its participants during the Class Period. Under securities laws there is no cause of action for "holders" of a company stock, *see Harris et al. v. Amgen, Inc., et al.*, No. 10-56014, at * 14 (9th Cir. June 4, 2013) (noting "there is no [securities law] violations absent purchase or sale of stock"), while ERISA provides damages to the extent that the imprudent investment performed less well than prudent alternative investments. *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248, 253, n.4 (2008).

and/or former employees of Kodak), as participants in the ERISA Plans, lost millions of dollars of their retirement savings when the value of Kodak stock held in the ERISA Plans plummeted in value, eventually becoming worthless. Notwithstanding the foregoing, the fiduciaries of the ERISA Plans (including Kodak) continued to offer Kodak stock as an investment for participant contributions under the ERISA Plans, despite actual or constructive knowledge of the financial disaster that was about to befall Kodak as it spiraled into bankruptcy.

21. The Complaint alleges that Non-Debtor Defendants, fiduciaries of the ERISA Plans, breached their fiduciary duties to the ERISA Plans, the ERISA Objectors and members of the putative class, and were therefore liable to the ERISA Plans, the ERISA Objectors and members of the putative class for the damages from that breach. *See* ERISA § 409(a) (fiduciaries are obligated to "make good to such plan any losses to the plan resulting from each such breach." Moreover, a court may grant "other appropriate relief" under ERISA § 502(a)(3).

22. Because the ERISA Claim is not a claim subject to subordination under 11 U.S.C. § 510(b), Kodak cannot, and should not, be permitted to use the Plan as a means to unilaterally subordinate the ERISA Claim.

23. Furthermore, as previously stated, Holders of Section 510(b) Claims receive no distribution under the Plan and are not entitled to vote. On the other hand, Holders of General Unsecured Claims (Class 4) will receive a pro rata distribution under the Plan. D.S., § 5B.2.d. The treatment of Class 4 and Class 10 Claims are substantially different, and hence, the intended classification of the ERISA Claim is critical and must be disclosed. As a result and by virtue of the aforesaid definitions, descriptions and treatments, additional disclosure is required to ensure the proper treatment of the ERISA Claim.

24. The Disclosure Statement should affirmatively state that the ERISA Claim, to the

extent ultimately allowed, is not a Section 510(b) Claim and the Plan should provide for the proper classification and treatment of the ERISA Claim. If there is a dispute as to such classification and treatment, the dispute should be identified and the impact of the treatment of the ERISA Claim depending upon its classification should be described and disclosed. As previously stated, and to the extent not resolved through this Objection, the ERISA Objectors reserve their rights to object to the classification and treatment of the ERISA Claim at confirmation.

B. The Plan and Disclosure Statement Contain Improper Releases and Injunction and Exculpation Provisions

25. Pursuant to the Plan, third-party claims against certain non-Debtors (identified as the Released Parties, which include some or all of the Non-Debtor Defendants) are released, waived and/or discharged if the Holder of a Claim votes to accept or reject the Plan, provided that in the scenario where the Holder votes to reject the Plan, the Holder does *not* affirmatively opt out of the release by making the appropriate mark on the Ballot. Plan, § 2.2.140.

26. Indeed, the Plan, in effect, creates a trap for the unwary, potentially imposing an involuntary release of claims in favor of numerous non-debtor insiders and agents with no corresponding benefit or consideration to the creditor. In order to retain or preserve its claim against a non-Debtor, a voting creditor rejecting the Plan must take an affirmative step, by checking the appropriate box on the Ballot. Failure to do so; *i.e.*, to opt out of the release, or forgetting to do so or not understanding the impact of the failure to act, results in the claims being released involuntarily. To require an affirmative act to prevent the release is unfair as most creditors may not fully comprehend what they must do to preserve a claim against a non-Debtor. Certainly, the more equitable alternative would be to require a voting creditor to opt into, as opposed to out of, the release by checking the appropriate box on the Ballot if the creditor elects

to release his claims.

27. Hence, the Ballot should provide that in order to release a creditor's claims against a non-Debtor, the creditor is required to affirmatively make *that* election on the Ballot. *See generally In re Oneida Ltd.*, 351 B.R. 79, 95 (Bankr. S.D.N.Y. 2006) (allowing non-debtor releases where the creditors "*affirmatively indicated* their willingness to grant such releases by *'checking a box*' on their Plan solicitation ballots" (emphasis added)). The Ballot should fully explain the consequences of that election, as well as the benefits being bestowed upon a creditor by virtue of the election to release non-Debtors. If there is no benefit, no release should be allowed.

28. Indeed, other than referring to "good and valuable consideration," the Plan and Disclosure Statement are completely silent as to what the Released Parties are providing in exchange for such extraordinary relief. No unusual circumstances are shown and no consideration in exchange for these releases is disclosed.

29. Based upon the foregoing provisions, the Plan release and injunction provisions are ambiguous and may be construed in such a way as to impact, enjoin, prohibit and/or preclude the ERISA Objectors from asserting potential claims against non-Debtor third parties or seeking discovery post-Effective Date. The Disclosure Statement offers no basis or justification for such broad release and injunction provisions which are justified, if at all, only in the most extraordinary and unusual circumstances, none of which exist or have been demonstrated herein. *See Deutsche Bank AG, London Branch v.Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 141-42 (2d Cir. 2005) (holding that non-debtor releases are proper only in rare cases and may be "tolerated only if the affected creditor consents").

30. While the ultimate propriety of the Plan injunction and release provisions is an

issue for Plan confirmation, if it is the Debtors' intent to enjoin post-Effective Date discovery or to release and enjoin third-party claims, especially those of the ERISA Objectors and the putative ERISA class, against non-Debtors, then the Disclosure Statement should make that clear. If, on the other hand, the Debtors do not intend to impact the claims alleged or to be alleged in the Complaint, the following language should be included in the Disclosure Statement and the Plan should be modified accordingly:

> Nothing in the Plan, any amended Plan, or in any order confirming the Plan or any Amended Plan, shall or is intended to (i) affect, release, enjoin or impact in any way the prosecution of the claims of the ERISA Objectors or the putative ERISA class asserted, or to be asserted, against any non-Debtor in the ERISA Litigation or any non-Debtor, or (ii) preclude the ERISA Objectors or the putative ERISA class from seeking discovery from the Debtors, the Reorganized Debtors or any transferee of the Debtors' assets.

C. The Opt-Out Provision on the Ballot is Potentially Discriminatory

31. As noted, *supra*, the Plan provides that if a Holder of a Claim that is entitled to vote and votes to reject the Plan, but does not opt out of the Plan Releases, the Holder is deemed to have released the Released Parties. In that regard, the Ballot includes that if the Holder of a Claim entitled to vote on the Plan votes to reject the Plan, the Holder can elect to opt out of the Plan Release. Holders voting to accept the Plan do not have the option to opt out and are deemed to have consented to the Plan Release, as well as the other Plan provisions. As such, it is not clear that the release is limited to the claim for which the Ballot is voted. Therefore, to the extent the failure to exercise the opt out election is *not* limited to the Claim voted on the Ballot, the Plan is discriminatory.

32. Some creditors may hold more than one Claim for which they are entitled to vote, or hold one claim for which they are entitled to vote and another where they may be deemed to accept the Plan or deemed to reject and are not entitled to vote. Therefore, any Release should

be limited to the Claim for which the Ballot is cast and should not affect other claims held by that creditor and any claims against third parties related to that Claim. Indeed, if the claims are classified separately, the Release must be applied separately.

D. The Disclosure Statement Fails to Disclose Whether The Plan Intends To Preclude The ERISA Objectors From Proceeding With Their Claims Against The Debtors To The Extent Of Available Insurance Coverage, Irrespective Of Any Injunctions On Distributions Under The Plan

33. Upon information and belief, the Debtors maintain fiduciary liability insurance policies (the "Liability Policies") in favor of their directors and officers for claims asserted in the ERISA Litigation, as well as for claims against the Debtors directly for violations of ERISA. While the Disclosure Statement and Plan refer to the Debtors' D&O Policies,[5] Plan, § 8.9, they fail to disclose the extent of the coverage provided by any Liability Policies. The ERISA Objectors maintain that the ERISA class is entitled to look to the proceeds of such insurance for payment in connection with the claims of the ERISA Objectors and the ERISA class and may, at least, pursue these Claims against the Debtors to the extent of such available insurance post-Confirmation. Because the ERISA Objectors may not have a direct action against the insurance carriers under the Liability Policies, the proceeds of the Liability Policies may only be accessed through the pursuit of the claims asserted in the ERISA Litigation. Accordingly, the Plan should not impact the rights of the ERISA Objectors or the ERISA class to pursue their claims against the Debtors to the extent of the proceeds of the Liability Policies.

34. In order to overcome this Disclosure Statement inadequacy, the Plan and Disclosure Statement should provide that:

> Nothing in the Plan, any amended Plan, or in any Order confirming the Plan, shall preclude the ERISA Objectors and the ERISA class from pursuing their claims against the Debtors to the extent of

[5] Unless advised otherwise, the Liability Policies would appear to be treated or considered as D&O Policies under the Plan.

> available insurance coverage and proceeds. The Claims of the ERISA Objectors and the ERISA class against the Debtors, to the extent of available insurance, are preserved and not discharged by the Plan.

E. The Disclosure Statement Fails to Describe, and the Plan Fails to Provide, an Appropriate Mechanism for the Preservation of Documents.

35. Although the Debtors are compelled to maintain and preserve their assets during the chapter 11 proceeding (unless authorized by order of the Bankruptcy Court to abandon them, after notice and an opportunity to be heard, *see* 11 U.S.C. § 554(a), Fed. R. Bankr. P. 6001(c)), the Plan fails to provide for the preservation of the Debtors' assets, including the Debtors' books, records and other documents, in any format (*e.g.*, electronic or hard-copy) (collectively, the "Documents") by the Reorganized Debtors post-confirmation. Therefore, a document preservation protocol must be established to prevent the destruction or abandonment of the Documents post-confirmation, especially because the Documents may include critical information relevant to the ERISA Litigation and certain other information relevant to the ERISA Claim.

36. Indeed, whether the Documents are retained by the Reorganized Debtors or some other estate representative or third-party, or transferred to a non-Debtor entity prior to the Effective Date of the Plan, the Documents must be preserved or maintained so as to be available to parties in interest, especially if the Documents are not available elsewhere. To do otherwise prejudices the rights of the ERISA Objectors, members of the ERISA class and other parties in interest. At the very least, some mechanism for providing notice and an opportunity to be heard by a court of competent jurisdiction must be established before any such Documents are abandoned, destroyed or rendered otherwise unavailable.

37. It is imperative that Reorganized Debtors or any third-party transferee retain and preserve the Documents that may be potentially relevant to the ERISA Litigation and the claims

arising therefrom, at least until such time as the ERISA Objectors are able to conduct and complete discovery, and that the ERISA Objectors be given reasonable notice of any proposed destruction or abandonment of the Documents and an opportunity to be heard before such proposed destruction or abandonment.

38. The Debtors, the Reorganized Debtors, or such other potential transferee of the Documents, as the case may be, must advise parties in interest through the Plan of their intention with respect to the Documents. Therefore, the Plan and/or any order confirming the Plan should include the following language:

> From and after the Effective Date, the Debtors, the Reorganized Debtors, and any transferee of the Debtors' Documents (defined *infra*), as the case may be, shall preserve and maintain all of the Debtors' documents, files, books, records, electronic data (including, but not limited to, emails and email server back-up tapes) (collectively, the "Documents"), whether retained by Reorganized Debtors or transferred to such other transferee pursuant to the Plan, and Reorganized Debtors, any successors thereto, and/or such other transferee shall not destroy or otherwise abandon any such Documents absent further order of this Court or such other court of competent jurisdiction after a hearing upon notice to parties in interest, including the ERISA Objectors, with an opportunity to be heard.

39. To the extent the Debtors do not intend to preserve the Documents or object to the inclusion of the foregoing language in the Plan or in any Order confirming the Plan, the Disclosure Statement should explain why.

CONCLUSION

40. Based on the foregoing, the ERISA Objectors respectfully request entry of an order (i) denying approval of the Disclosure Statement until the modifications set forth above are made to the Disclosure Statement and the Plan, and (ii) granting such other and further relief as the Court deems just and proper.

Dated: June 7, 2013

Respectfully submitted,

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