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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)

OBJECTION OF STWB INC. TO DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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TO THE HONORABLE ALLAN L. GROPPER,
UNITED STATES BANKRUPTCY JUDGE:

STWB Inc. ("STWB"),[1] by and through its counsel, respectfully submits this Objection (the "Objection") to the Disclosure Statement for Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code [Docket No. 3651] (the "Disclosure Statement" or "D.S.") filed by the above-captioned Debtors in Possession (collectively the "Debtors") on April 30, 2013, and in support thereof states as follows:

INTRODUCTION

1. STWB, one of the largest unsecured creditors in this case, objects to the approval of the Disclosure Statement as it fails to provide adequate information concerning the Plan. Specifically, as set forth in more detail below (but without limiting other deficiencies), the Disclosure Statement provides woefully inadequate information concerning the following:

- the magnitude and consequences of the Debtor's environmental liabilities;
- the KPP Settlement;
- any meaningful liquidation analysis;
- the rationale and alleged justification for classifying and treating certain unsecured creditors differently;
- the legal and factual basis for the proposed deemed substantive consolidation of the Debtors;
- the legal and factual basis for the non-debtor releases;
- financial projections and valuation information of the Debtors' assets; and
- the value of the proposed recovery by all classes of unsecured creditors.

[1] STWB and Bayer Corporation ("Bayer") have filed substantially similar Proofs of Claim against Eastman Kodak Company ("Kodak") and NPEC Inc. ("NPEC") relating to the Debtors' environmental indemnity obligations. Since STWB is the entity that may bear the brunt of the Debtors' breach or rejection of its indemnity obligations, this Objection is primarily in the name of STWB. However, for the avoidance of doubt and because the contractual indemnity provisions run in the first instance from Kodak to Bayer, Bayer joins in and adopts these Objections in their entirety.

2. The Disclosure Statement as currently drafted fails to provide information sufficient to meet the requirements of Section 1125 of the Bankruptcy Code; consequently, it should not be approved.

BACKGROUND

3. On January 19, 2012 (the "Petition Date"), each of the Debtors[2] filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). The Debtors' cases have been consolidated for administrative purposes only. (See Docket No. 42). These cases have not been substantively consolidated.

4. On July 17, 2012, STWB (and Bayer) timely filed Proofs of Claim against Kodak and NPEC, for, *inter alia*, past, present and future environmental liabilities and obligations. On or about June 7, 2013, STWB (and Bayer) amended the Proofs of Claim to fix the previously unliquidated amount of the claim at $250,611,579, plus additional costs and damages as detailed in the claims.[3]

5. On or about April 30, 2013, the Debtors filed their proposed Joint Plan of Reorganization (the "Plan"), along with the proposed Disclosure Statement.

[2] 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 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); Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019).

[3] Although as stated in the D.S. (see, e.g., page 35), Kodak and STWB have been negotiating the liquidation of STWB and Bayer's claims, the Debtors have not agreed to the amount of the amended Proofs of Claim ("Amended Claims"). The Debtors have been provided with the support for the Amended Claims, most of which is subject to confidentiality agreements.

OBJECTIONS

6. The Disclosure Statement does not contain "adequate information" within the meaning of section 1125 of the Bankruptcy Code and cannot be approved unless it is modified to provide additional and clarifying information.

7. Section 1125(b) of the Bankruptcy Code conditions a debtor's solicitation of votes on a proposed chapter 11 plan on the bankruptcy court's determination that the disclosure statement contains "adequate information." The Bankruptcy Code defines adequate information as:

> [I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable 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 of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1); In re Crowthers McCall Patterns, Inc. 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) ("At the 'heart' of the chapter 11 process is the requirement that holders of claims in impaired classes be furnished a proper disclosure statement 'that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan'" (quoting H.R. Rep. No. 95-595. at 408-09 (1977)), *reprinted* in 1978 U.S.C.C.A.N. 6963, 6364-65; In re Ferretti, 128 B.R. 16, 19 (Bankr. D.N.H. 1991) (disclosure statement "must clearly and succinctly 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").

8. The Disclosure Statement must provide enough information to enable the Debtors' creditors and this Court to make an informed judgment about the Plan. Disclosure is the pivotal concept in reorganization practice under the Bankruptcy Code. 7 COLLIER ON BANKRUPTCY, ¶1125.22 (Alan N. Resnick & Henry J. Sommer eds. 2013). Accordingly, it is difficult to

"overemphasize the debtor's obligation to provide sufficient data to satisfy the Bankruptcy Code standard of 'adequate information.'" Kunica v. St. Jean Financial, Inc., 233 B.R. at 46, 54 (S.D.N.Y, 1999) (quoting Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3d Cir. 1988)).

9. The Disclosure Statement fails to provide adequate information regarding several important components of the Plan from which a "hypothetical reasonable investor" could make an informed decision about the Plan. Accordingly, the Disclosure Statement must not be approved.

Inadequate and Inaccurate Information Concerning Environmental Liabilities

10. According to the Disclosure Statement, the Debtors' total accrued liabilities for environmental remediation costs amount to approximately $96 million. D.S. at 17. Any creditor utilizing this information to assess the Plan and vote accordingly will be misled. STWB's environmental claims alone, in the amount of over $250,611,579, are more than 2.5 times the purported total environmental liabilities facing the Debtors. Consequently, Kodak's disclosure of only its accrued liabilities as of December 31, 2011, is misleading considering STWB's claim, which is likely a combination of a portion of the Debtors' accrued and unaccrued environmental liabilities, but which in total is a significant and much higher liability than the $96 million disclosed by the Debtors.

11. This gross understatement paints an inaccurate picture of the Debtors' liabilities and could lead to distribution expectations that are not realistic. Unsecured creditors should be aware that the Debtors' environmental liability estimate is not reliable. The degree of underestimation also raises feasibility concerns for the Plan.

12. The Disclosure Statement does not explain what comprises the $96 million figure. It does not list the sites included in the estimated figure or how the number was calculated. Moreover, the figure in the Disclosure Statement is "as of December 31, 2011." Thus, even if the figure was accurate at one time, it is now an 18 month old estimate that is outdated and, therefore, inadequate. Since December 31, 2011 obviously predated both the Petition Date and the Bar Date (July 17, 2012) in this case, the estimated liabilities could not have taken, and do not take, into account any consequences of the bankruptcy filing or any of the proofs of claim filed in this case. Moreover, the December 31, 2011 accrued liabilities obviously could not have taken into account the current status of the litigation, remediation or other activities that occurred in connection with the underlying environmental matters.

13. The Debtors also fail to disclose that at least three of the sites for which the Debtors, and Kodak and NPEC in particular, had environmental remediation liabilities are owned by NPEC. Upon information and belief,[4] NPEC owns the Hilton Davis-Cincinnati Site at 2235 Langdon Farm Road, Cincinnati, Ohio; the Renssellaer Sterling Site III at Riverside Avenue Extension, East Greenwich, New York; and the Trenton Site at 2144 East State Street, Hamilton, New Jersey. Consequently, as a result of its continuing ownership, the Debtors will not be discharged from their ongoing obligation to remediate those sites. The Disclosure Statement fails to disclose such continuing obligations, whether Kodak has the financial ability to honor such obligations and whether the Plan in this respect, among others, is feasible.

14. The Disclosure Statement also fails to disclose the amount, or magnitude, of STWB's claims. While the Debtors may not have an obligation to disclose every claim or even every material claim, the Debtors should disclose how the allowance of STWB's claims will

[4] The Debtors' Schedules are also inaccurate because these owned sites are not listed on NPEC's Schedule A (Real Property).

materially dilute the recovery of all other Class 4 Claimants and whether or how that is reflected in the estimated range of unsecured claims, which as stated in the Disclosure Statement is between $1.6 and $2.2 billion. See D.S. at 4.

Insufficient Information on KPP Settlement Agreement

15. Central to the success of the current Plan is approval and consummation of a proposed settlement between the Debtors and the Kodak Pension Plan ("KPP") in the United Kingdom. According to the Disclosure Statement, KPP is the largest unsecured creditor with claims totaling approximately $2.8 billion. D.S. at 5.

16. The proposed Settlement Agreement with KPP calls for a withdrawal of the KPP claims, a payment of $525 million in cash and a $125 million note in exchange for the transfer of the Debtor's Personalized Imaging Business and Document Imaging Business and a $200 million payment from a non-debtor UK based affiliate, Kodak Limited.

17. Over half of the estimated $815 million in projected post-confirmation cash consists of proceeds from the KPP Settlement. It is clear the Plan cannot succeed without it, yet the Disclosure Statement provides no meaningful way to assess whether the Settlement represents good value for the creditors. As just one example, there is no "fairness opinion" that would customarily be provided in a transaction of this nature.

18. It is also impossible to determine from the information in the Disclosure Statement whether the treatment of the KPP Claims is unfairly discriminatory.

19. The Disclosure Statement does not indicate that any Debtor other than Kodak is liable for the KPP Claims. Kodak's liability is as a guarantor for the statutory and other pension obligations of its British affiliates. See D.S. at 17. The KPP Claims against Kodak, therefore, are contingent, general unsecured claims.

20. The Disclosure Statement provides no information as to the likelihood that Kodak would ever have to pay on its contingent obligation. In other words, the Disclosure Statement does not contain adequate information on the ability of Kodak's British affiliates to honor their pension obligations or provide any other insight as to why Kodak should, among other things, give away two valuable business units in satisfaction of a general unsecured claim, especially when other unsecured creditors are only receiving equity.

21. The Disclosure Statement is completely lacking in adequate information regarding the value of the assets being transferred and the assets (including a substantial note) to be received in exchange. Even the net consideration to be received can not be analyzed because the purchase price is subject to numerous adjustments that are not fully disclosed and can not be deciphered from the information in the Disclosure Statement.

22. It is impossible to determine from the Disclosure Statement whether the KPP Claim Holders are receiving better treatment than the other general unsecured creditors, most notably the Class 4 Claimants. It is imperative that all creditors be informed of whether Class 5 is receiving a better or worse treatment than the Class 4 creditors. In light of the paucity of asset and recovery valuations under the Plan, the Disclosure Statement falls far short of providing adequate information in that regard.

23. In particular, the Disclosure Statement does not provide sufficient asset valuation of the Personalized Imaging and Document Imaging Businesses to enable creditors to determine whether the KPP Settlement is in the best interests of creditors. The KPP Settlement will eliminate $2.8 billion in alleged unsecured claims; however, the Disclosure Statement does not elaborate on that figure. There is no explanation as to whether that figure is net of the value of the non-debtor primary obligor, Kodak Limited. There is no explanation of why Kodak Limited

keeps its assets and pays cash to KPP, while the Debtors have to part with two going concern business units. Perhaps, the KPP Settlement is a net positive transaction for unsecured creditors. The problem is that unsecured creditors have no substantive way of determining this from the Disclosure Statement (and the publicly filed documents relating to the separately filed settlement motion do not contain adequate information either).

24. There also is no adequate explanation for why the transfer of the Personalized Imaging and Document Imaging Businesses are not being exposed to a normal Section 363 sale process. The failure to let the "market" make the fundamental determination of the asset's values is a fatal flaw in the Plan that violates the Supreme Court's directives, albeit in an absolute priority context, in Bank of America National Trust and Savings Assoc. v. 203 North LaSalle Street Partnership, 526 U.S. 434 (1999).

25. It is clear that the Debtors will have significant post confirmation obligations with respect to the Personalized Imaging and Document Imaging Businesses, however, the scope and benefits, if any, of these obligations are not disclosed. For example, there is no information regarding the value and pricing of the 18 month transitions services to be provided, the 14 service and supply agreements, the brand licenses, the patent licenses, the non-compete agreement or the financial terms of the Harrow manufacturing facilities. It is conceivable that these agreements, along with the post-closing contingent price adjustments, could materially affect performance of the company, yet there is simply no information to advise creditors on the impact of the transactions in the Disclosure Statement, nor is there any information describing the consequences when the agreements, such as the non-compete agreement, expire or are terminated.

26. Moreover, the KPP Settlement is a centerpiece of the Plan, yet at present, it has merely been proposed and has not been approved. Consequently, the Plan and Disclosure Statement are premature and cannot be evaluated properly until more information is provided on the KPP Settlement and it is approved by this Court.

27. Finally, given the prominence of the KPP Settlement, and the inverted procedural posture in which it currently exists, there is insufficient information on what happens if the KPP Settlement is not approved. Presumably, creditors could look to alternative reorganization scenarios or a liquidation analysis in the Disclosure Statement. Yet these either do not exist or are sorely lacking in substance in the current Disclosure Statement.

Inadequate Liquidation Analysis

28. To have a Plan confirmed, Section 1129(a)(7) requires that it provide creditors with at least what they would receive under a Chapter 7 liquidation. A plan proponent, therefore, must provide a liquidation analysis to comply with this requirement and the "adequate information" requirement under Section 1125. "Disclosure statements are required to contain liquidation analyses that enable creditors to make their own judgment as to whether a plan is in their best interests and to vote and object to a plan if they so desire." In re Crowthers McCall Patterns, Inc., 120 B.R. 279, 300-01 (Bankr. S.D.N.Y. 1990).

29. Here, there is no liquidation analysis. The Debtors have apparently reserved Appendix G for this purpose, yet as of the morning of June 7**,** 2013, no liquidation analysis has been made available. So long as a proper liquidation analysis is not provided, the Plan is unconfirmable on its face.

30. Without this information, the creditors do not have the most fundamental basis on which to judge a Plan, particularly a Plan that proposes to distribute only equity to a substantial

portion of the unsecured creditors. If a creditor cannot see what a liquidation would provide, it cannot make an educated assessment of any proposed reorganization.

31. Even if the Debtors provide such an analysis at the "midnight hour," not enough time has been provided to creditors to conduct a meaningful review of it at this point. While the complete lack of a liquidation analysis obviously falls short of the requirements, if and when one is provided, additional time must be provided to assess it; thus, this version of the Disclosure Statement should not be approved.

Insufficient Information Justifying Separate Classification and Different Treatment of Certain Unsecured Creditors

32. The Plan classifies Second Lien Noteholder claims in Class 3, general unsecured claims in Class 4, and the KPP claims in Class 5. Although the Class 3 Second Lien Note claimants are ostensibly "secured," the Official Committee of Unsecured Creditors (the "Creditors Committee") has filed an adversary proceeding (Adv. Proc. No. 12-01947 (ALG)) challenging the secured status of the Class 3 claimants. If successful, the Creditors' Committee lawsuit could render the Second Lien Noteholder claimants as partially or totally unsecured. If that occurs, the result would be three separate classes of general unsecured claims being treated very differently and, therefore, improperly.

33. However, the Disclosure Statement only makes passing reference to the Creditor Committee lawsuit and does not fully explain the consequences of the lawsuit to the Plan or the potential improper classification that exists or may result. See D.S. at 11 and 67, n. 8. Creditors should know there is pending, unresolved litigation that could result in the Plan producing unfair and discriminatory treatment of Class 4 claimants.

34. Similarly, there is insufficient asset valuation information in the Disclosure Statement to determine if Class 3 claimants are entitled to be treated as secured creditors. As

the Class 3 claimants are behind Class 2 secured claims in lien priority, they are secured only to the extent Class 2 claimants are oversecured and there is remaining collateral value to cover the Class 3 Claims. There is simply no way to determine this from the information provided in the Disclosure Statement. And, once again, the Plan is fatally flawed because there is no "market" determination of the value of the Class 3 Claimants' collateral.

The Disclosure Statement Fails to Provide the Legal and Factual Basis for the Proposed Substantive Consolidation

35. The Disclosure Statement reveals that the Plan serves as a motion for deemed substantive consolidation of the Debtors' sixteen separately filed bankruptcy estates into a single estate for certain purposes, such as voting, confirmation and distribution, but not for all purposes. See D.S. at 66. The Plan will not result in a merger or otherwise affect the separate corporate existence of the Debtors, but creditors will be treated as though the Debtors are one entity.

36. In the Second Circuit, substantive consolidation is appropriate when: (i) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit," or (ii) "the affairs of the debtors are so entangled that consolidation will benefit all creditors." In re Augie/Restivo Baking Co., 860 F.2d 515, 518 (2d Cir. 1988) (internal citations omitted). No information is provided in the Disclosure Statement that meaningfully addresses these points, let alone establishes the Debtors' entitlement to substantive consolidation.

37. Apart from the failure to demonstrate legal entitlement to substantive consolidation relief, the Disclosure Statement fails in its primary purpose on this point: it fails to disclose the effects of such relief (deemed or otherwise), whether positive or negative, on the creditors. It is likely that some creditors will be worse off in a consolidated estate, yet there is no

way for creditors to determine this, nor is there a description of the possible negative consequences that could arise from substantive consolidation for creditors of certain Debtors.

The Disclosure Statement Fails to Provide Adequate Information Concerning the Proposed Non-Debtor Third Party Releases

38. The Disclosure Statement contains no information explaining or justifying the proposed release of non-debtor third parties such as non-debtor affiliates of the debtors. The Second Circuit has held that non-debtor third party releases are proper only in "rare cases". Deutsche Bank AG v. Metromedia Fiber Network Inc. (In re Metromedia Fiber Network, Inc.) 416 F.3d 136, 141(2d Cir. 2005). Under the Metromedia case, a non-debtor third party release should not be approved absent a finding by the court that "truly unusual circumstances" exist that render the release terms important to the success of the plan. Metromedia 416 F.3d at 143. Here there is no information provided of such "truly unusual circumstances" that would justify or support such third party non-debtor releases.

39. Indeed, this court may not have subject matter jurisdiction to enjoin third party non-debtor claims that do not affect the property of the estate. See In re Dreier LLP 429 B.R. 112, 132 (Bankr. S.D.N.Y. 2010). Without further information explaining the need for these releases, the Disclosure Statement should not be approved.

The Disclosure Statement Fails to Provides Adequate Financial Projections and Post Confirmation Value Information

40. The Plan contemplates not merely a financial reorganization of Kodak, but a completely different enterprise with a fundamental shift in business focus. "New" Reorganized Kodak will no longer be a consumer film, camera and document imaging company. However, the financial projections fail to adequately address this seismic shift.

41. The opaque post confirmation financial picture of the Debtors is a major problem to creditors in this case because the proposed new Kodak will be a completely different company

and most creditors will become involuntary owners of this business. This information vacuum blinds the new owners of the company from its inception.

42. For example, the Disclosure Statement assumes a post confirmation equity value of $441 million. However, there is no explanation of how that number is calculated or the methodology used to derive it (other than categorical and vague references to projected financial statements). Moreover, the Disclosure Statement concedes that it does not utilize specific asset and liability fair values and uses existing book values instead. This is an insufficient basis on which creditors should be forced to decide whether the new Kodak is a good investment of their vote.

43. Indeed, even the Disclosure Statement itself admits that it does not provide adequate information concerning the equity value when it states:

> (i) "determination of specific asset and liability fair values has not been completed"; and
>
> (ii) "existing book values are used for illustrative purposes in the pro forma balance sheet."

See Notes on Reorganized Kodak's Emergence Balance Sheet, D.S. at F.2.

44. There is no sensitivity analysis indicating how earnings and cash flow will be impacted by such different operating conditions and assumptions, such as revenue growth, cost of labor materials and other factors. Given the materially different business the Plan contemplates, the Disclosure Statement must provide more than past financial results simply rolled forward.

45. Further, the projections that are provided generally lack visibility and detail regarding the assumptions and drivers of the resulting pro forma financial statements. Without this critical context, the information portrayed in the projections does not provide adequate

information to evaluate the outlook for the emerging entity in which the creditors may become shareholders.

46. The Disclosure Statement also fails to adequately describe the post-confirmation management and directors. The current management and directors are disclosed (D.S. at 58), but the future directors apparently will not be disclosed until the Debtors file a Plan Supplement. Whether the Plan Supplement will contain adequate information or will comply with Section 1129(a)(5) of the Bankruptcy Code can not be determined because it has not been filed. Regardless, it appears that the Debtors do not intend in the Plan Supplement or elsewhere to provide any meaningful information regarding the officers or key managers of Reorganized Kodak. Where unsecured creditors are being asked to vote to accept an equity position, the experience and capabilities of the management team is critical information.

47. Although the Disclosure Statement states that the Debtors decreased their selling, general and administrative expenses by comparing their results to comparable industry metrics, there is no information on how the Debtors measured up to those benchmarks before and after their cost cutting efforts. Perhaps more could be done in its Plan to further reduce costs going forward, but there simply is no way to tell from the information provided in the Disclosure Statement.

48. In addition, the projections in the Disclosure Statement assume that the Debtors will be able to utilize an estimated $2.6 billion in net operating losses ("NOL's") post confirmation. D.S. at 121. However, the Disclosure Statement concedes that the Plan will cause it to experience an ownership change which may significantly jeopardize its ability to utilize the NOL's. How this eventuality could specifically impact post confirmation financial performance is not addressed, other than to state that such an occurrence could "affect" the projections. Id.

CONCLUSION

49. In sum, it is impossible for an unsecured Class 4 creditor to determine, *inter alia*, what it is getting under the proposed Plan, whether that proposed recovery is fair and equitable, whether the Plan unfairly discriminates against Class 4, and whether there is a better alternative. Consequently, the Disclosure Statement lacks "adequate information" within the meaning of Section 1125(a)(1) of the Bankruptcy Code.

WHEREFORE, STWB Inc. respectfully requests that this Honorable Court deny approval of the Disclosure Statement and provide STWB Inc. with such other and further relief as is appropriate.

Dated: June 7, 2013

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