

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

In re:

EASTMAN KODAK COMPANY, *et al.*

Debtors.

Chapter 11

Case No. 12-10202 (ALG)

(Jointly Administered)

**OBJECTION OF CREDITOR BMP AMERICA, INC. TO DEBTORS' MOTION FOR AN
ORDER ESTABLISHING AND IMPLEMENTING EXCLUSIVE PROCEDURES FOR
TREATMENT OF RECLAMATION CLAIMS**

WILLIAM C. GROSSMAN hereby affirms under penalty of perjury:

1. I am an attorney at law duly licensed to practice in the State of New York, admitted Pro Hac Vice in this case by this court, and attorney for the creditor BMP America, Inc. (hereinafter referred to as "BMP"). As such, I am fully familiar with the facts and circumstances hereof.

2. I make this affirmation in support of BMP's objection to the Debtors' Motion For An Order Establishing And Implementing Exclusive Procedures For Treatment Of Reclamation Claims.



3. Briefly and as described further below, it is BMP's position that Debtor's Motion asks this court to give debtor additional rights not specified in the Bankruptcy Code while curtailing existing creditor rights as to reclamation claims.

4. On or about January 25, 2012, BMP timely provided debtor and debtor counsel with a reclamation demand in compliance with Section 546(c) of the Bankruptcy Code and applicable non-bankruptcy law. Subsequently, BMP filed a Notice of Reclamation Demand with the court. However, if the debtors' "proposed reclamation procedures" are approved, debtor could later argue that BMP's reclamation demand must be disallowed because it was not in technical compliance with these added procedures.

5. The proposed reclamation procedures require that a creditor's reclamation demand include "a statement indicating whether the Seller has filed or intends to file any other claim against any debtor regarding the Goods underlying its Reclamation Demand". This statement is not required by the Bankruptcy Code. It is reasonable to assume that a creditor could discover an additional claim later against "any debtor". However, under debtor's proposed procedures, if such an express statement is not included in the reclamation demand, not only may the reclamation demand be disallowed for failure to meticulously follow the proposed reclamation procedures but the creditor may be barred from bringing any later discovered claim which might otherwise be timely.

6. Debtors also propose to give themselves an additional 120 days after the entry of a Reclamation Procedures Order to file and serve a "Reclamation Notice", again adding time and requirements not specified in the Bankruptcy Code. If creditors fail to timely file an objection to the Reclamation Notice (within 20 days after receipt of said Notice), the proposed procedures provide that whatever reduced amount that the debtors included for the creditor in the

debtors' Reclamation Notice shall be deemed allowed, effectively barring any rights of the creditor to argue that their numbers are correct despite prior compliance with the law in filing and serving their original reclamation demand (which should have been enough to preserve all reclamation rights but for these additional proposed procedures).

7. The proposed procedures provide that the Reclamation Procedures shall be "the sole and exclusive method for addressing and resolving unpaid Reclamation Claims", thereby curtailing rights that a creditor might otherwise have under Section 546(c) or applicable non-bankruptcy law to obtain possession of its goods and/or bring an adversary proceeding or contested matter to resolve such claims or otherwise.

8. Debtors propose that the Reclamation Procedures be retroactively effective as of the Petition Date so that any creditor, like BMP, who timely provided a reclamation demand that otherwise was in compliance with the law, may later have such demand potentially barred because the debtor found some technical flaw in the original demand by alleging that it is not in compliance with the subsequent Reclamation Procedures which were not in effect at the time of the original demand.

9. Debtors propose that any seller/creditor asserting a reclamation claim must satisfy all procedural and timing requirements set forth in their exclusive Reclamation Procedures. Such a proposal may create the unfair result that sellers/creditors who have complied with the law in serving a proper reclamation demand may now have such demands challenged and barred because the debtor has added technical requirements that were not required before.

10. BMP respectfully requests this court for an Order denying the debtor's request to add reclamation rights or requirements that are non-existent in the Bankruptcy Code or applicable non-bankruptcy law. In the alternative, BMP requests that any sellers/creditors who

have timely served a proper reclamation notice prior to the entry of any Reclamation Procedures Order be carved out of the procedures provided in said Order based on the fact that they have already complied with applicable law for the service of reclamation demands.

WHEREFORE, BMP respectfully requests this court for an Order denying the debtor's request to add reclamation rights or requirements as added procedures that are non-existent in the Bankruptcy Code or applicable non-bankruptcy law. In the alternative, BMP requests that any sellers/creditors who have timely served a proper reclamation notice prior to the entry of any Reclamation Procedures Order be carved out of any procedures provided in said Order based on the fact that they have already complied with applicable law for the service of reclamation demands.

Dated: February 7, 2012
Buffalo, New York

JAECKLE FLEISCHMANN & MUGEL, LLP

By: /s/ William C. Grossman
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on this 7th day of February, 2012 via CM/ECF Notification to all parties consenting to service through same, and/or regular U.S. mail.

/s/ William C. Grossman

William C. Grossman