

**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 PROCEDURES FOR THE ASSERTION, RESOLUTION,
ALLOWANCE AND SATISFACTION OF UNPAID CLAIMS PURSUANT TO 11 U.S.C.
503(b)(9)**

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 Procedures For The Assertion, Resolution, Allowance and Satisfaction Of Unpaid Claims pursuant to 11 U.S.C. 503(b)(9).

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 503(b)(9) 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 which also provided notice of BMP's specific claim under 503(b)(9). Subsequently, BMP filed a Notice of Reclamation demand with the court which provided further specific notice of BMP's reclamation and 503(b)(9) claims.

5. Section 503(b) provides that notice and a hearing is required before the allowance of Administrative Expenses. Typically, absent an Order providing otherwise, creditors may file such motions at their discretion and, upon approval by the Court, file their Administrative Proofs of Claim later.

6. The debtors' proposed 503(b)(9) procedures add requirements not found in the Bankruptcy Code. For example, under the proposed procedures, rather than follow the above-noted procedure specifically provided in the Bankruptcy Code, vendors/creditors must now first prepare and mail a Proof of Claim (including detailed information required by the debtors which might not otherwise be required by the Bankruptcy Code) to three separate addresses within 75 days of the Petition Date (in reality, probably on less than 45 days notice since nearly 30 days will have passed by the time the debtors' motion may be ruled upon and actual notice is then given to all creditors). Then the debtors give themselves 75 (actual) days to file an objection, followed by an additional 30 day period for the vendors/creditors to file a response. While the proposed procedures were presumably designed to streamline the 503(b)(9) claims process, they actually add extra steps which make it more cumbersome.

7. Under the debtors' proposed 503(b)(9) procedures, if the debtors' fail to timely object to a creditor's mailed claim, those claims are deemed allowed with any oversight or review by the court. This proposed procedure ignores the statutory requirement of notice and a

hearing prior to the allowance of any Administrative Expense claim, as outlined in paragraph 5 above.

8. The proposed 503(b)(9) procedures also appear to provide that debtors may, at their sole discretion, pick and choose which vendors/creditors they may decide to provide with early payment on their 503(b)(9) claim (versus early payment pursuant to a specific Court Order or later payment pursuant to a Chapter 11 Plan) without regard to the merits of said claims. In effect, debtors may prefer certain creditors over other similarly situated creditors at their sole discretion and without any oversight from this court. Like most creditors, BMP would obviously prefer such favorable treatment for itself but it appears that debtors have too much discretion.

9. BMP respectfully requests this court for an Order denying the debtor's request to add 503(b)(9) rights or requirements that are non-existent in the Bankruptcy Code so that creditors are permitted to file a request for the allowance, and approval of payment, of a 503(b)(9) claim as an Administrative Expense pursuant to the procedure required by Section 503(b), as discussed in paragraph 5 above. In the alternative, BMP requests that any vendors/creditors who have already timely served a notice of their specific 503(b)(9) claim upon debtor and debtor counsel prior to the entry of any 503(b)(9) Procedures Order be carved out of the procedures provided in said Order based on the fact that they have already provided adequate notice and proof to the debtor of their 503(b)(9) claim, except that if debtors are permitted to grant early payment of 503(b)(9) claims, all such vendors/creditors who have, or will have, their 503(b)(9) claims allowed by the court, including those who provided earlier notice, shall be entitled to such favorable treatment.

WHEREFORE, BMP respectfully requests this court for an Order denying the debtor's request to add 503(b)(9) rights or requirements that are non-existent in the Bankruptcy Code so that creditors are permitted to file a request for the allowance, and approval of payment, of a 503(b)(9) claim as an Administrative Expense pursuant to the procedure required by Section 503(b). In the alternative, BMP requests that any vendors/creditors who have already timely served a notice of their specific 503(b)(9) claim upon debtor and debtor counsel prior to the entry of any 503(b)(9) Procedures Order be carved out of the procedures provided in said Order based on the fact that they have already provided adequate notice and proof to the debtor of their 503(b)(9) claim, except that if debtors are permitted to grant early payment of any 503(b)(9) claims, all such vendors/creditors who have, or will have, their 503(b)(9) claims allowed by the court, including those who provided earlier notice, shall be entitled to such favorable treatment.

Dated: February 7, 2012
Buffalo, New York

JAECKLE FLEISCHMANN & MUGEL, LLP

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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