

Hearing Date and Time: February 15, 2012 at 11:00 a.m. (Prevailing Eastern Time)

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Unsecured Creditors of Eastman Kodak Company, et al.

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

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In re:	:	Chapter 11
	:	
EASTMAN KODAK COMPANY, <u>et al.</u>,	:	Case No. 12-10202 (ALG)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO MOTIONS AND APPLICATIONS SCHEDULED
TO BE HEARD ON FEBRUARY 15, 2012**

The Official Committee of Unsecured Creditors (the “Committee”) of Eastman Kodak Company and the other debtors and debtors in possession (collectively, the “Debtors” or “Kodak”) in the above-captioned jointly administered chapter 11 cases (the “Chapter 11 Cases”) submits the following response (the “Response”) to the motions and applications currently scheduled to be heard on February 15, 2012:

BACKGROUND

1. On January 19, 2012 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”). The Debtors continue to manage and operate



their businesses and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

2. On January 25, 2012, the United States Trustee for the Southern District of New York appointed the Committee consisting of: (a) KPP Trustees Limited, (b) Pension Benefit Guaranty Corporation, (c) Primax Electronics Ltd., (d) Sony Pictures Entertainment Inc., (e) Strategic Procurement Group, (f) U.S. Bank National Association, and (g) Walmart Stores, Inc. Later that same day, the Committee duly selected Milbank, Tweed, Hadley & McCloy LLP (“Milbank”) as counsel to represent it during the pendency of the Chapter 11 Cases. The Committee has also selected Alvarez & Marsal North America, LLC (“A&M”) as its financial advisor and Jefferies & Company Inc. (“Jefferies”) as its investment banker. No other statutory committees have been appointed or designated in the Chapter 11 Cases.

3. Shortly after the Committee’s formation, its professionals reached out to the Debtors to arrange for an immediate review and analysis of the Debtors’ numerous “first-day” and “second-day” motions and applications to retain professionals, including counsel, financial advisors and administrative professionals (the “Motions” and the “Applications,” as applicable),¹ which were scheduled for final hearing on February 15, 2012.² In exercising its statutory oversight responsibilities, the Committee has made certain preliminary determinations with respect to the Motions and Applications, each as described herein.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the applicable Motions and Applications.

² At the Committee’s request, the Debtors have agreed to adjourn to a later date the hearing with respect to (i) the retention applications for Sullivan & Cromwell LLP (Docket No. 166), Young Conaway Stargatt & Taylor LLP (Docket No. 167), and Lazard (Docket No. 171), and (ii) the Critical Vendor Motion (Docket No. 14). As a result, this Response does not address the Committee’s concerns or agreements with respect to such applications.

PRELIMINARY STATEMENT

4. The commencement of Kodak's chapter 11 cases on January 19, 2012 began a new chapter in the history of an American corporate icon once regarded as the world's leading producer of cameras and film. Burdened by a sustained decline in the market for film based products and the global economic downturn, Kodak turned to chapter 11 amidst increasing liquidity concerns.

5. Despite the numerous complicated issues typically associated with a large chapter 11 filing, the Committee, as a fiduciary for the unsecured creditors in these cases, will work tirelessly with the Debtors to maximize the value of Kodak's operations and assets. Chapter 11 affords Kodak a much needed breathing spell and opportunity to carefully explore strategic alternatives with respect to its Imaging Portfolio³ and other valuable intellectual property assets.

6. The Committee stands ready to work collaboratively with the Debtors in pursuit of this common objective, while efficiently and effectively fulfilling its parallel fiduciary duties in addressing the myriad issues and challenges confronting these estates, including:

- (i) identifying a fair and balanced approach to sharing financial sacrifice among the Debtors' diverse group of stakeholders;
- (ii) working constructively with the Debtors' secured lenders to establish and meet common goals;
- (iii) rationalizing the Debtors' non-core business units;
- (iv) ensuring the continued health and viability of the Debtors' foreign subsidiaries; and
- (v) maximizing the value of the Debtors' estates for unsecured constituents.

7. The Committee believes the first major step towards achieving a successful reorganization is through establishing a cooperative and productive working

³ The "Imaging Portfolio" consists of Kodak's digital capture and imaging systems and services patent portfolios.

relationship with the Debtors and their professionals. Due to the considerable efforts of both the Debtors' and the Committee's representatives, interaction with the Debtors' key personnel and expedited sharing of confidential information, the Committee is pleased to report that the parties have made significant progress in negotiating resolutions of the Committee's various concerns with the Debtors' Motions and Applications. A chart summarizing the relief requested in the Motions and Applications and describing the consensual resolution of the Committee's concerns is attached hereto as **Exhibit A**. The Committee hopes to continue a productive working relationship with the Debtors throughout the balance of the Chapter 11 Cases.

RESPONSE

8. The Committee has no substantive concerns with the relief requested in the following Motions: (a) Aircraft Lease Rejection Motion (Docket No. 27); (b) Real Property Lease Rejection Motion (Docket No. 31); and (c) Naming Rights Agreement Rejection Motion (Docket No. 172), and supports the entry of the proposed forms of order with respect thereto.

9. The Committee also has no objection to the terms of the following Applications: (a) the Linklaters LLP Application (Docket No. 168); (b) the Groom Law Group Application (Docket No. 169); and (c) the KCC Application (Docket No. 170).

10. With respect to the balance of the Motions, at the Committee's request, the Debtors have agreed to revise the proposed orders, as summarized in greater detail on **Exhibit A** attached hereto, to generally provide for (i) more consultation and consent rights to, and oversight by, the Committee, (ii) more protections for the rights of the Debtors' general unsecured creditors, and (iii) more scrutiny for the various matters involving insiders.

RESERVATION OF RIGHTS

11. The Committee reserves its rights to raise and argue at the February 15, 2012 hearing any unresolved concern that may still exist with respect to the Motions and Applications.

CONCLUSION

12. For the foregoing reasons, based upon the Debtors' agreements with the Committee summarized in Exhibit A attached hereto with respect to the modifications of the various proposed orders, and subject to the Committee's counsel's review and approval of the actual modifications, the Committee supports the relief sought by the Debtors in the Motions and Applications as set forth herein.

Dated: New York, New York
February 14, 2012

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Dennis F. Dunne

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EXHIBIT A

Status of Certain Matters Scheduled For February 15, 2012 Omnibus Hearing¹

	MOTION OR APPLICATION	CURRENT STATUS
1.	Debtors' Motion for an Order Authorizing the Establishment of Certain Notice, Case Management and Administrative Procedures (Docket No. 7, the " <u>Case Management Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide:</p> <ul style="list-style-type: none">• the Debtors must consult with Committee counsel prior to scheduling any motion for a date other than an omnibus hearing date;• wherever practical, provisions should apply to all parties equally, not simply the Debtors;• third parties must consult with Committee counsel as well as Debtors' counsel prior to moving for emergency or expedited relief;• the Debtors must consult with Committee counsel prior to seeking emergency, shortened, or expedited relief;• clarification with respect to the time to file replies, joinders, and statements;• parties must file pleadings 17 days prior to the applicable hearing date; and• that the Committee's consent is required to amend the case management procedures.

¹ Capitalized terms used but otherwise not defined herein shall have the meanings ascribed to them in the applicable Motion or Application.

	MOTION OR APPLICATION	CURRENT STATUS
2.	Debtors' Motion for an Order Authorizing Restrictions on Certain Transfers of Interests in the Debtors and Establishing Notification Procedures Relating Thereto Pursuant to Sections 105(a) and 362 of the Bankruptcy Code (Docket No. 8, the " <u>Tax Attributes Motion</u> ")	At the Committee's request, the Debtors have agreed to revise the proposed order to provide that, with respect to the Equity Trading Procedures, the Debtors' affirmative consent (rather than negative notice) will be required to close a transaction involving 5% shareholders.
3.	Debtors' Motion for Interim and Final Orders (a) Authorizing, But Not Directing, the Debtors to Pay Taxes and Fees and (b) Authorizing, But Not Directing, All Financial Institutions to Honor All Related Payment Requests (Docket No. 9, the " <u>Taxes Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • the Debtors shall provide the Committee with notice when the payment of certain Taxes and Fees exceed \$6 million; and • the Committee will have the benefit of the same reservation of rights as the Debtors with respect to challenges to the validity of any claims paid thereunder.

	MOTION OR APPLICATION	CURRENT STATUS
4.	Debtors' Motion for Entry of Interim and Final Orders Authorizing, But Not Directing, Debtors to (a) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (b) Pay and Honor Employee Medical and Other Benefits and (c) Continue Employee Benefit Programs (Docket No. 10, the " <u>Wages and Benefits Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • the Debtors will provide prior notice to, and consult with, the Committee in connection with any modifications to the Employee Obligations; • payments to insiders are carved out from the approved incentive plans; • the Debtors will limit postpetition accruals under non-qualified defined benefit plans to accruals based on actual postpetition service under the standard terms of such plans; and • consideration of the approval of postpetition Director Obligations will be adjourned.
5.	Debtors' Motion for Entry of Interim and Final Orders (a) Authorizing, But Not Directing, the Debtors to Pay (i) Prepetition Claims of Shippers, Warehousemen, Processors and Lien Claimants and (ii) Certain Customs Duties and Similar Incidental Prepetition Import Expenses and (b) Authorizing, But Not Directing, All Financial Institutions to Honor All Related Payment Requests (Docket No. 11, the " <u>Lien Claimants Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • the Debtors will provide the Committee with information regarding the claims it intends to pay in the ordinary course; • the Debtors will provide the Committee with at least 2 business day notice of claims they propose to pay outside the ordinary course; and • the Committee will have the benefit of the same reservation of rights as the Debtors with respect to challenges to the validity of any claims paid thereunder.

	MOTION OR APPLICATION	CURRENT STATUS
6.	Debtors' Motion for Entry of Interim and Final Orders (a) Authorizing, But Not Directing, the Debtors to (i) Maintain and Administer Customer Programs and (ii) Honor Related Prepetition Obligations to Customers and (b) Authorizing, But Not Directing, All Financial Institutions to Honor All Related Payment Requests (Docket No. 12, the " <u>Customer Programs Motion</u> ")	At the Committee's request, the Debtors have agreed to revise the proposed order to provide that the Debtors will consult with the Committee concerning changes to the Customer Programs.

	MOTION OR APPLICATION	CURRENT STATUS
7.	Debtors' Motion for Entry of Interim and Final Orders (a) Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Claims of Foreign Vendors, (b) Approving Related Procedures and (c) Authorizing, But Not Directing, All Financial Institutions to Honor All Related Payment Requests (Docket No. 13, the " <u>Foreign Vendor Motion</u> ")	At the Committee's request, the Debtors have agreed to revise the proposed order to provide that: <ul style="list-style-type: none"> • the Debtors will provide advance notice to the Committee prior to paying any Foreign Vendor; • the Debtors will consult with the Committee prior to declaring a Foreign Vendor in breach; • the Debtors may not pay a Foreign Vendor that has not executed a Foreign Vendor Agreement without the Committee's consent; • the Debtors will provide the Committee's professionals with a matrix setting forth all payments under the order and provide timely access to additional information about such payments; and • the Committee will have the benefit of the same reservation of rights as the Debtors with respect to challenges to the validity of any claims paid thereunder.

	MOTION OR APPLICATION	CURRENT STATUS
8.	Debtors' Motion for Entry of Interim and Final Orders (a) Authorizing, But Not Directing, the Debtors to (i) Continue Using Their Existing Cash Management System, Bank Accounts and Business Forms, (ii) Maintain Investment Practices and (iii) Continue Intercompany Transactions, (b) Providing Postpetition Intercompany Claims Administrative Expense Priority and (c) Authorizing, But Not Directing, All Financial Institutions to Honor All Related Payment Requests (Docket No. 15, the " <u>Cash Management Motion</u> ")	At the Committee's request, the Debtors have agreed to revise the proposed order to provide that: <ul style="list-style-type: none">• the Debtors will provide the Committee with advance notice of any new bank accounts; and• the Committee will have the benefit of the same reservation of rights as the Debtors with respect to challenges to the validity of any claims paid thereunder.

	MOTION OR APPLICATION	CURRENT STATUS
9.	<p>Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) and 364(E) and (B) To Utilize Cash Collateral Pursuant To 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, And 364, And (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) (Docket No. 16, the "<u>DIP Financing Motion</u>")</p>	<p>At the Committee's request, the Debtors have agreed to revise the proposed Final DIP Order from the initial proposed form to provide that:</p> <ul style="list-style-type: none"> • the Committee will receive copies of all notices and reporting that the Debtors are required to deliver to the DIP Agent or DIP Lenders under the DIP Credit Agreement; • DIP Liens and Adequate Protection Liens will not attach to avoidance actions; • the amount of Cash Collateral that may be used by the Committee for investigating and prosecuting claims and issues relating to the First Lien Existing Agreements, the Pre-Petition First Lien Debt, or the Pre-Petition First Lien Agent's or the Pre-Petition First Lien Secured Lenders' liens is increased from \$60,000 to \$150,000; • the Challenge Period with respect to the First Lien Existing Agreements, the Pre-Petition First Lien Debt, and the Pre-Petition First Lien Agent's or the Pre-Petition First Lien Secured Lenders' liens is increased from 60 days to 120 days; • application of cash from swept accounts be subject to a 7 day notice requirement; • the proposed finding that the anti-pledge provisions in leases and licenses are overridden by the Final DIP Order will be removed; and • the Committee will have the right to consent to derivatives transactions outside the ordinary course and receive prior notice of all other derivatives transactions.

	MOTION OR APPLICATION	CURRENT STATUS
10.	Debtors' Motion for an Order Establishing Procedures for the Assertion, Resolution, Allowance and Satisfaction of Unpaid Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9) (Docket No. 26, the " <u>503(b)(9) Claims Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • the Committee will receive a copy of all 503(b)(9) claims, objections, and replies; • the Committee will have the same opportunity as the Debtors to object to such claims; • the Committee's consent will be required for agreements resolving objections or otherwise settling 503(b)(9) claims, including the payment of any such claims; and • nothing therein will affect any avoidance actions against a 503(b)(9) claimant.
11.	Debtors' Motion for Entry of Interim and Final Orders (a) Authorizing, But Not Directing, the Debtors to Continue Prepetition Insurance Coverage and Pay Prepetition Obligations Relating Thereto and (b) Authorizing, But Not Directing, All Financial Institutions to Honor All Related Payment Requests (Docket No. 28, the " <u>Insurance Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • they may not purchase a D&O insurance policy covering prepetition periods absent consultation with the Committee or a separate order of the Bankruptcy Court; and • the Committee will have the benefit of the same reservation of rights as the Debtors with respect to challenges to the validity of any claims paid thereunder.

	MOTION OR APPLICATION	CURRENT STATUS
12.	Debtors' Motion for an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (Docket No. 29, the " <u>Interim Compensation Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • the Committee will have the benefit of the same reservation of rights as the Debtors with respect to challenges as to the validity of any claims paid thereunder; and • certain timing issues with respect to retention of professionals in the Chapter 11 Cases will be clarified.
13.	Debtors' Motion for an Order Authorizing the Retention and Compensation of Certain Professional Utilized in the Ordinary Course of Business (Docket No. 32, the " <u>Ordinary Course Procedures Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • the Committee will receive copies of all invoices to be paid pursuant thereto; • in addition to a monthly cap on professional fees that may be paid without a fee application, there will be a cap of \$5,000 per month in expenses that may be sought without a fee application; and • the Committee will have the benefit of the same reservation of rights as the Debtors with respect to challenges to the validity of any claims paid thereunder.

	MOTION OR APPLICATION	CURRENT STATUS
14.	Debtors' Motion for an Order Establishing and Implementing Exclusive Procedures for Treatment of Reclamation Claims (Docket No. 35, the " <u>Reclamation Procedures Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • the Committee will receive a copy of all Reclamation Claims, objections, and replies; • the Debtors will consult with the Committee prior to settling any Reclamation Claim; and • no settlement may provide for the payment of any Reclamation Claim other than pursuant to a confirmed chapter 11 plan.
15.	Debtors' Motion for an Order Determining Adequate Assurance of Payment for Future Utility Services (Docket No. 89, the " <u>Utilities Motion</u> ")	<p>At the Committee's request, the Debtors have agreed to revise the proposed order to provide that:</p> <ul style="list-style-type: none"> • all requests for Additional Adequate Assurance be served on the Committee; • the Debtors will provide the Committee with notice of any resolution of an Adequate Assurance Request; • the Debtors will give notice to the Committee before amending the list of utility companies; and. • the Committee will receive the same reporting as to be provided to the DIP Agent.

	MOTION OR APPLICATION	CURRENT STATUS
16.	Debtors' Motion for an Order Approving Expedited Procedures for the Sale, Transfer, Donation and/or Abandonment of <i>De Minimis</i> Assets (Docket No. 173, the " <u><i>De Minimis</i> Assets Procedures Motion</u> ")	At the Committee's request, the Debtors have agreed to revise the proposed order to provide that: <ul style="list-style-type: none"> • the threshold below which the Debtors may consummate a sale, transfer, or abandonment of <i>De Minimis</i> Assets outside the ordinary course of business without notice will be lowered from \$5,000,000 to \$3,000,000; • the aggregate annual proceeds from non-noticed sales or transfers of <i>De Minimis</i> Assets may not exceed \$30,000,000 without providing prior notice to the Committee; • the threshold below which the Debtors may consummate a sale, transfer, or abandonment of <i>De Minimis</i> Assets outside the ordinary course of business with notice will be lowered from \$15,000,000 to \$10,000,000; • the Committee will be provided with ten business days notice of noticed sales, transfers, or abandonments; and • additional information will be provided to the Committee regarding <i>De Minimis</i> Asset dispositions.