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*Proposed Counsel for the Official Committee of Retired Employees
of Eastman Kodak Company, et al.*

**IN THE 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)

OFFICIAL COMMITTEE OF RETIRED
EMPLOYEES OF EASTMAN KODAK
COMPANY, *et al.*,

Plaintiff,

Adv. Proc. No. 12-_____ (ALG)

v.

EASTMAN KODAK COMPANY, *et al.*,

Defendants.



**COMPLAINT OF RETIREE COMMITTEE
FOR DECLARATORY JUDGMENT**

Nature of the Action and the Need for Relief

1. The Official Committee of Retired Employees of Eastman Kodak Company, *et al.* (“Retiree Committee”), brings this action to resolve an actual controversy regarding whether the requirements of 11 U.S.C. § 1114 apply to all “retiree benefits,” as that term is defined in 11 U.S.C. § 1114(a) (“Retiree Benefits”), and therefore applies to any proposal or application by Eastman Kodak Company, *et al.* (“Kodak” or the “Debtors”),¹ during these chapter 11 proceedings, to terminate or modify Retiree Benefits. Section 1114 contains substantive and procedural requirements that debtors in chapter 11 proceedings must meet in order to modify Retiree Benefits. 11 U.S.C. § 1114(e)(1).

2. The Debtors asserted, in their Motion for an Order Authorizing Debtors to Terminate Non-Vested Medicare Enhancement Benefits for Post-1991 Retirees (“Termination Motion,” Doc. 432), that § 1114 does not apply to benefit modifications for at least some Kodak retirees. Although the Debtors withdrew the Termination Motion, they did so without prejudice, and on information and belief, continue to maintain that § 1114 does not apply to, *inter alia*, the benefits sought to be modified in the Termination Motion.

3. The Retiree Committee contends that the procedural and substantive protections of § 1114 apply to *all* Retiree Benefits. Accordingly, the Retiree Committee seeks a declaration that § 1114 of the Bankruptcy Code applies to any Retiree Benefits that the Debtors may seek to

¹ 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 Capital 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); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.

modify.

Jurisdiction and Venue

4. On January 19, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, and they have continued since that date to manage their businesses and operate their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157(b)(1), (b)(2)(A), (b)(2)(O), and 1334. This proceeding is a core proceeding under 28 U.S.C. § 157. Alternatively, this Court has non-core concurrent jurisdiction over this proceeding under 28 U.S.C. § 1334(b), as this cause of action is directly related to the Debtors' bankruptcy cases and will have a significant impact on the Debtors' estates.

6. Venue properly lies in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

7. This adversary proceeding is initiated under Rule 7001(9) of the Federal Rules of Bankruptcy Procedure (to obtain a declaratory judgment) and 28 U.S.C. § 2201.

The Parties

8. Plaintiff Retiree Committee is a committee appointed pursuant to 11 U.S.C. § 1114 of the Bankruptcy Code to represent the interests of Kodak retirees receiving Retiree Benefits sponsored by the Debtors. The Retiree Committee was appointed on May 3, 2012. Doc. 1096.

9. Debtor Defendant Eastman Kodak Company is a materials science company based in Rochester, New York, and the additional Debtor Defendants are fifteen affiliated entities who have also filed voluntary petitions under chapter 11. The chapter 11 cases are being jointly administered. A comprehensive background of the Debtors' businesses, operations and

financial affairs can be found in the Declaration of Antoinette P. McCorvey (Doc. 2).

The Statute

10. Under § 1114, Retiree Benefits are defined as “payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.” 11 U.S.C. § 1114(a).

11. Pursuant to § 1114, a debtor “shall timely pay and shall not modify any retiree benefits” unless the procedural steps and substantive requirements outlined in that section are met. 11 U.S.C. § 1114(e)–(k). The procedural steps include, among other things, the making of a proposal to the authorized representative of the retirees and the provision of information necessary to evaluate the proposal. 11 U.S.C. § 1114(f)(1)(A), (B). Substantively, § 1114 requires the Debtors to demonstrate that any modification of Retiree Benefits is, among other things, “necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably,” and is “clearly favored by the balance of the equities.” 11 U.S.C. § 1114(g)(3).

Factual Background

12. On February 27, 2012, the Debtors filed the Termination Motion. That Motion requested an Order from the Court, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, authorizing the Debtors to terminate certain health care benefits for employees who either retired or became eligible for long-term disability benefits on or after October 1, 1991, or the survivors of those employees (defined by the Debtors as “Post-1991 Medicare Enhancement

Benefits”). Termination Motion ¶¶ 5, 14, 21. The Debtors indicated that they did not seek to modify the benefits of other retirees at that time, but may do so in the future. *Id.* ¶¶ 16, 19, 22.

13. In the Termination Motion, the Debtors stated as follows: “Debtors believe that terminating Post-1991 Medicare Enhancement Benefits is permitted under applicable law and the Bankruptcy Code and that, because Post-1991 Medicare Enhancement Benefits are not *vested* rights of the Post-1991 Retirees, section 1114 of the Bankruptcy Code is inapplicable to the relief requested herein.” *Id.* ¶ 6 (emphasis added); *see also id.* ¶¶ 33-35.

14. Several retirees objected to the Termination Motion, *see, e.g.*, Docs. 570, 580, and two groups requested the appointment of a retiree committee under § 1114. *See* Docs. 562, 580.

15. At a hearing on March 20, 2012, the Court suggested that formation of a § 1114 retiree committee would be appropriate and productive. Thereafter, the Debtors requested that a retiree committee be appointed. Doc. 773. The Court directed the appointment of the Retiree Committee by Order dated April 16, 2012, Doc. 852, and the Retiree Committee was appointed by the U.S. Trustee on May 3, 2012, with an amendment on May 17, 2012. Docs. 1096, 1206.

16. The Retiree Committee represents the interests of up to 56,000 retirees, recipients of long-term disability benefits, dependents, and survivors whose Retiree Benefits are sponsored by the Debtors. *See* Termination Motion ¶ 1.

17. On April 17, 2012, the Debtors withdrew the Termination Motion, without prejudice to re-filing it at a later date. Doc. 872.

18. The Debtors have stated repeatedly that it is their intention to modify Retiree Benefits during the course of these cases.

19. On information and belief, it is the position of the Debtors that § 1114 does not apply to Retiree Benefits that are not “vested,” as Debtors used that term in the Termination

Motion, and that § 1114 therefore does not apply to any proposal to modify or terminate such Retiree Benefits.

20. It is the position of the Retiree Committee that § 1114 governs the modification of *all* Retiree Benefits during chapter 11 proceedings, without regard to whether the Retiree Benefits might be deemed “vested,” and that § 1114 therefore applies to any proposal by the Debtors to modify or terminate Retiree Benefits. 11 U.S.C. § 1114(e)(1). *See In re Visteon Corp.*, 612 F.3d 210 (2010).

COUNT I
Declaratory Judgment

21. This cause of action arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

22. An actual controversy exists between the Retiree Committee and the Debtors regarding whether § 1114 of Title 11 of the Bankruptcy Code applies to all Retiree Benefits, whether or not vested, and therefore applies to any proposal by the Debtors to modify or terminate Retiree Benefits during these chapter 11 proceedings.

PRAYER FOR RELIEF

WHEREFORE, the Retiree Committee respectfully requests that the Court: (1) declare that § 1114 applies to all Retiree Benefits, whether or not vested, and that the Debtors must therefore comply fully with the provisions of 11 U.S.C. § 1114 if they seek to modify or terminate any Retiree Benefits; and (2) award the Retiree Committee such other and further relief which this Court deems just and proper.

Dated: New York, New York
July 9, 2012

/s/ Andrew I. Silfen

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