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

In re:)	
)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i>)	Case No. 12-10202 (ALG)
Debtors.)	(Jointly Administered)

**DEBTORS’ MOTION FOR AN ORDER AUTHORIZING DEBTORS TO TERMINATE
NON-VESTED MEDICARE ENHANCEMENT BENEFITS FOR POST-1991 RETIREES**

Eastman Kodak Company (“**Kodak**”), on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), hereby submits this motion (this “**Motion**”) for entry of an order substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), authorizing the Debtors, pursuant to section 363 of the Bankruptcy Code (as defined below), to terminate non-vested medical benefits for Medicare-eligible Post-1991 Retirees (as defined below) provided under certain non-vested retiree medical and survivor benefit plans and programs. The Debtors have a contractual right to terminate these benefits under applicable non-bankruptcy law and the applicable provisions of the Bankruptcy Code and have concluded that doing so is in the best interests of the Debtors and their estates.



Prior to the Petition Date (as defined below), the Debtors, from time to time, unilaterally and without contest or objection, modified their non-vested retiree medical and survivor benefit programs in the ordinary course of business. However, out of an abundance of caution, and to provide clarity to all parties in interest, the Debtors have filed this Motion seeking entry of the Proposed Order. In support of this Motion, the Debtors respectfully state as follows:

Preliminary Statement

1. The Debtors face significant liability for retiree medical, dental, life insurance and survivor income benefits (these types of benefits collectively referred to as “**Retiree Medical and Survivor Benefits**”), which they provide to about 56,000 retired employees and long-term disability recipients, survivors and dependents. The Debtors estimate that their consolidated balance sheet liability for Retiree Medical and Survivor Benefits is approximately \$1.223 billion. Without the modifications requested herein, the Debtors’ aggregate annual cash cost to provide Retiree Medical and Survivor Benefits is estimated to be approximately \$118 million. If the relief sought herein is granted, it would reduce the Debtors’ consolidated balance sheet liability for Retiree Medical and Survivor Benefits by approximately \$223 million, resulting in annual cash savings of approximately \$13.7 million for fiscal year 2012, and approximately \$20.5 million for each fiscal year thereafter.

2. Although Kodak has been diligently working toward improving its cash position, liquidity continues to be constrained by, among other things, (a) the duration and extent of its business transformation, (b) difficulties collecting licensing fees from infringers of its intellectual property and (c) substantial foreign and U.S. legacy costs. In order to ensure that its Retiree Medical and Survivor Benefits program is appropriately scaled for a company of its size – since 2003, Kodak’s global workforce has been reduced from approximately 63,900 employees to about 17,000; and consolidated revenue has declined from about \$14.4 billion to about \$6.0

billion – Kodak has been carefully and deliberately reviewing the costs associated with continuing to provide its current scope of coverage.

3. In that regard, Kodak has always addressed its Retiree Medical and Survivor Benefits costs with consideration for its former employees and their survivors and dependents. As part of its restructuring initiative, Kodak has determined, regrettably, that it is necessary to reduce the burden of its substantial Retiree Medical and Survivor Benefits liabilities that it can no longer afford to service. Accordingly, Kodak's current goal is to significantly reduce its Retiree Medical and Survivor Benefits costs and obligations, while maintaining those Retiree Medical and Survivor Benefits that are critical to retirees and within the bounds of affordability. In its review, Kodak has considered whether or not specific Retiree Medical and Survivor Benefits provide core coverage (or are enhancements to such coverage) and whether specific Retiree Medical and Survivor Benefits can be replaced manageably in the open market (or are either not readily available or likely to be prohibitively expensive).

4. In 1994, the Debtors announced a limit on future company contributions to retiree medical benefits that applied to employees who retired on or after October 1, 1991, and, as more particularly set forth in paragraph 18, the Debtors have used this date consistently in defining subsequent changes to Retiree Medical and Survivor Benefits. As more particularly set forth in paragraphs 14 and 16, the Debtors grouped their retiree community into the following two segments as a result of the October 1, 1991 demarcation: individuals who retired before October 1, 1991; and individuals who retired on or after October 1, 1991.

5. Consistent with the Debtors' ongoing review of their Retiree Medical and Survivor Benefit programs, the Debtors have determined, as an initial step, after full and careful deliberation, that it is in the best interests of their estates to terminate retiree medical benefits

available to Medicare-eligible individuals (the “**Medicare Enhancement Benefits**”) for the Post-1991 Retirees (the Medicare Enhancement Benefits, as to the Post-1991 Retirees, “**Post-1991 Medicare Enhancement Benefits**”).¹ The Debtors believe that terminating Post-1991 Medicare Enhancement Benefits is a logical and socially responsible step to take in rationalizing their Retiree Medical and Survivor Benefits program, because these benefits (a) do not provide core medical coverage and (b) are readily and economically replaceable in the open market. As discussed below, the plan documents and summary plan descriptions with respect to Post-1991 Medicare Enhancement Benefits clearly and unequivocally reserve the Debtors’ right to unilaterally modify or terminate these benefits at any time.

6. Accordingly, the 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.

7. In further support of this Motion, the Debtors submit the Declaration of Patricia A. Obstarczyk, Director, Global Benefits Organization and Vice President of Human Resources of Kodak, attached as Exhibit B and incorporated by reference herein.

Background

8. On January 19, 2012 (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court 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 continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the

¹ The Debtors’ retiree medical benefits for Medicare-eligible individuals (individuals who have either attained age 65 or are otherwise eligible for Medicare) are comprised of options under the Kodak Medical Assistance Plan, which include Medicare Advantage plans, and other medical plan options provided to certain individuals in lieu of Medicare Advantage plans.

Bankruptcy Code. No request for appointment of a trustee or examiner has been made in these chapter 11 cases.

9. On January 25, 2012, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) pursuant to section 1102 of the Bankruptcy Code.

10. Founded in 1880 and long one of the world’s leading material science companies, the Debtors and their non-Debtor affiliates operate an integrated global business involving a diverse collection of mature and growth businesses and an array of valuable intellectual property. In order to address a shortfall in liquidity in the United States, monetize non-strategic intellectual property, fairly resolve legacy liabilities and focus on their most valuable business lines, the Debtors commenced these chapter 11 cases.

11. Additional factual background relating to the Debtors’ businesses and the commencement of these chapter 11 cases is set forth in detail in the Declaration of Antoinette P. McCorvey Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First Day Pleadings dated January 18, 2012, incorporated herein by reference.

Facts Specific to the Relief Requested

A. Overview of the Debtors’ Retiree Medical and Survivor Benefits

12. The following chart summarizes the plans and programs under which the Debtors provide or have provided Retiree Medical and Survivor Benefits (collectively, all the plans in the chart below, the “**Retiree Medical and Survivor Benefit Plans**”):

Plan Name	Description of Benefits
Kodak Medical Assistance Plan (“ KMAP ”)	Medical benefit plan, many retiree premiums subsidized by Debtors

Plan Name	Description of Benefits
Kodak Basic Health Care Plan (“KBHCP”); Kodak Extended Health Care Plan (“KEHCP”); Blue Cross / Blue Shield Plan (“BCBS”); and Major Medical Expense Insurance Plan (“MMEIP”)	Terminated medical benefit plans ²
Kodak Dental Assistance Plan (“KDAP”)	Dental benefit plan, premiums subsidized by Kodak
Kodak Dental Plan (“KDebt”)	Dental benefit plan, premiums subsidized by Kodak
Kodak Prescription Drug Plan (“KRx”)	Prescription drug benefit plan, many retiree premiums subsidized by Debtors
Group Life Insurance Plan (“GLI”)	Employer-subsidized employee life-insurance plan
Family Protection Program (“FPP”)	Employee life insurance and survivor income benefits, premiums and benefits subsidized by Debtors
Supplementary Group Life Insurance Plan (“SGLI”)	Designed to supplement Kodak’s broader-based FPP and GLI for highly compensated employees seeking additional life insurance protection
Kodak Life Insurance Plan (“KLife”)	Life insurance benefits, premiums subsidized by Debtors
1983 Optional Retirement & Separation Program (the “ORSP”); 1983 Special Separation and Retirement Program (the “SERP”); 1984 Reduction in Force at Kodak Office and 1985-1986 Reduction in Force programs (the “RIFs”); 1989-1990 Limited Separation Enhancement programs (the “LSEs”); and 1991 Resource Redeployment and Retirement Program (“RRR”)	Early retirement programs ³

13. The following chart summarizes the Debtors’ current estimated obligations under the Retiree Medical and Survivor Benefits:

Plan Name	Approximate # of Retirees	Estimated Balance Sheet Liability (millions of \$)	Estimated Five Year Cash Cost (millions of \$)
Kodak Medical Assistance Plan (KMAP):			
<i>Employees Who Retired On or After October 1, 1991</i>			
Medicare-eligible	16,030	228	94
Pre-65	6,110	61	49

² Although these predecessor programs have been terminated, some retired employees currently receiving benefits under KMAP retired under KBHCP, KEHCP, BCBS or MMEIP. These predecessor programs are therefore listed separately.

³ These programs are not standalone plans, but since summary plan descriptions discussing Retiree Medical and Survivor Benefits have been issued pursuant to these programs, the programs have been separately enumerated in the above chart out of an abundance of caution.

Plan Name	Approximate # of Retirees	Estimated Balance Sheet Liability (millions of \$)	Estimated Five Year Cash Cost (millions of \$)
<i>Employees Who Retired Before October 1, 1991</i>			
Medicare-eligible	15,865	212	107
Pre-65	160	8	5
Kodak Dental Assistance Plan (KDAP)	14,602	23	12
Kodak Dental Plan (KDent)	233	1	0.4
Kodak Prescription Drug Plan (KRx) (see pre-65 KMAP)	N/A	N/A	N/A
Group Life Insurance Plan (GLI)	1,348	27	21
Supplementary Group Life Insurance Plan (SGLI)	531	26	19
Family Protection Program (FPP)	7,234	114	64
Asset SIB	3,048	479	112
Metlife SIB	3,493	31	26
Kodak Life Insurance Plan (KLife)	313	7	3
MetLife Portability and Conversion Charges	N/A	6	6
TOTAL		1,223	518

B. Description of Post-1991 Medicare Enhancement Benefits

14. The Debtors provide Post-1991 Medicare Enhancement Benefits to approximately 16,030 individuals who (i) retired on or after October 1, 1991; (ii) became eligible to receive long-term disability benefits on or after October 1, 1991; or (iii) are the survivors of the individuals described in (i) and (ii) above (collectively, and together with approximately 14,110 active and former employees of the Debtors who currently are or may become eligible for the Medicare Enhancement Benefits, and with their respective spouses, surviving spouses and

dependents, as applicable, the “**Post-1991 Retirees**”).⁴

15. The Debtors currently provide Post-1991 Medicare Enhancement Benefits pursuant to KMAP. In addition, some of the Post-1991 Retirees were enrolled in the KBHCP, KEHCP, KRx or RRR (collectively with KMAP, the “**Relevant Plans**”), whose associated plan documents discuss Post-1991 Medicare Enhancement Benefits.⁵ Post-1991 Medicare Enhancement Benefits have a twelve-month cash cost of approximately \$20.5 million and an associated balance sheet liability of approximately \$223 million. Following the proposed termination of Post-1991 Medicare Enhancement Benefits, all affected recipients will continue to be eligible for Medicare coverage. In addition, affected recipients will be able to economically replace Post-1991 Medicare Enhancement Benefits with retail products readily available in the market.

16. As discussed, the Debtors also provide Retiree Medical and Survivor Benefits to individuals who (i) retired before October 1, 1991; (ii) became eligible to receive long-term disability benefits before October 1, 1991; or (iii) are the survivors of the individuals described in (i) and (ii) above (collectively, with their respective spouses, surviving spouses and dependents, as applicable, the “**Pre-1991 Retirees**”). The Debtors are not currently seeking to modify any Retiree Medical and Survivor Benefits for Pre-1991 Retirees.

⁴ The figures with respect to the Post-1991 Retirees are as of November 30, 2011. The Post-1991 Retirees do not include retirees who were eligible for retirement based on age and years of service in 1989, but who retired on or after October 1, 1991. For purposes of this Motion, such retirees are considered to be part of the Pre-1991 Retirees (as defined below).

⁵ The RRR is not a standalone plan, but a voluntary early retirement program for which a summary plan description was issued discussing, among other matters, the terms of Post-1991 Medicare Enhancement Benefits for employees who retired under the program. As such, the RRR is included separately in this Motion out of an abundance of caution.

C. Debtors' Reservation of Rights to Terminate Post-1991 Medicare Enhancement Benefits

17. The Debtors have expressly reserved the unilateral right, at any time, to modify or terminate Post-1991 Medicare Enhancement Benefits under each of the Relevant Plans within the associated summary plan descriptions (each, an “SPD”) and plan documents.⁶ The relevant language and documentation with respect to the Debtors' unilateral right to terminate Post-1991 Medicare Enhancement Benefits under each of the Relevant Plans is organized in summary chart format in Appendix A hereto.⁷

18. The Debtors have, from time to time, reduced the level of medical coverage provided under Post-1991 Medicare Enhancement Benefits and increased the portion of the cost borne by the Post-1991 Retirees.

- In 1992, Kodak established a limit or “cap” on the contribution it would pay for medical and dental coverage during retirement for employees who became eligible for retirement on or after January 1, 1993. The amount of the cap was approximately twice the average amount the company paid for health care and dental coverage in 1992. This cap also applied to all employees who qualified for long-term disability benefits after January 1, 1993 and to all persons who became eligible surviving dependents on or after such date.
- Effective January 1, 1996, the free base medical plan option offered under the KBHCP and the KEHCP to Rochester-based Medicare eligible retirees, those eligible for long-term disability benefits, and their survivors was no longer available to those populations absent payment of a premium, although another substitute free base plan option was offered.
- Effective January 1, 2004, the percentage of Kodak's contribution toward medical coverage for retirees who retired on or after January 1, 1993, long-term disability recipients and survivors was changed from about 95% to about 92.5% of the cost

⁶ Under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1001 *et seq.* (“ERISA”), employers are required to issue “summary plan descriptions”, which summarize the terms of their plans in simple and understandable language. 29 U.S.C. § 1022.

⁷ The Debtors will provide the Court, the U.S. Trustee, and counsel to the Creditors' Committee with copies of all documents described in Appendix A to this Motion. However, due to the voluminous nature of these materials, the Debtors have not filed them with the Court. Other parties in interest may receive copies of these documents upon written request to counsel to the Debtors and upon execution of an appropriate confidentiality agreement.

of retiree coverage and from about 75% to about 72.5% of the cost of dependent coverage for the applicable base plan option.

- Effective January 1, 2005, the percentage of Kodak's contribution toward medical coverage for retirees who retired on or after January 1, 1993, long-term disability recipients and survivors was changed from about 92.5% to about 90% of the cost of retiree coverage and from about 72.5% to about 70% of the cost of dependent coverage for the applicable base plan option.

19. By this Motion, the Debtors seek to terminate Post-1991 Medicare Enhancement Benefits pursuant to the Relevant Plans consistent with their unilateral right to do so under applicable law. In the future, and consistent with their ongoing review of their Retiree Medical and Survivor Benefits, the Debtors may request authority to modify or terminate other Retiree Medical and Survivor Benefits upon the filing of a separate motion on notice to parties in interest.

Jurisdiction

20. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and section 363(b) of the Bankruptcy Code.

Relief Requested

21. By this motion, the Debtors seek entry of the Proposed Order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code authorizing them to terminate Post-1991 Medicare Enhancement Benefits, effective as of May 1, 2012.

22. Consistent with their ongoing review of Retiree Medical and Survivor Benefits and with the Debtors' financial position in these chapter 11 cases, the Debtors may in the future request authority to modify or terminate additional Retiree Medical and Survivor Benefits upon the filing of a separate motion on notice to parties in interest. Until such time as this Court enters

an order authorizing the modification or termination of additional Retiree Medical and Survivor Benefits provided by the Debtors, the Debtors will continue to honor such benefits in the ordinary course.⁸

Basis for Relief

A. The Debtors Are Contractually Entitled to Terminate Post-1991 Medicare Enhancement Benefits

23. The Supreme Court and Congress have made clear that, under ERISA, an employer is not required to provide Retiree Medical and Survivor Benefits. *See, e.g., Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) (“ERISA does not create any substantive entitlement to employer-provided health benefits or any other kind of welfare benefits.”). Importantly, Congress has rejected automatic vesting for welfare (including Retiree Medical and Survivor Benefits) plans, recognizing that employers need flexibility in modifying welfare plans due to unpredictable and fluctuating costs. *Moore v. Metropolitan Life Ins. Co.*, 856 F.2d 488, 492 (2d Cir. 1988).

24. If an employer chooses to provide Retiree Medical and Survivor Benefits, the employer is “generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans.” *Devlin v. Empire Blue Cross and Blue Shield*, 274 F.3d 76, 82 (2d Cir. 2001) (citing *Curtiss-Wright Corp.*, 514 U.S. at 78). In the Second Circuit, “the general rule under ERISA is that an employee welfare benefit plan is not vested and that an employer has the right to terminate or unilaterally to amend the plan at any time.” *Joyce v. Curtiss-Wright Corp.*, 171 F.3d 130, 133 (2d Cir. 1999) (internal quotations omitted).

⁸ Notwithstanding the Debtors’ current intent to continue their Retiree Medical and Survivor Benefit Plans, as modified according to the description above, each of the Debtors reserves all of its existing unilateral rights to modify or terminate each plan, in whole or in part, at any time and for any reason.

25. The interpretation of plan documents is a matter of contract interpretation.⁹ *Gibbs v. Cigna Corp.*, 440 F.3d 571, 576 (2d Cir. 2006). When plan documents unambiguously permit the employer to modify or terminate benefits, the ability of the plan sponsor to modify or terminate retiree benefits is governed solely by the plan documents and SPDs, and not by other ancillary documents and communications the plan sponsor or employer may have sent to retirees (including those sent while they were active employees). *Moore*, 856 F.2d at 491.

26. Here, the plain terms of the plan documents and SPDs of the Relevant Plans clearly and unequivocally reserve the Debtors' right to unilaterally terminate Post-1991 Medicare Enhancement Benefits. As set forth below, courts in this jurisdiction have concluded that if a debtor has retained the unilateral right to modify or terminate such benefits, the debtor may do so under section 363 of the Bankruptcy Code.

B. The Debtors' Reservation of its Right to Terminate Post-1991 Medicare Enhancement Benefits Precludes Any Claim to Vested Rights

27. Under binding Second Circuit precedent, if plan documents clearly reserve the employer's right to modify or terminate welfare benefits, then, as a matter of law, the plan does not provide for vested benefits—even if the plan documents contain language that appears to promise lifetime benefits. *Abbruscato v. Empire Blue Cross & Blue Shield*, 274 F.3d 90, 99 (2d Cir. 2001); *Joyce*, 171 F.3d at 136 (holding that an SPD that contained reservation of rights clause precludes any viable claim that the SPD served to vest the retiree benefits); *Moore*, 856 F.2d at 492 (holding that employer reserved right to modify or terminate medical benefits where the employer “indicated in a straightforward way [the company’s] reservations of a right to amend or terminate.”); *see also Sprague v. General Motors Corp.*, 133 F.3d 388, 400 (6th Cir.

⁹ Under ERISA, the “plan documents” include any written welfare benefit plan and SPD. 29 U.S.C. § 1022; *see also Moore*, 856 F.2d at 492 (noting that Congress intended that plan documents and SPDs govern an employer's obligations under ERISA plans).

1998) (holding that plan containing language that “General Motors Corporation reserves the right to amend, change or terminate the Plans and Program described in this booklet” established that General Motors Corporation had unequivocal right to modify or terminate the plan).

28. As detailed in the summary provided in Appendix A hereto, the Debtors reserved the unilateral right to modify or terminate Post-1991 Medicare Enhancement Benefits in both the SPDs and plan documents issued for the Relevant Plans. While the legally binding terms of the plan are formally laid out in the plan documents, reservation of rights language in the SPDs is significant in this case because Congress intended SPDs to be the primary source of information for plan participants regarding plan benefits. *CIGNA v. Amara*, 563 U.S. ___, 131 S.Ct. 1866, 1878 (2011) (noting that “the basic summary plan description objective [is] clear, simple communication”); *see also Joyce*, 171 F.3d at 136; *see also* 29 U.S.C. § 1022(a) (1) (SPD must be provided to participants and beneficiaries).

29. In this case, the relevant plan documents and SPDs show, on their face, that the Debtors reserved their right to modify or terminate the Relevant Plans as to Post-1991 Medicare Enhancement Benefits, and the Post-1991 Retirees cannot point to language “capable of reasonably being interpreted as creating a promise on the part of [the Debtors] to vest ... benefits.” *Joyce*, 171 F.3d at 134. For example, plan documents and SPDs describing KMAP state that “Kodak may amend, suspend, or terminate the Plan in whole or in part at any time.” *See, e.g., Kodak Medical Assistance Plan – Effective Date September 1, 1990* (p. 43).

30. Likewise, plan documents and SPDs describing the other Relevant Plans contain language similar to that quoted from the KMAP plan document referenced above:

- **KBHCP:** “Eastman Kodak Company may amend, suspend, or terminate the Plan in whole or in part at any time.” *See, e.g., Kodak Basic Health Care Plan – Effective Date August 16, 1991* (p. 44).

- **KEHCP:** “Kodak may amend, suspend, or terminate the Plan in whole or in part at any time.” *See, e.g., Kodak Extended Health Care Plan – Effective Date August 16, 1991* (p. 37).
- **KRx:** “The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak.” *See, e.g., Kodak Prescription Drug Plan – Effective Date January 1, 2001* (p. 47).
- **RRR:** “The Company reserves the right to change any of the plans described in this summary.” *See, e.g., Summary Plan Description for the Resource, Redeployment and Retirement Program Benefits – October 1, 1991* (p. 6).

31. The above reservation of rights clauses make clear that the Debtors did not intend for Post-1991 Medicare Enhancement Benefits to be vested, and, as a matter of law, such benefits are not vested. In *Moore*, the Second Circuit rejected a challenge by a group of retirees to their former employer’s unilateral modification of their medical benefits, holding that the provisions of the plan unambiguously reserving the employer’s right to modify or terminate the benefits must govern. 856 F.3d at 489. The plans at issue stated: “[t]he Company expects to continue [the post-employment welfare plan]. However, it reserves the right to change or discontinue any portion of the benefits described in the summary.” *Id.* The benefits described herein are no different; the unambiguous provisions of the Relevant Plans reserving Kodak’s right to unilaterally modify or terminate Post-1991 Medicare Enhancement Benefits must govern.

32. The unambiguous reservation of rights clauses control even if the plan documents and SPDs also contain language appearing to describe “lifetime” benefits:

Because the same documents that potentially provided the “lifetime” benefits also clearly informed employees that these benefits were subject to modification, we conclude that the language contained in the [SPD] is not susceptible to an interpretation that promises vested lifetime life insurance benefits.

Abbruscato, 274 F.3d at 99; *see also Robinson v. Sheet Metal Workers’ Nat’l Pension Fund, Plan A*, 515 F.3d 93 (2d Cir. 2008) (“[T]he ‘lifetime’ language in Plan documents was merely a

factually correct statement of the benefits then provided by the Plan—benefits that were expressly subject to amendment at any time.”) *Id.* at 99 (internal quotation marks omitted).

C. Section 1114 of the Bankruptcy Code Does Not Apply to the Relief Sought in this Motion

33. As illustrated below, courts in this district have consistently concluded that, where a plan providing for medical, surgical or hospital care or benefits in the event of sickness, accident, disability or death unambiguously states that a debtor has the unilateral right to modify or terminate such benefits at any time, section 1114 of the Bankruptcy Code is inapplicable.¹⁰ *See In re Chemtura Corp.*, No. 09-11233, Hr’g Tr. at 89:17-22 (Bankr. S.D.N.Y. Nov. 20, 2009) (“[T]he keystone of the law in this district and circuit since the time that we’ve looked at [retiree benefits] in a more modern way has been that, where a company reserves the right to modify or terminate its benefits, that becomes part of the contract and, where the company is merely invoking its rights under the plan, 1114 doesn’t apply.”); *In re Lyondell Chemical Corp.*, No. 09-10023, Hr’g Tr. at 77:21-24 (Bankr. S.D.N.Y. Sept. 8, 2009) (“**Lyondell Tr.**”) (“[T]he law in this district is that where an employer reserves the right to unilaterally amend or terminate a benefits plan, 1114 doesn’t apply to the debtors’ termination of the plan.”); *In re Gen’l Motors Corp.*, No. 09-50026, Hr’g Tr. at 109:24-110:2 (Bankr. S.D.N.Y. June 25, 2009) (“**GM Tr.**”) (“Section 1114 doesn’t apply to employee benefit plans that are terminable or amendable unilaterally by the plan sponsor.”); *see also In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991) (concluding that section 1114 does not freeze the debtor’s retiree obligations as of the petition date, regardless of the debtor’s prepetition contract rights); *In re Delphi Corp.*, 2009

¹⁰ Generally, under section 1114 of the Bankruptcy Code, among other requirements, vested retiree health and welfare benefits may not be modified unless the debtor first bargains with an authorized representative of retirees and then, if the parties are unable to reach an agreement, seeks court authority to unilaterally modify such benefits. *See* 11 U.S.C. § 1114.

Bankr. LEXIS 576, at *19 (Bankr. S.D.N.Y. Mar. 10, 2009) (“[I]f, in fact, the debtors have the unilateral right to modify a health or welfare plan . . . the debtors’ pre-bankruptcy rights [are] not [] abrogated by the requirements of section 1114.”); *In re Wellman, Inc.*, 2009 Bankr. LEXIS 234, at *8 (Bankr. S.D.N.Y. Jan. 23, 2009) (“Employers or other plan sponsors are generally free under ERISA, for any reason, at any time, to adopt, modify, or terminate welfare plans.”).

34. The fundamental policy underlying this well-established rule is simple: the Bankruptcy Code does not enhance creditors’ contractual rights over a debtor merely because the debtor has filed for chapter 11 protection. *Lyondell Tr.*, at 78:2-9 (“[W]e do not give people in bankruptcy more rights than they have outside bankruptcy Any contrary result would be in substance to be rewriting the contract.”); *GM Tr.*, at 110:3-5 (“Section 1114 does not trump any agreement between a company and its employee that gives the company the right to amend or terminate a welfare plan.”); *Delphi*, 2009 Bankr. LEXIS 576, *7 (“[Section 1114 does not] create[] a federal law overriding pre-petition contractual rights of the debtors that would permit them to modify or terminate retiree health and welfare benefits during the course of a Chapter 11 case.”).¹¹

35. Similar to the situations in *Chemtura*, *Lyondell* and *GM*, the Debtors have numerous Retiree Medical and Survivor Benefits obligations that, if modified or terminated, would save the Debtors’ estates millions in dollars annually and improve the Debtors’ prospects

¹¹ Contrary to the general rule and established law of this Circuit, a Third Circuit panel recently held that debtors are prohibited from modifying even vested retiree benefits without the procedures of section 1114 of the Bankruptcy Code. *In re Visteon Corp.*, 612 F.3d 210 (3d Cir. 2010). In the two years since its publication, *In re Visteon Corp.* has not been cited for this proposition by any court in the Third Circuit, let alone by any court in the Second Circuit. Rather, it continues to be settled law in the Second Circuit that section 1114 of the Bankruptcy Code does not apply to vested retiree benefits. Indeed, just last year, Judge Robert E. Gerber of the Southern District of New York noted that “section 1114 does not trump any agreement between a company and its employee that gives the company the right to amend or terminate a welfare plan.” *In re Chemtura*, No. 09-11233 (REG), 2011 WL 1344573, at *6 (Bankr. S.D.N.Y. April 8, 2011) (citing *Delphi*, 2009 Bankr. LEXIS 576 at *6–*7).

for a successful reorganization. Moreover, the Debtors' relevant plan documents, as well as their past course of conduct, both clearly establish that the Debtors expressly retained the unilateral right to modify or terminate such benefits.¹² Accordingly, section 1114 of the Bankruptcy Code is inapplicable to the relief sought in this Motion.

D. Terminating Post-1991 Medicare Enhancement Benefits is a Sound Exercise of the Debtors' Business Judgment.

36. Termination of Post-1991 Medicare Enhancement Benefits is an eminently reasonable exercise of the Debtors' sound business judgment. Section 1108 of the Bankruptcy Code authorizes the Debtors to operate their businesses, and section 363(b)(1) of the Bankruptcy Code permits a debtor in possession to use property of the estate "other than in the ordinary course of business" after notice and hearing. 11 U.S.C. § 363(b)(1). In order for a transaction out of the ordinary course of business to be approved pursuant to section 363(b), it must represent a reasonable exercise of the debtor's business judgment. *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (upholding trial court's approval of debtor's 363(b)(3) application because "the Debtors [had] advanced good business reasons" for the sale and it was "a reasonable exercise of each of the Debtors' business judgment."); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.").

37. Here, the Debtors have good business reasons for terminating Post-1991 Medicare Enhancement Benefits. Continuing to provide these benefits is a significant financial burden on the Debtors, representing a consolidated liability of more than \$223 million on the Debtors'

¹² As part of Kodak's efforts to provide competitive benefits to employees, it continually reviews all of its plans, which are subject to change at any time.

balance sheet. After extensively reviewing the operating and financial costs associated with their Retiree Medical and Survivor Benefits, the Debtors, in the sound exercise of their business judgment, have elected to terminate Post-1991 Medicare Enhancement Benefits. The Debtors have determined that terminating these benefits will generate significant cost savings and, thus, preserve much needed liquidity going forward, which is in the best interest of the Debtors' and their estates and will facilitate the Debtors' successful reorganization.

38. Accordingly, the Debtors respectfully submit that they have satisfied the business judgment standard required under section 363(b) of the Bankruptcy Code to proceed with the termination of Post-1991 Medicare Enhancement Benefits.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

39. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the 14-day stay under Bankruptcy Rule 6004(h).

Debtors' Reservation of Rights

40. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim of any member of the Post-1991 Retirees under applicable non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

41. Notice of this Motion has been provided to: (a) the U.S Trustee; (b) the Post-1991

Retirees; (c) Milbank, Tweed, Hadley & McCloy LLP, proposed counsel to the Creditors' Committee; (d) counsel to any other statutory committee appointed in these chapter 11 cases; (e) counsel to the agent under the prepetition revolving credit facility; (f) U.S. Bank, National Association, as indenture trustee; (g) Wilmington Trust, National Association, as indenture trustee; (h) the Securities and Exchange Commission; (i) the Internal Revenue Service; (j) the Environmental Protection Agency; (k) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders; (l) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; and (m) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that further notice of this Motion is neither required nor necessary.

No Prior Request

42. The Debtors have not previously sought the relief requested herein from this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order authorizing, but not directing, them to (a) terminate Post-1991 Medicare Enhancement Benefits and (b) grant such other and further relief as is just and proper.

Dated: February 27, 2012
New York, New York

/s/ Andrew G. Dietderich

Andrew G. Dietderich
Marc R. Trevino
Michael H. Torkin
Mark U. Schneiderman
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
Proposed Counsel to the Debtors and Debtors in
Possession

Hearing Date: March 20, 2012 at 11:00 a.m. (ET)
Objection Deadline: March 13, 2012 at 4:00 p.m. (ET)

Andrew G. Dietderich
Marc R. Trevino
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Mark U. Schneiderman
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Proposed Counsel to the Debtors and
Debtors in Possession

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

In re:))	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹))	Case No. 12-10202 (ALG)
Debtors.))	Jointly Administered

**NOTICE OF DEBTORS' MOTION FOR AN ORDER AUTHORIZING DEBTORS TO
TERMINATE NON-VESTED MEDICARE ENHANCEMENT BENEFITS FOR
POST-1991 RETIREES**

PLEASE TAKE NOTICE that a hearing on the *Debtors' Motion for an Order Authorizing Debtors to Terminate Non-Vested Medicare Enhancement Benefits for Post-1991 Retirees* (this "**Motion**") will be held before the Honorable Allan L. Gropper, United States Bankruptcy Judge, in Room 617 of the United States Bankruptcy Court for the Southern District

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.

of New York (the “**Bankruptcy Court**”), One Bowling Green, New York, New York, on **March 20, 2012 at 11:00 a.m. (ET)**.

PLEASE TAKE FURTHER NOTICE that any responses or objections to this Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court’s case filing system (the User’s Manual for the Electronic Case Filing System can be found at <http://www.nysb.uscourts.gov>, the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon: (a) the Office of the United States Trustee for the Southern District of New York; (b) Milbank, Tweed, Hadley & McCloy LLP, proposed counsel to the Official Committee of Unsecured Creditors; (c) counsel to any other statutory committee appointed in these chapter 11 cases; (d) counsel to the agent under the prepetition revolving credit facility; (e) U.S. Bank, National Association, as indenture trustee; (f) Wilmington Trust, National Association, as indenture trustee; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the Environmental Protection Agency; (j) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders; (k) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders; and (l) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 so as to be actually received **no later than March 13, 2012 at 4:00 p.m. (ET)**. Only those responses that are timely filed, served and received will be considered at the

hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

Dated: February 27, 2012
New York, New York

/s/ Andrew G. Dietderich

Andrew G. Dietderich
Marc R. Trevino
Michael H. Torkin
Mark U. Schneiderman
SULLIVAN & CROMWELL LLP
125 Broad Street
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Telephone: (212) 558-4000
Facsimile: (212) 558-3588
Proposed Counsel to the Debtors and Debtors in
Possession

APPENDIX A TO MOTION

**Reservation of Rights Language in Plan
Documents and SPDs**

The relevant language and documentation with respect to each of the SPDs and plan documents for the Relevant Plans¹ is organized in summary chart format below.² The term “**RDS Population**” shall mean eligible retirees, long-term disability recipients and survivors.

I. Kodak Medical Assistance Plan (“KMAP”)

KMAP, an employer-subsidized retiree health plan, became effective on January 1, 1983, and, to date, all of the Debtors’ active employees and retirees are currently provided health insurance benefits under this plan. KMAP operates in conjunction with KRx (described below) to provide retirees and employees with comprehensive medical coverage. To the best of the Debtors’ knowledge, the plan documents and SPDs listed below represent all plan documents and SPDs governing KMAP for the period beginning from October 1, 1991 through the present.

A. Summary Plan Descriptions

Name of SPD	Reservation of Rights Language
Summary Plan Description (You and Kodak) applicable to RDS Population – Date: December 1990 (p. 142) Summary Plan Description (You and Eastman) applicable to RDS Population – Date: December 1990 (p. 154) Summary Plan Description (You and Kodak) applicable to Employee population – Date: July 1991 (p. 241)	“While Eastman Kodak Company intends to continue the benefit plans described in this book indefinitely, any plan may be modified or terminated at any time.”
Summary Plan Description (You and Kodak) applicable to Employee population – Date: July 1991 (p. 3) Summary Plan Description (You and Kodak) applicable to Employee population – Date: April 1993 (unnumbered page at front of document)	“While Eastman Kodak Company intends to continue the benefit plans as described in this book, any plan may be modified or terminated at any time by action of the Benefit Plans Committee, a committee of the Board of Directors, or by action of the Board itself. Although the company has total discretion to amend or terminate a plan, it generally exercises that discretion in response to a change in the environment which existed when the

¹ Capitalized terms used but not defined in this Appendix shall have the meaning ascribed to such terms in the body of the Motion.

² The Debtors will provide the Court, the U.S. Trustee, and counsel to the Creditors’ Committee with copies of all agreements described in this Appendix. However, due to the voluminous nature of these documents, the Debtors have not filed them with the Court. Other parties in interest also may receive copies of these documents upon written request to counsel to the Debtors and upon execution of an appropriate confidentiality agreement.

Name of SPD	Reservation of Rights Language
	<p>plan was originally adopted or subsequently amended. For example, the company might decide to modify or terminate a plan because of changes in applicable laws or regulations, changes in the company's economic or business situation, or changes in the apparent needs of employees. In the event of plan termination, plan assets will be distributed according to the terms of each plan. Under no circumstances will any plan modification or termination adversely affect any benefits that were accrued (payable) prior to the effective date of the plan modification or termination. The above provisions apply to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. ... Employee contributions are currently required toward the cost of some benefits such as health care and life insurance coverages. Under certain conditions, as described in the respective plans, Kodak retirees, disabled persons, and survivors are also required to contribute toward the cost of some benefits. Costs of plans described in this book may change at any time. As a result, contribution rates may change. In addition, the company may, at its discretion, modify plans to require contributions toward the cost of some benefits currently provided to participants without charge."</p>
<p>Summary Plan Description (You and Kodak) applicable to Employee population – Date: April 1993 (p. 295)</p>	<p>"While Eastman Kodak Company intends to continue the benefit plans described in this book indefinitely, the company reserves the right, at its discretion, to modify, suspend or terminate any plan at any time."</p>
<p>Summary Plan Description (You and Kodak) applicable to Pre-1993 RDS Population – Date: December 1995 (unnumbered page at front of document and p. 138)</p>	<p>"Any employee benefit plan may be modified or terminated at any time for any reason by adoption of a resolution by the Benefit Plans Committee, a committee designated by the Board of Directors, or by the Board itself. A resolution is adopted when a majority of the members of the Committee or Board approve the resolution by voice or written vote at a meeting of the Committee or Board. If no meeting is held, the resolution is in writing and signed by all of the members of the Committee or Board."</p>
<p>Summary Plan Description (You and Kodak) applicable to Employee population – Date: 1997 (pp. 2, 335)</p> <p>Summary Plan Description applicable to Post-1993 RDS Population – Date: July 1998 (pp. 1, 141)</p>	<p>"Any plan described in [the Benefit Plans section of this handbook] / [this handbook] may be modified or terminated at any time for any reason. The above provision applies to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. ... Employee contributions are currently required toward the cost of some benefits such as health care and life insurance coverages. Under certain conditions, as described in the respective plans, Kodak retirees, disabled persons, and survivors are also required to contribute toward the cost of some benefits. Costs of plans described in this book may change at any time. As a result, contribution rates may change. In addition, the company may, at its discretion, modify plans to require contributions toward</p>

Name of SPD	Reservation of Rights Language
	<p>the cost of some benefits currently provided to participants without charge.”</p> <p>“Eastman Kodak Company reserves the right, at its discretion, to modify, suspend or terminate any plan at any time, for any reason.”</p>
<p>Summary Plan Description (You and Kodak) applicable to Employee population: Date 2002 (pp. 37 – 38)</p> <p>Summary Plan Description (You and Kodak) applicable to Employee population: Date 2008 (pp. 1 – 2)</p>	<p>“Any plan described in a benefit summary contained in this handbook section may be modified or terminated [by Kodak] at any time for any reason. The above provision applies to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. ... Employee contributions are currently required toward the cost of some benefits such as [health care] / [medical], dental and life insurance coverages. Under certain conditions, as described in the respective plans, Kodak retirees, disabled persons, and survivors with plan coverage are also required to contribute toward the cost of some benefits. Costs of the plans described in this section may change at any time. As a result, contribution rates may be changed. In addition, Kodak may, at its discretion, modify plans to require contributions toward the cost of benefits currently provided to participants without charge.”</p>
<p>Summary Plan Description (You and Kodak) applicable to Post-1993 RDS Population: Date 2003 (p. 9)</p> <p>Summary Plan Description (You and Kodak) applicable to Pre-1993 RDS Population: Date 2006 (p. 2)</p> <p>Summary Plan Description (You and Kodak) applicable to Post 9-30-1991 RDS Population: Date 2009 (pp. 1 – 2)</p>	<p>“Any plan described in a benefit summary contained in this handbook may be modified or terminated [by Kodak] at any time for any reason. The above provision applies to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. ... Retirees, LTD Recipients and Survivors are currently required to contribute toward the cost of some benefits such as [health care] / [medical], dental and life insurance coverage. Costs of the plans described in this section may change at any time. As a result, contribution rates may be changed. In addition, Kodak may, at its discretion, modify plans to require contributions toward the cost of benefits currently provided to participants without charge.”</p>

B. Plan Documents

Name of Plan Document	Reservation of Rights Language
<p>Kodak Medical Assistance Plan – Effective Date September 1, 1990 (p. 43)</p> <p>Kodak Medical Assistance Plan – Effective Date November 1, 1994; As Amended November 22, 1998 (p. 45)</p>	<p>“Kodak intends to continue the Plan indefinitely, but it assumes no contractual obligation to do so. Kodak may amend, suspend, or terminate the Plan in whole or in part at any time.”</p>

Name of Plan Document	Reservation of Rights Language
<p>Kodak Medical Assistance Plan – Effective Date January 1, 1995; As Amended August 30, 1996 (pp. 81, 83)</p> <p>Kodak Medical Assistance Plan – Effective Date January 1, 1996; As Amended August 30, 1996 (pp. 77, 79)</p>	<p>“Eastman Kodak Company may amend, suspend, or terminate the Plan in whole or in part at any time, for any reason.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>
<p>See Annex I-A for a complete list of KMAP plan documents containing these provisions.</p>	<p>“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>
<p>Kodak Medical Assistance Plan – Effective Date August 1, 2006; As Amended August 12, 2006 (pp. 115, 117)</p> <p>Kodak Medical Assistance Plan – Effective Date January 1, 2007; As Amended July 9, 2007 (pp. 116, 118)</p> <p>Kodak Medical Assistance Plan – Effective Date January 1, 2008; As Amended October 22, 2007, June 26, 2008, and September 11, 2009 (pp. 107, 109)</p> <p>Kodak Medical Assistance Plan – Effective Date June 1, 2008; As Amended October 2, 2008 (pp. 107, 109)</p> <p>Kodak Medical Assistance Plan – Effective Date January 1, 2009; As Amended October 2, 2008, May 18, 2009, and September 11, 2009 (pp. 108, 109)</p> <p>Kodak Medical Assistance Plan – Effective Date September 1, 2009; As Amended September 11, 2009 (pp. 108, 110)</p> <p>Kodak Medical Assistance Plan – Effective Date November 1, 2009; As Amended April 13, 2010 (pp. 108, 110)</p> <p>Kodak Medical Assistance Plan – Effective Date January 1, 2010; As Amended April 13, 2010 (pp. 108, 109)</p> <p>Kodak Medical Assistance Plan – Effective Date November 10, 2010; As Amended November 24, 2010</p>	<p>“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak. No person has any vested rights under this Plan.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>

Name of Plan Document	Reservation of Rights Language
and June 29, 2011 (pp. 108, 110) Kodak Medical Assistance Plan – Effective Date January 1, 2011; As Amended November 24, 2010, June 29, 2011 and September 27, 2011 (pp. 108, 109)	

II. Kodak Basic Health Care Plan (“KBHCP”)

By the mid-1990’s, KBHCP, a predecessor health plan to KMAP, was being phased out by the Debtors as an employer-subsidized retiree health plan, and no retirees are currently provided health insurance benefits under this plan. Since certain retirees under KMAP were provided health insurance under KBHCP as of the date of their retirement, however, the Debtors provide, out of an abundance of caution, the following chart summarizing the relevant language within plan documents applicable to KBHCP. To the best of the Debtors’ knowledge, the plan documents and SPDs listed below represent all plan documents and SPDs governing KBHCP for the period from October 1, 1991 through 2008, when KBHCP was terminated.

A. Summary Plan Descriptions

Name of SPD	Reservation of Rights Language
Summary Plan Description (You and Kodak) applicable to RDS Population – Date: December 1990 (p. 142) Summary Plan Description (You and Eastman) applicable to RDS Population – Date: December 1990 (p. 154) Summary Plan Description (You and Kodak) applicable to Employee population – Date: July 1991 (p. 241)	“While Eastman Kodak Company intends to continue the benefit plans described in this book indefinitely, any plan may be modified or terminated at any time.”
Summary Plan Description (You and Kodak) applicable to Employee population – Date: July 1991 (p. 3)	“While Eastman Kodak Company intends to continue the benefit plans as described in this book, any plan may be modified or terminated at any time by action of the Benefits Plan Committee, a committee of the Board of Directors, or by action of the Board itself. Although the company has total discretion to amend or terminate a plan, it generally

Name of SPD	Reservation of Rights Language
	<p>exercises that discretion in response to a change in the environment which existed when the plan was originally adopted or subsequently amended. For example, the company might decide to modify or terminate a plan because of changes in applicable laws or regulations, changes in the company's economic or business situation, or changes in the apparent needs of employees. In the event of plan termination, plan assets will be distributed according to the terms of each plan. Under no circumstances will any plan modification or termination adversely affect any benefits that were accrued (payable) prior to the effective date of the plan modification or termination. The above provisions apply to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. . . . Employee contributions are currently required toward the cost of some benefits such as health care and life insurance coverages. Under certain conditions, as described in the respective plans, Kodak retirees, disabled persons, and survivors are also required to contribute toward the cost of some benefits. Costs of plans described in this book may change at any time. As a result, contribution rates may change. In addition, the company may, at its discretion, modify plans to require contributions toward the cost of some benefits currently provided to participants without charge."</p>
<p>Summary Plan Description (You and Kodak) applicable to Pre-1993 RDS Population – Date: December 1995 (unnumbered page at front of document and p. 138)</p>	<p>"Any employee benefit plan may be modified or terminated at any time for any reason by adoption of a resolution by the Benefit Plans Committee, a committee designated by the Board of Directors, or by the Board itself. A resolution is adopted when a majority of the members of the Committee or Board approve the resolution by voice or written vote at a meeting of the Committee or Board. If no meeting is held, the resolution is in writing and signed by all of the members of the Committee or Board."</p>
<p>Summary Plan Description (You and Kodak) applicable to Pre-1993 RDS Population: Date 2006 (p. 2)</p>	<p>"Any plan described in a benefit summary contained in this handbook may be modified or terminated at any time for any reason. The above provision applies to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. . . . Retirees, LTD Recipients and Survivors are currently required to contribute toward the cost of some benefits such as medical, dental and life insurance coverage. Costs of the plans described in this section may change at any time. As a result, contribution rates may be changed. In addition, Kodak may, at its discretion, modify plans to require contributions toward the cost of benefits currently provided to participants without charge."</p>

B. Plan Documents

Name of Plan Document	Reservation of Rights Language
<p>Kodak Basic Health Care Plan – Effective Date August 16, 1991; Revised November 1, 1993 (p. 44)</p> <p>Kodak Basic Health Care Plan – Effective Date August 16, 1991 (p. 40)</p>	<p>“Eastman Kodak Company intends to continue the Plan indefinitely, but it assumes no contractual obligation to do so. Eastman Kodak Company may amend, suspend, or terminate the Plan in whole or in part at any time. The contracts with insurance companies may be amended or terminated by Eastman Kodak Company or the appropriate insurance company. The Trust Agreement may be amended or terminated by Eastman Kodak Company or Citibank N.A. However, no amendment, suspension, or termination shall adversely affect benefits payable for any expenses incurred before the amendment, suspension, or termination.”</p>
<p>Kodak Basic Health Care Plan – Effective Date March 1, 1994; As Amended August 30, 1996 (p. 44)</p>	<p>“Eastman Kodak Company may amend, suspend, or terminate the Plan in whole or in part at any time, for any reason.”</p>
<p>Kodak Basic Health Care Plan – Effective Date March 1, 1994 (p. 42)</p>	<p>“Eastman Kodak Company may amend, suspend, or terminate the Plan in whole or in part at any time, for any reason. For the purposes of ERISA Section 402(b)(3), the procedure for amending, suspending and terminating the Plan is the adoption of a resolution by the Board or Benefit Plans Committee to such effect. A resolution is considered adopted when a majority of the members of the Board or Benefit Plans Committee approve of the resolution by voice or written vote at a Board or Committee meeting, whichever is applicable, or if no meeting is held, the resolution is in writing and signed by all of the members of the Board or Benefit Plans Committee.”</p>

Name of Plan Document	Reservation of Rights Language
<p>See Annex II-A for a complete list of KBHCP plan documents containing these provisions.</p>	<p>“Kodak may amend, suspend or terminate the Plan in whole or in part at any time for any reason.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>
<p>See Annex II-B for a complete list of KBHCP plan documents containing these provisions.</p>	<p>“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>
<p>Kodak Basic Health Care Plan – Effective Date August 1, 2006; As Amended August 12, 2006 (pp. 83, 85)</p> <p>Kodak Basic Health Care Plan – Effective Date January 1, 2007; As Amended July 9, 2007 (pp. 83, 84)</p> <p>Kodak Basic Health Care Plan – Effective Date January 1, 2008; As Amended October 22, 2007 (pp. 83, 85)</p>	<p>“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak. No person has any vested rights under this Plan.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>

III. Kodak Extended Health Care Plan (“KEHCP”)

By the mid-1990’s, KEHCP, a predecessor major medical health plan to KMAP, was being phased out by the Debtors as an employer-subsidized retiree major medical plan, and no retirees are currently provided major medical health insurance benefits under this plan. Since certain retirees under KMAP were provided major medical health insurance under KEHCP as of

the date of their retirement, however, the Debtors provide, out of an abundance of caution, the following chart summarizing the relevant language within plan documents applicable to KEHCP. To the best of the Debtors’ knowledge, the plan documents listed below represent all plan documents and SPDs governing KEHCP for the period from October 1, 1991 through 2008, when KEHCP was terminated.

A. Summary Plan Descriptions

Name of Plan Document / SPD	Reservation of Rights Language
<p>Summary Plan Description (You and Kodak) applicable to RDS Population – Date: December 1990 (p. 142)</p> <p>Summary Plan Description (You and Eastman) applicable to RDS Population – Date: December 1990 (p. 154)</p> <p>Summary Plan Description (You and Kodak) applicable to Employee population – Date: July 1991 (p. 241)</p>	<p>“While Eastman Kodak Company intends to continue the benefit plans described in this book indefinitely, any plan may be modified or terminated at any time.”</p>
<p>Summary Plan Description (You and Kodak) applicable to Employee population – Date: July 1991 (p. 3)</p>	<p>“While Eastman Kodak Company intends to continue the benefit plans as described in this book, any plan may be modified or terminated at any time by action of the Benefits Plan Committee, a committee of the Board of Directors, or by action of the Board itself. Although the company has total discretion to amend or terminate a plan, it generally exercises that discretion in response to a change in the environment which existed when the plan was originally adopted or subsequently amended. For example, the company might decide to modify or terminate a plan because of changes in applicable laws or regulations, changes in the company’s economic or business situation, or changes in the apparent needs of employees. In the event of plan termination, plan assets will be distributed according to the terms of each plan. Under no circumstances will any plan modification or termination adversely affect any benefits that were accrued (payable) prior to the effective date of the plan modification or termination. The above provisions apply to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. . . . Employee contributions are currently required toward the cost of some benefits such as health care and life insurance coverages. Under certain conditions, as described in the respective plans, Kodak retirees,</p>

Name of Plan Document / SPD	Reservation of Rights Language
	disabled persons, and survivors are also required to contribute toward the cost of some benefits. Costs of plans described in this book may change at any time. As a result, contribution rates may change. In addition, the company may, at its discretion, modify plans to require contributions toward the cost of some benefits currently provided to participants without charge.”
Summary Plan Description (You and Kodak) applicable to Pre-1993 RDS Population – Date: December 1995 (unnumbered page at front of document and p. 138)	“Any employee benefit plan may be modified or terminated at any time for any reason by adoption of a resolution by the Benefit Plans Committee, a committee designated by the Board of Directors, or by the Board itself. A resolution is adopted when a majority of the members of the Committee or Board approve the resolution by voice or written vote at a meeting of the Committee or Board. If no meeting is held, the resolution is in writing and signed by all of the members of the Committee or Board.”
Summary Plan Description (You and Kodak) applicable to Pre-1993 RDS Population: Date 2006 (p. 2)	“Any plan described in a benefit summary contained in this handbook may be modified or terminated at any time for any reason. The above provision applies to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. ... Retirees, LTD Recipients and Survivors are currently required to contribute toward the cost of some benefits such as medical, dental and life insurance coverage. Costs of the plans described in this section may change at any time. As a result, contribution rates may be changed. In addition, Kodak may, at its discretion, modify plans to require contributions toward the cost of benefits currently provided to participants without charge.”

B. Plan Documents

Name of Plan Document	Reservation of Rights Language
Kodak Extended Health Care Plan – Effective Date September 1, 1990 (p. 34) Kodak Extended Health Care Plan – Effective Date August 16, 1991; Revised November 1, 1993 (p. 37)	“Kodak intends to continue the Plan indefinitely, but it assumes no contractual obligation to do so. Kodak may amend, suspend, or terminate the Plan in whole or in part at any time.”

Name of Plan Document	Reservation of Rights Language
<p>Kodak Extended Health Care Plan – Effective Date: March 1, 1994; As Amended August 30, 1996 (p. 37)</p>	<p>“Eastman Kodak Company may amend, suspend, or terminate the Plan in whole or in part at any time, for any reason.”</p>
<p>See Annex III-A for a complete list of KEHCP plan documents containing this provision.</p>	<p>“Kodak may amend, suspend or terminate the Plan in whole or in part at any time for any reason.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>
<p>See Annex III-B for a complete list of KEHCP plan documents containing this provision.</p>	<p>“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>

Name of Plan Document	Reservation of Rights Language
Kodak Extended Health Care Plan – Effective Date August 1, 2006; As Amended August 12, 2006 (pp. 84, 85)	“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak. No person has any vested rights under this Plan.”
Kodak Extended Health Care Plan – Effective Date January 1, 2007; As Amended July 9, 2007 (pp. 84, 85)	“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”
Kodak Extended Health Care Plan – Effective Date January 1, 2008; As Amended October 22, 2007 (pp. 84, 85)	

IV. Kodak Prescription Drug Plan (“KRx”)

In 2001, the Debtors instituted KRx, which was intended to aid participants in meeting prescription drug expenses. KRx operates in conjunction with KMAP (described above) to provide retirees and employees with comprehensive medical coverage. The following chart summarizes the relevant reservation of rights language within plan documents applicable to KRx. To the best of the Debtors’ knowledge, the plan documents and SPDs listed below represent all plan documents and SPDs governing KRx for the period beginning with the institution of KRx in 2001 through the present.

A. Summary Plan Descriptions

Name of SPD	Reservation of Rights Language
Summary Plan Description (You and Kodak) applicable to Employee population: Date 2002 (pp. 37 – 38)	“Any plan described in a benefit summary contained in this handbook section may be modified or terminated [by Kodak] at any time for any reason. The above provision applies to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. ... Employee contributions are currently required toward the cost of some benefits such as [health care] / [medical], dental and life insurance coverages. Under certain conditions, as described in the respective plans, Kodak retirees, disabled persons, and survivors with plan coverage are also required to contribute toward the cost of some benefits. Costs of the plans described in this section
Summary Plan Description (You and Kodak) applicable to Employee population: Date 2008 (pp. 1 – 2)	

	may change at any time. As a result, contribution rates may be changed. In addition, Kodak may, at its discretion, modify plans to require contributions toward the cost of benefits currently provided to participants without charge.”
Summary Plan Description (You and Kodak) applicable to Post-1993 RDS Population: Date 2003 (p. 9)	“Any plan described in a benefit summary contained in this handbook may be modified or terminated [by Kodak] at any time for any reason. The above provision applies to all Kodak plans, regardless of whether the benefits are provided through trust funds, company assets or insurance. ... Retirees, LTD Recipients and Survivors are currently required to contribute toward the cost of some benefits such as [health care] / [medical], dental and life insurance coverage. Costs of the plans described in this section may change at any time. As a result, contribution rates may be changed. In addition, Kodak may, at its discretion, modify plans to require contributions toward the cost of benefits currently provided to participants without charge.”
Summary Plan Description (You and Kodak) applicable to Pre-1993 RDS Population: Date 2006 (p. 2)	
Summary Plan Description (You and Kodak) applicable to Post 9-30-1991 RDS Population: Date 2009 (pp. 1 – 2)	

B. Plan Documents

Name of Plan Document	Reservation of Rights Language
See Annex IV-A for a complete list of KRx plan documents containing these provisions.	<p>“Coverage with respect to a Covered Person shall terminate on the date that his [or her]³ coverage under a Participating Health Plan terminates.”</p> <p>“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or inducement or condition of, the employment of the Employee.”</p>
See Annex IV-B for a complete list of KRx plan documents containing these provisions.	<p>“Coverage with respect to a Covered Person shall terminate on the date that his [or her]⁴ coverage under a Participating Health Plan terminates.”</p> <p>“The Plan may be terminated, suspended, or modified, in whole or in part, at any time for any reason by Kodak. No person has any vested rights under this Plan.”</p> <p>“The adoption and maintenance of this Plan shall not constitute a contract between the Company and the Employee for consideration for, or</p>

³ Throughout the KRx plan documents, there are minor variations to this language as to whether the bracketed gender-inclusive language is included.

⁴ Throughout the KRx plan documents, there are minor variations to this language as to whether the bracketed gender-inclusive language is included.

Name of Plan Document	Reservation of Rights Language
	inducement or condition of, the employment of the Employee.”

V. Resource Redeployment and Retirement Program (“RRR”)

In 1991, the Debtors instituted RRR, a voluntary early retirement plan, pursuant to which a significant number of employees retired. The RRR is not a standalone plan, but a SPD was issued with respect to this program that discussed the terms of Post-1991 Medicare Enhancement Benefits. Out of an abundance of caution, the relevant reservation of rights and other related language in the RRR SPD is set forth below:

Name of SPD	Reservation of Rights Language
<p>Summary Plan Description for the Resource Redeployment and Retirement Benefits – October 1, 1991 through December 1, 1992 (p. 6)</p>	<p>“For additional information, such as plan identification, benefit limitations, funding, and plan modifications for the plans mentioned above, see the specific plan descriptions in the <u>You and Kodak</u> employee handbook. Information concerning the following can also be found in the 1991 edition of <u>You and Kodak</u>:</p> <ul style="list-style-type: none"> - Claims and Appeal Procedures – see page 237 - Rights under the Employment Retirement Income Security Act (ERISA) – see page 238 <p>In the event of a conflict between the terms of this summary and the plan documents, the terms of the plan documents shall control.</p> <p>The Company reserves the right to change any of the plans described in this summary.”</p>

ANNEX I-A

Kodak Medical Assistance Plan – Effective Date January 1, 1996; As Amended November 22, 1998 (pp. 108, 111)

Kodak Medical Assistance Plan – Effective Date January 1, 1996; As Amended and Restated July 1, 1996 (pp. 108, 111)

Kodak Medical Assistance Plan – Effective Date February 9, 1996; As Amended January 20, 1997 (pp. 109, 112)

Kodak Medical Assistance Plan – Effective Date July 1, 1996; As Amended January 20, 1997 (pp. 109, 112)

Kodak Medical Assistance Plan – Effective Date August 22, 1996; As Amended January 20, 1997 and January 12, 1998 (pp. 107, 109)

Kodak Medical Assistance Plan – Effective Date January 1, 1997; As Amended December 20, 1996, January 20, 1997, and August 5, 1997 (pp. 111, 113)

Kodak Medical Assistance Plan – Effective Date April 1, 1997; As Amended August 5, 1997 (pp. 108, 110)

Kodak Medical Assistance Plan – Effective Date May 1, 1997; As Amended August 5, 1997 (pp. 110, 112)

Kodak Medical Assistance Plan – Effective Date August 5, 1997; As Amended January 12, 1998 (pp. 110, 113)

Kodak Medical Assistance Plan – Effective Date January 1, 1998; As Amended December 22, 1997, January 12, 1998, April 16, 1998, and December 22, 1998 (pp. 117, 119)

Kodak Medical Assistance Plan – Effective Date August 1, 1998; As Amended December 22, 1998 (pp. 113, 115)

Kodak Medical Assistance Plan – Effective Date November 9, 1998; As Amended November 22, 1998 (pp. 112, 115)

Kodak Medical Assistance Plan – Effective Date January 1, 1999; As Amended December 22, 1998 (pp. 116, 118)

Kodak Medical Assistance Plan – Effective Date January 1, 2000; As Amended December 22, 1999, May 25, 2000, December 22, 2000, and April 30, 2001 (pp. 120, 122)

Kodak Medical Assistance Plan – Effective Date January 1, 2001; As Amended December 22, 2000, April 30, 2001, and December 21, 2001 (pp. 116, 118)

Kodak Medical Assistance Plan – Effective Date February 4, 2001; As Amended June 24, 2002 (pp. 116, 118)

Kodak Medical Assistance Plan – Effective Date April 1, 2001; As Amended April 30, 2001 (pp. 116, 118)

Kodak Medical Assistance Plan – Effective Date May 1, 2001; As Amended December 12, 2004 (pp. 118, 120)

Kodak Medical Assistance Plan – Effective Date January 1, 2002; As Amended December 21, 2001, June 24, 2002, June 26, 2002 and August 28, 2002 (pp. 124, 126-127)

Kodak Medical Assistance Plan – Effective Date April 8, 2002; As Amended June 24, 2002 (pp. 121, 123)

Kodak Medical Assistance Plan – Effective Date June 26, 2002; As Amended June 24, 2002, June 26, 2002, and August 28, 2002 (pp. 121, 123)

Kodak Medical Assistance Plan – Effective Date January 1, 2003; As Amended August 28, 2002, January 1, 2003, April 8, 2003, August 16, 2003, December 12, 2004, and April 18, 2005 (pp. 137, 139)

Kodak Medical Assistance Plan – Effective Date March 1, 2003; As Amended August 16, 2003 (pp. 134, 136)

Kodak Medical Assistance Plan – Effective Date April 14, 2003; As Amended April 8, 2003 and August 16, 2003 (pp. 134, 136)

Kodak Medical Assistance Plan – Effective Date August 18, 2003; As Amended August 16, 2003 (pp. 134, 136)

Kodak Medical Assistance Plan – Effective Date October 9, 2003; As Amended October 29, 2003 (pp. 134, 136)

Kodak Medical Assistance Plan – Effective Date January 1, 2004; As Amended December 12, 2004, January 10, 2005, April 18, 2005, August 7, 2005, September 29, 2005, December 8, 2005, and September 11, 2009 (pp. 130, 132)

Kodak Medical Assistance Plan – Effective Date January 5, 2004; As Amended April 26, 2004 (pp. 125, 127)

Kodak Medical Assistance Plan – Effective Date March 1, 2004; As Amended March 29, 2004, December 10, 2004, January 10, 2005, April 18, 2005, and August 7, 2005 (pp. 128, 130)

Kodak Medical Assistance Plan – Effective Date April 1, 2004; As Amended December 10, 2004 (pp. 127, 128)

Kodak Medical Assistance Plan – Effective Date July 5, 2004; As Amended December 10, 2004 (pp. 126, 128)

Kodak Medical Assistance Plan – Effective Date August 16, 2004; As Amended April 18, 2005 (pp. 126, 128)

Kodak Medical Assistance Plan – Effective Date September 1, 2004; As Amended November 30, 2004, December 10, 2004, January 10, 2005, April 18, 2005, and August 7, 2005 (pp. 126, 128)

Kodak Medical Assistance Plan – Effective Date October 1, 2004; As Amended April 18, 2005 (pp. 124, 126)

Kodak Medical Assistance Plan – Effective Date October 4, 2004; As Amended December 10, 2004 (pp. 124, 126)

Kodak Medical Assistance Plan – Effective Date January 1, 2005; As Amended April 18, 2005, August 7, 2005, and December 8, 2005 (pp. 106, 108)

Kodak Medical Assistance Plan – Effective Date March 21, 2005; As Amended April 18, 2005 and August 7, 2005 (pp. 105, 106)

Kodak Medical Assistance Plan – Effective Date March 28, 2005; As Amended April 18, 2005 (pp. 105, 106)

Kodak Medical Assistance Plan – Effective Date April 20, 2005; As Amended April 18, 2005 and September 29, 2005 (pp. 105, 106)

Kodak Medical Assistance Plan – Effective Date May 1, 2005; As Amended August 7, 2005 (pp. 105, 106)

Kodak Medical Assistance Plan – Effective Date June 1, 2005; As Amended August 7, 2005 (pp. 105, 106)

Kodak Medical Assistance Plan – Effective Date July 1, 2005; As Amended August 7, 2005 (pp. 105, 106)

Kodak Medical Assistance Plan – Effective Date August 1, 2005; As Amended August 7, 2005 (pp. 105, 107)

Kodak Medical Assistance Plan – Effective Date September 16, 2005; As Amended September 29, 2005 (pp. 105, 107)

Kodak Medical Assistance Plan – Effective Date October 1, 2005; As Amended December 8, 2005 (pp. 105, 107)

Kodak Medical Assistance Plan – Effective Date January 1, 2006; Revised December 8, 2005, August 12, 2006,
December 27, 2006, and October 22, 2007 (pp. 108, 110)

ANNEX II-A

Kodak Basic Health Care Plan – Effective Date January 1, 1996; As Amended August 30, 1996 (pp. 64, 65)

Kodak Basic Health Care Plan – Effective Date January 1, 1996 (pp. 81, 83)

Kodak Basic Health Care Plan – Effective Date February 9, 1996; As Amended January 20, 1997 (pp. 64, 66)

Kodak Basic Health Care Plan – Effective Date July 1, 1996; As Amended January 20, 1997 (pp. 65, 67)

Kodak Basic Health Care Plan – Effective Date August 22, 1996; As Amended January 20, 1997 and January 12, 1998 (pp. 65, 67)

Kodak Basic Health Care Plan – Effective Date January 1, 1997; As Amended January 20, 1997, August 5, 1997, January 12, 1998, November 30, 2004, and January 10, 2005 (pp. 69, 71)

Kodak Basic Health Care Plan – Effective Date April 1, 1997; As Amended August 5, 1997 (pp. 68, 69-70)

Kodak Basic Health Care Plan – Effective Date August 5, 1997; As Amended January 12, 1998 (pp. 68, 69-70)

Kodak Basic Health Care Plan – Effective Date January 1, 1998; As Amended January 12, 1998 and December 22, 1998 (pp. 70, 72)

Kodak Basic Health Care Plan – Effective Date January 1, 1999; As Amended December 22, 1998 (pp. 70, 72)

Kodak Basic Health Care Plan – Effective Date January 1, 2000; As Amended December 22, 1999, May 25, 2000, December 22, 2000, and April 30, 2001 (pp. 76, 77)

Kodak Basic Health Care Plan – Effective Date January 1, 2001; As Amended April 30, 2001 and December 21, 2001 (pp. 73, 74)

Kodak Basic Health Care Plan – Effective Date May 1, 2001; As Amended January 10, 2005 (pp. 73, 74)

Kodak Basic Health Care Plan – Effective Date January 1, 2002; As Amended June 24, 2002, June 26, 2002, August 28, 2002, and January 1, 2003 (pp. 76, 77)

Kodak Basic Health Care Plan – Effective Date April 8, 2002; As Amended June 24, 2002 (pp. 73, 75)

Kodak Basic Health Care Plan – Effective Date June 26, 2002; As Amended June 26, 2002 and August 28, 2002 (pp. 73, 75)

Kodak Basic Health Care Plan – Effective Date January 1, 2003; As Amended August 28, 2002, January 1, 2003, April 8, 2003, August 16, 2003, March 29, 2004, and January 10, 2005 (pp. 82, 83-84)

Kodak Basic Health Care Plan – Effective Date April 14, 2003; As Amended April 8, 2003 and August 16, 2003 (pp. 79, 81)

Kodak Basic Health Care Plan – Effective Date August 18, 2003; As Amended August 16, 2003 (pp. 79, 81)

Kodak Basic Health Care Plan – Effective Date October 9, 2003; As Amended October 29, 2003 (pp. 79, 81)

ANNEX II-B

Kodak Basic Health Care Plan – Effective Date January 1, 2004; As Amended March 29, 2004, January 10, 2005, September 29, 2005, December 8, 2005, and December 28, 2008 (pp. 73, 75)

Kodak Basic Health Care Plan – Effective Date March 1, 2004; As Amended March 29, 2004, January 10, 2005, and September 29, 2005 (pp. 72, 73)

Kodak Basic Health Care Plan – Effective Date April 1, 2004; As Amended January 10, 2005 and April 18, 2005 (pp. 72, 73)

Kodak Basic Health Care Plan – Effective Date July 5, 2004; As Amended January 10, 2005 (pp. 72, 73)

Kodak Basic Health Care Plan – Effective Date August 16, 2004; As Amended September 29, 2005 (pp. 72, 73)

Kodak Basic Health Care Plan – Effective Date September 1, 2004; As Amended November 30, 2004, January 10, 2005, and September 29, 2005 (pp. 71, 73)

Kodak Basic Health Care Plan – Effective Date October 1, 2004; As Amended April 18, 2005 (pp. 71, 73)

Kodak Basic Health Care Plan – Effective Date October 4, 2004; As Amended January 10, 2005 (pp. 71, 73)

Kodak Basic Health Care Plan – Effective Date January 1, 2005; As Amended April 18, 2005, September 29, 2005, December 8, 2005 (pp. 71, 73)

Kodak Basic Health Care Plan – Effective Date March 28, 2005; As Amended April 18, 2005 (pp. 71, 73)

Kodak Basic Health Care Plan – Effective Date April 20, 2005; As Amended April 18, 2005 and September 29, 2005 (pp. 71, 72)

Kodak Basic Health Care Plan – Effective Date May 1, 2005; As Amended September 29, 2005 (pp. 71, 72)

Kodak Basic Health Care Plan – Effective Date July 1, 2005; As Amended September 29, 2005 (pp. 72, 73)

Kodak Basic Health Care Plan – Effective Date August 1, 2005; As Amended September 29, 2005 (pp. 72, 73)

Kodak Basic Health Care Plan – Effective Date September 16, 2005; As Amended September 29, 2005 (pp. 72, 73)

Kodak Basic Health Care Plan – Effective Date January 1, 2006; As Amended December 8, 2005, August 12, 2006, December 27, 2006, July 9, 2007, and October 22, 2007 (pp. 75, 77)

ANNEX III-A

Kodak Extended Health Care Plan – Effective Date January 1, 1996; As Amended August 30, 1996 (pp. 114, 116)

Kodak Extended Health Care Plan – Effective Date February 9, 1996; As Amended January 20, 1997 (pp. 112, 114)

Kodak Extended Health Care Plan – Effective Date July 1, 1996; As Amended January 20, 1997 (pp. 113, 115)

Kodak Extended Health Care Plan – Effective Date August 22, 1996; As Amended January 20, 1997 and January 12, 1998 (pp. 113, 115)

Kodak Extended Health Care Plan – Effective Date January 1, 1997; As Amended January 20, 1997, August 5, 1997, January 12, 1998, November 30, 2004, and September 29, 2005 (pp. 119, 121)

Kodak Extended Health Care Plan – Effective Date April 1, 1997; As Amended August 5, 1997 (pp. 116, 118)

Kodak Extended Health Care Plan – Effective Date August 5, 1997; As Amended January 12, 1998 (pp. 116, 118)

Kodak Extended Health Care Plan – Effective Date January 1, 1998; As Amended January 12, 1998 and December 22, 1998 (pp. 119, 121)

Kodak Extended Health Care Plan – Effective Date January 1, 1999; As Amended December 22, 1998 (pp. 119, 121)

Kodak Extended Health Care Plan – Effective Date January 1, 2000; As Amended December 22, 1999, May 25, 2000, December 22, 2000, and April 30, 2001 (pp. 124, 125)

Kodak Extended Health Care Plan – Effective Date January 1, 2001; As Amended April 30, 2001 and December 21, 2001 (pp. 121, 122)

Kodak Extended Health Care Plan – Effective Date May 1, 2001; As Amended September 29, 2005 (pp. 121, 122))

Kodak Extended Health Care Plan – Effective Date January 1, 2002; As Amended June 24, 2002, June 26, 2002, August 28, 2002, and January 1, 2003 (pp. 121, 123)

Kodak Extended Health Care Plan – Effective Date April 8, 2002; As Amended June 24, 2002 (pp. 121, 123)

Kodak Extended Health Care Plan – Effective Date June 26, 2002; As Amended June 26, 2002 and August 28, 2002 (pp. 122, 123)

Kodak Extended Health Care Plan – Effective Date January 1, 2003; As Amended August 28, 2002, January 1, 2003, April 8, 2003, August 16, 2003, and September 29, 2005 (pp. 131, 133)

Kodak Extended Health Care Plan – Effective Date April 14, 2003; As Amended April 8, 2003 and August 16, 2003 (pp. 128, 130)

Kodak Extended Health Care Plan – Effective Date August 18, 2003; As Amended August 16, 2003 (pp. 128, 130)

Kodak Extended Health Care Plan – Effective Date October 9, 2003; As Amended October 29, 2003 (pp. 128, 130)

ANNEX III-B

Kodak Extended Health Care Plan – Effective Date January 1, 2004; As Amended March 29, 2004, September 29, 2005, December 8, 2005, and December 28, 2008 (pp. 75, 77)

Kodak Extended Health Care Plan – Effective Date March 1, 2004; As Amended March 29, 2004 and September 29, 2005 (pp. 74, 76)

Kodak Extended Health Care Plan – Effective Date April 1, 2004; As Amended April 18, 2005 and September 29, 2005 (pp. 74, 76)

Kodak Extended Health Care Plan – Effective Date July 5, 2004; As Amended April 18, 2005 and September 29, 2005 (pp. 74, 76)

Kodak Extended Health Care Plan – Effective Date August 16, 2004; As Amended April 18, 2005 and September 29, 2005 (pp. 74, 76)

Kodak Extended Health Care Plan – Effective Date September 1, 2004; As Amended November 30, 2004 and September 29, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date October 1, 2004; As Amended April 18, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date October 4, 2004; As Amended April 18, 2005 and September 29, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date January 1, 2005; As Amended April 18, 2005, September 29, 2005, and December 8, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date March 28, 2005; As Amended April 18, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date April 20, 2005; As Amended April 18, 2005 and September 29, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date May 1, 2005; As Amended September 29, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date July 1, 2005; As Amended September 29, 2005 (pp. 73, 75)

Kodak Extended Health Care Plan – Effective Date August 1, 2005; As Amended September 29, 2005 (pp. 74, 75)

Kodak Extended Health Care Plan – Effective Date September 16, 2005; As Amended September 29, 2005 (pp. 74, 75)

Kodak Extended Health Care Plan – Effective Date January 1, 2006; As Amended December 8, 2005, August 12, 2006, December 27, 2006, July 9, 2007, and October 22, 2007 (pp. 76, 77)

ANNEX IV-A

Kodak Prescription Drug Plan – Effective Date January 1, 2001; As Amended August 16, 2003 (pp. 28, 47, 49)

Kodak Prescription Drug Plan – Effective Date February 4, 2001; As Amended June 24, 2002 (pp. 29, 47, 49)

Kodak Prescription Drug Plan – Effective Date May 1, 2001; As Amended June 24, 2002 and November 28, 2005 (pp. 29, 47, 49)

Kodak Prescription Drug Plan – Effective Date January 1, 2002; As Amended June 24, 2002, June 26, 2002, August 28, 2002, and January 1, 2003 (pp. 29, 48, 50)

Kodak Prescription Drug Plan – Effective Date April 8, 2002; As Amended June 24, 2002 (pp. 29, 48, 50)

Kodak Prescription Drug Plan – Effective Date June 26, 2002; As Amended June 24, 2002, June 26, 2002, and August 28, 2002 (pp. 29, 48, 50)

Kodak Prescription Drug Plan – Effective Date January 1, 2003; As Amended August 28, 2002, January 1, 2003, April 8, 2003, August 16, 2003, and November 28, 2005 (pp. 31, 55, 56-57)

Kodak Prescription Drug Plan – Effective Date April 14, 2003; As Amended April 8, 2003 and August 16, 2003 (pp. 30, 53, 55)

Kodak Prescription Drug Plan – Effective Date August 18, 2003; As Amended August 16, 2003 (pp. 30, 53, 55)

Kodak Prescription Drug Plan – Effective Date October 9, 2003; As Amended October 29, 2003 (pp. 30, 53, 55)

Kodak Prescription Drug Plan – Effective Date January 1, 2004; As Amended November 28, 2005 and December 28, 2008 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date January 5, 2004; As Amended April 26, 2004 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date February 5, 2004; As Amended November 28, 2005 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date March 1, 2004; As Amended March 29, 2004 and November 28, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date April 1, 2004; As Amended April 18, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date July 5, 2004; As Amended April 18, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date August 16, 2004; As Amended April 18, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date September 1, 2004; As Amended November 30, 2004 and November 28, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date October 1, 2004; As Amended April 18, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date October 4, 2004; As Amended April 18, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date October 8, 2004; As Amended November 28, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date December 15, 2004; As Amended November 28, 2005 (pp. 30, 56, 57)

Kodak Prescription Drug Plan – Effective Date January 1, 2005; As Amended April 18, 2005 and November 28, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date March 21, 2005; As Amended April 18, 2005 and November 28, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date March 28, 2005; As Amended April 18, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date April 4, 2005; As Amended November 28, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date April 20, 2005; As Amended April 18, 2005 and November 28, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date April 28, 2005; As Amended November 28, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date June 3, 2005; As Amended November 28, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date June 30, 2005; As Amended November 28, 2005 (pp. 30, 55, 56)

Kodak Prescription Drug Plan – Effective Date July 1, 2005; As Amended November 28, 2005 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date July 22, 2005; As Amended November 28, 2005 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date August 1, 2005; As Amended November 28, 2005 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date September 16, 2005; As Amended November 28, 2005 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date September 30, 2005; As Amended November 28, 2005 (pp. 30, 55, 57)

Kodak Prescription Drug Plan – Effective Date January 1, 2006; As Amended August 12, 2006, December 27, 2006, July 9, 2007, and October 22, 2007 (pp. 32, 59, 60)

ANNEX IV-B

Kodak Prescription Drug Plan – Effective Date August 1, 2006; As Amended August 12, 2006 (pp. 31, 66, 68)

Kodak Prescription Drug Plan – Effective Date January 1, 2007; As Amended July 9, 2007 (pp. 31, 66, 68)

Kodak Prescription Drug Plan – Effective Date January 1, 2008; As Amended October 22, 2007 and December 28, 2008 (pp. 32, 67, 69)

Kodak Prescription Drug Plan – Effective Date January 1, 2009; As Amended September 11, 2009 (pp. 32, 67, 69)

Kodak Prescription Drug Plan – Effective Date January 1, 2010; As Amended December 16, 2009 and April 13, 2010 (pp. 24, 54, 55)

Kodak Prescription Drug Plan – Effective Date October 1, 2010; As Amended November 24, 2010 (pp. 24, 54, 55)

Kodak Prescription Drug Plan – Effective Date November 10, 2010; As Amended November 24, 2010 (pp. 24, 54, 55)

Kodak Prescription Drug Plan – Effective Date January 1, 2011; As Amended November 24, 2010, June 29, 2011, and September 27, 2011 (pp. 24, 55, 56)

Kodak Prescription Drug Plan – Effective Date August 1, 2011; As Amended June 29, 2011 (pp. 24, 55, 56)

Kodak Prescription Drug Plan – Effective Date January 1, 2012; As Amended December 30, 2011 (pp. 24, 55, 56)

EXHIBIT A

Proposed Order

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

In re:)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> ,)	Case No. 12-10202 (ALG)
Debtors.)	(Jointly Administered)

**ORDER AUTHORIZING DEBTORS TO TERMINATE NON-VESTED MEDICARE
ENHANCEMENT BENEFITS FOR POST-1991 RETIREES**

Upon the motion (the “**Motion**”)¹ of Eastman Kodak Company on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) authorizing, but not directing, the Debtors to terminate non-vested retiree medical benefits for Medicare-eligible Post-1991 Retirees, (as more fully described in the Motion); and upon consideration of the Declaration of Patricia A. Obstarczyk; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. Termination of Post-1991 Medicare Enhancement Benefits is a sound exercise of the Debtors' business judgment under section 363(b) of the Bankruptcy Code.

3. The Debtors are hereby authorized, but not directed, to modify the Relevant Plans in order to terminate Post-1991 Medicare Enhancement Benefits, effective as of May 1, 2012, as described in the Motion and to take all actions necessary to implement the relief granted herein.

4. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Order.

5. The requirements set forth in Local Rule 9013-1(b) are satisfied.

6. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

7. This Order shall be immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h).

8. The Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

New York, New York
Dated: March [•], 2012

Allan L. Gropper
United States Bankruptcy Judge

EXHIBIT B

Obstarczyk Declaration

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

In re:)

) Chapter 11

EASTMAN KODAK COMPANY, *et al.*,¹)

) Case No. 12-10202 (ALG)

Debtors.)

) (Jointly Administered)

**DECLARATION OF PATRICIA A. OBSTARCZYK
IN SUPPORT OF DEBTORS' MOTION FOR AN ORDER AUTHORIZING DEBTORS
TO TERMINATE NON-VESTED MEDICARE ENHANCEMENT BENEFITS FOR
POST-1991 RETIREES**

I, Patricia A. Obstarczyk, under penalty of perjury, declare as follows:

1. I am the Director, Global Benefits Organization and Vice President of Human Resources of Eastman Kodak Company ("**Kodak**") and have been employed by Kodak since 2002. In my current position, I am responsible for the administration of the Debtors' global employee and retiree benefits plans and programs.

2. I submit this declaration in support of the Motion (the "**Motion**")² of Kodak and certain of its affiliates, as debtors and debtors in possession in these chapter 11 cases (collectively, the "**Debtors**"), for an order authorizing the Debtors to terminate non-vested medical benefits provided to Medicare-eligible Post-1991 Retirees pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"). Except

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.

² All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

as otherwise noted, the matters set forth herein are based upon my review of relevant documents, information provided to me or verified by other employees or the Debtors' professional advisors, including Sullivan & Cromwell LLP, Young Conaway Stargatt & Taylor, LLP and Phillips Lytle LLP, and my experience, knowledge and information concerning the Debtors' benefits plans and programs.

Documentation of Post-1991 Medicare Enhancement Benefits

3. The Debtors maintain detailed, organized and accurate records of their employee and retiree benefits plans and programs and have conducted a thorough inventory of such records in connection with the changes proposed by the Motion. To the best of my knowledge, the SPDs and plan documents listed in Appendix A to the Motion represent all of the SPDs and plan documents relevant to Post-1991 Medicare Enhancement Benefits.

Previous Unilateral Modifications of Post-1991 Medicare Enhancement Benefits

4. Since 1991, the Debtors have, from time to time, unilaterally modified Post-1991 Medicare Enhancement Benefits, including by increasing the premiums, deductibles, co-pays, co-insurance and out-of-pocket limits paid by the Post-1991 Retirees, reducing covered services, reducing prescription drug coverage, and changing the coverage from a self-insured basis to an insured basis.

5. None of the Debtors' unilateral modifications of the Post-1991 Medicare Enhancement Benefits prior to the Petition Date have been successfully challenged or contested.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 27, 2012
New York, New York

/s/ Patricia A. Obstarczyk
Name: Patricia A. Obstarczyk
Title: Director, Global Benefits Organization &
Vice President, Human Resources