

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

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

**ORDER APPROVING AND AUTHORIZING THE DEBTORS' ENTRY INTO  
THE EASTMAN BUSINESS PARK SETTLEMENT AGREEMENT**

Upon the motion and notice (collectively, the “**Motion**”)<sup>2</sup> of Eastman Kodak Company (“**Kodak**”), 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**”) approving and authorizing the EBP Settlement and the consummation of the transactions contemplated thereby; and this Court having conducted a hearing approving the EBP Settlement on August 16, 2013 (the “**EBP Settlement Hearing**”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the EBP Settlement, the EBP Settlement Agreement and all other relief granted herein; and this Court having determined that the consummation of the EBP Settlement is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and upon consideration of the EBP Settlement; and upon consideration of the arguments of counsel, the record made at the EBP Settlement Hearing, and

<sup>1</sup> 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 Qalex Inc. (6019). The location of the Debtors’ corporate headquarters is 343 State Street, Rochester, NY 14650.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion, or if not defined in the Motion, are to be given the meanings ascribed to them in the EBP Settlement Agreement (as defined in the Motion).



the record of these chapter 11 cases; and the Court having reviewed and considered the Motion; and after due deliberation thereon, and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>

**Jurisdiction and Statutory Predicates**

- A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).
- B. Venue of these cases and the Motion in this Court and this District is proper under 28 U.S.C. §§ 1408 and 1409.
- C. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
- D. This Order is intended to be a final and appealable order as set forth in 28 U.S.C. § 158(a).
- E. The statutory predicates and rules for the relief sought in the Motion are sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9019 and Local Rule 6004-1.

**Notice**

F. As demonstrated at the EBP Settlement Hearing and as evidenced by the affidavits of service filed with this Court, the Debtors have provided proper, timely, adequate and sufficient notice of and sufficient opportunity to object to the Motion, the EBP Settlement and the relief to be granted in this Order. No further or other notice is or shall be required in connection with the relief provided in this Order.

---

<sup>3</sup> The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

**Reasonableness and Sound Business Purpose**

G. There are good, sufficient and sound business reasons for the Debtors to consummate the EBP Settlement, as justified by the compelling circumstances described in the Motion. The EBP Settlement represents a fair and reasonable resolution of the DEC Claims (as defined below) and Clean-Up Obligations and results in a substantial benefit to the Debtors, their estates, their creditors and other parties in interest.

H. The Debtors diligently and in good faith explored alternatives for settlement of the DEC Claims and the Clean-Up Obligations. The Debtors reasonably concluded that none of the available options for resolving the DEC Claims and the Clean-Up Obligations in a non-consensual manner were more favorable to the Debtors than the EBP Settlement. The Debtors' determination that the EBP Settlement was the best and most effective means of fully and consensually resolving the DEC Claims and the Clean-Up Obligations was a valid, sound and reasonable exercise of the Debtors' business judgment and is within the range of reasonableness.

I. Time is of the essence in consummating the Utility Purchase. There is no legal or equitable reason to delay the entry into the EBP Settlement, it is essential that entry into the EBP Settlement be as soon as practicable so that ESD shall take actions reasonably appropriate to support the consummation of the Utility Purchase. Accordingly, there is cause to waive the stay contemplated by Bankruptcy Rule 6004(h).

**Good Faith Finding**

J. The EBP Settlement was negotiated, proposed and entered into by the Debtors and the N.Y. State Parties in good faith and from arm's-length bargaining positions.

K. Each of the N.Y. State Parties is a good-faith purchaser under section 363(m) of the Bankruptcy Code with respect to all consideration to be received by such parties, and, as such, is entitled to all of the protections afforded thereby.

L. None of the Debtors nor the N.Y. State Parties has engaged in any conduct that would cause or permit any part of the EBP Settlement to be avoidable under section 363(n) of the Bankruptcy Code.

**Validity of Transfer and Authorizations**

M. Kodak and the other Debtors have full corporate power and authority to execute and deliver the EBP Settlement Agreement, the Trust Agreement and the DEC Covenant and have all corporate authority necessary to consummate the EBP Settlement. No consents or approvals, other than those expressly provided for in the EBP Settlement, are required for Kodak or the other Debtors to consummate the EBP Settlement.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

**Approval of the EBP Settlement**

2. Pursuant to Bankruptcy Rule 9019 and section 363 of the Bankruptcy Code, the EBP Settlement and all transactions contemplated thereby are hereby approved in all respects.

3. The Debtors and their officers, employees and agents, are authorized, pursuant to Bankruptcy Rule 9019 and section 363 of the Bankruptcy Code, (a) to enter into the EBP Settlement Agreement and consummate the transactions contemplated therein and (b) to execute and deliver the Trust Agreement, the DEC Covenant and the U.S. Covenant and consummate the transactions contemplated therein.

4. Kodak is ordered and directed to pay and perform its obligations to be performed on or prior to the Implementation Date under the EBP Settlement Agreement.

5. Prior to the Effective Date, all of Kodak's monetary obligations under the EBP Settlement Agreement shall constitute administrative expenses under section 503(b) of the Bankruptcy Code.

6. On the Implementation Date, the DEC's unsecured claims [Claim Numbers 5775-5786] shall be stipulated and allowed in the aggregate as a pre-petition general unsecured claim against Kodak in the amount of \$4,122,000. On the Implementation Date, DEC's unsecured claim for Genesee River natural resource damages [Claim Number 5787] and the overlapping unsecured claim for Genesee River natural resource damages in the United States' claim [Claim No. 5709] (together, the "**NRD Claim**") shall be stipulated and allowed as an aggregate pre-petition general unsecured claim against Kodak in the total amount of \$7,163,000, payable without duplication solely in accordance with paragraph 7. Nothing herein waives any right of the United States to seek reclassification of the NRD Claim (subject to the allowance in the amount specified herein and subject to the application of distributions in accordance with paragraph 7) as secured by right of setoff, or any right of the Debtors to contest such reclassification.

7. Except with respect to DEC's Claim Number 5787, distributions in satisfaction of DEC's stipulated and allowed claims shall be made pursuant to the instructions provided by DEC to the Debtor's disbursing claims agent. With respect to the NRD Claim, distributions in satisfaction of the NRD Claim shall be made pursuant to the instructions agreed to by DEC and the United States as provided to the Debtor's disbursing claims agent. Any monies realized from the distribution made with respect to the NRD Claim shall be for

implementation of Genesee River natural resource restoration projects and the reimbursement of trustee assessment and oversight costs, and any disbursements of such monies shall be made in accordance with a memorandum of agreement to be entered into by DEC and the United States.

**Transfer of Assets**

8. Upon the Implementation Date, the transfer of the Environmental Remediation Equipment shall constitute a legal, valid and effective transfer of all of the Debtors' right, title and interest in and to such assets subject to and in accordance with the EBP Settlement, free and clear of any liens, encumbrances or other Interests in such property.

**Additional Provisions**

9. Nothing herein shall impair or otherwise alter or modify any rights previously granted to (a) Wilmington Trust, National Association, as agent (the "**Junior DIP Agent**") under the Debtor-in-Possession Loan Agreement, dated as of March 22, 2013, among the Debtors, the Junior DIP Agent and the other parties thereto (as amended from time to time, the "**Junior DIP Loan Agreement**"), (b) any of the Lenders (as defined in the Junior DIP Loan Agreement), (c) Citicorp North America, Inc., as agent (the "**Senior DIP Agent**") under the Debtor-in-Possession Credit Agreement, dated as of January 20, 2012 and as amended and restated as of March 22, 2013, among the Debtors, the Senior DIP Agent and the other parties thereto (as amended from time to time, the "**Senior DIP Credit Agreement**"), (d) any of the Lenders (as defined in the Senior DIP Credit Agreement) or (e) other secured creditors pursuant to pre-existing Court orders, the Junior DIP Loan Agreement, the Senior DIP Credit Agreement and any documents relating thereto.

10. Nothing contained in the EBP Settlement Agreement, Trust Agreement, the DEC Covenant and any related agreements, documents or other instruments (collectively, the "**Agreements**"), or this Order shall be construed as barring, adjudicating, or in any way

resolving any claims, causes of action, or rights of the United States, including, but not limited to, the United States' claims, causes of action, and rights under any environmental laws, and including, but not limited to, any rights with respect to the issuance of any new or revised permit or permits contemplated by the Agreements or this Order. Kodak's rights with respect to the foregoing are expressly reserved.

11. Nothing contained in the Agreements or this Order affects the right of the United States to decline to provide the covenant and contribution protection referenced in Section 3.2(e) of the EBP Settlement Agreement.

12. The Agreements may be modified, amended or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of the Court; *provided* that no such modification, amendment or supplement may be made without further order of the Court if it materially alters the terms of the settlement. The Debtors are authorized to perform each of their covenants and undertakings as provided in the EBP Settlement prior to or after the Implementation Date without further order of the Court.

13. The Utility Purchase Approval Order, as may be amended from time to time, remains in full force and effect and the terms of this Order do not derogate in any way from the Utility Purchase Approval Order, as may be amended from time to time.

14. The requirements set forth in Local Rules 6004-1 and 9013-1 are satisfied.

15. This Court retains jurisdiction with respect to all matters arising from or related to the EBP Settlement or enforcement of this Order, including the authority to interpret, implement and enforce the terms and provisions of the EBP Settlement or this Order.

16. The stay otherwise imposed by Bankruptcy Rule 6004(h) is hereby waived. This Order is immediately effective and enforceable, notwithstanding anything set forth

in the Bankruptcy Rules or Local Rules or otherwise. The Debtors are not subject to any stay by this Court in the implementation, enforcement, or realization of the relief granted in this Order.

Dated: August 19, 2013  
New York, New York

/s/ Allan L. Gropper  
Allan L. Gropper  
United States Bankruptcy Judge