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Kodak Trustee Objects To \$9M Bonuses For Key Managers

By **Carolina Bolado**

Law360, New York (July 30, 2012, 11:19 PM ET) -- The U.S. bankruptcy trustee for Eastman Kodak Co. on Monday objected to the former photography equipment giant's plan to pay \$8.8 million in bonuses to 15 managers, saying the company had failed to provide enough information about the plan.

Trustee Tracy Hope Davis said Kodak, which wants to pay \$8.8 million to 15 unnamed "key management employees" for work related to selling the company's assets, had failed to show that the proposed bonus payments comply with the Bankruptcy Code.

"While keeping the company operating as a going concern is a legitimate function of the key employees, the debtors have provided no evidence for the proposition that this function will not be fulfilled absent incentive bonuses," the trustee said.

Kodak's motion, filed July 11, failed to identify who would be receiving the bonuses, except to say that the group of 15 consisted of nine executive officers and six other key management employees including the CEO and chief financial officer, according to the trustee. The motion also did not provide the salaries of the bonus recipients, Davis said.

The bonuses are linked to distributions to third-party unsecured creditors and will be calculated according to the recovery percentage of the creditors, according to the trustee. Assuming the target recovery is achieved, the bonuses will total \$8.8 million.

Davis also objected to Kodak's request to make bonus payments under an Executive Compensation for Excellence and Leadership Plan that could grant bonuses of up to \$4.5 million each, according to the trustee. While the bonuses are performance-based, Davis said the specific performance criteria for EXCEL bonuses is missing from the motion.

In addition, Davis said, the proposal to pay a one-time bonus of between \$600,000 and \$1.5 million for insider Laura G. Quatela, who worked on the company's patent portfolio, also lacked sufficient details for approval.

Kodak won approval April 30 to pay out a \$13.5 million in employee retention bonuses. A group of 119 employees at the middle-manager level and above would get \$8.5 million, and a second group of at least 200 employees will get the rest, according to Kodak's proposal.

U.S. Bankruptcy Judge Allan L. Gropper signed off on the plan despite Davis' arguments that the recipients could include company insiders. The judge said that he would take the company at its word that the plan wouldn't benefit insiders.

On the same day he approved the bonuses, Judge Gropper also signed off on an unopposed motion for approval of the \$23.8 million sale of the debtor's Kodak Gallery online photo services business to stalking horse bidder Shutterfly. A slated April 20 auction had been canceled after no other potential bidders surfaced.

Under the deal, online personal publishing service Shutterfly will get Gallery customer accounts and images in the U.S. and Canada.

Kodak is in the process of cutting back its business after its failure to sell digital patents, coupled with intense competition from new technologies, forced it to file for Chapter 11 bankruptcy in January. The company is funding its operations through a \$950 million debtor-in-possession facility approved by Judge Gropper.

Kodak is represented by Andrew G. Dietderich, Steven L. Holley, Brian D. Glueckstein and Michael H. Torkin of Sullivan & Cromwell LLP and Pauline K. Morgan and Joseph M. Barry of Young Conaway Stargatt & Taylor LLP.

The case is In re: Eastman Kodak Co., case number 1:12-bk-10202, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Lisa Uhlman and Max Stendahl. Editing by Kat Laskowski.

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