

## **Kodak, in Bankruptcy, Seeks Bonuses to Keep Executives**

When Eastman Kodak went into bankruptcy proceedings six months ago, it left creditors holding unpaid bills and the world with questions about whether the company would simply shut down.

Eastman Kodak is reorganizing for the second time in six months as part of its Chapter 11 bankruptcy.

Now, Kodak's top executives could be in line for big bonuses if creditors get some payback and if the company successfully emerges from bankruptcy or gets acquired.

The printing and imaging company on Wednesday filed a motion in U.S. Bankruptcy Court seeking approval for as much as \$17.6 million in bonuses for 15 executives.

CEO Antonio Perez could receive up to \$4.4 million if unsecured creditors — those who have no assurance they'll get paid — get back every dime they're owed. If they get back 30 cents on the dollar, which is Kodak's target, Perez would receive \$2.2 million.

Kodak's chief restructuring officer, James Mesterharm, said in a memo to employees Wednesday that the proposed Emergence Performance Plan "provides our leaders an opportunity to earn market-competitive compensation ... for their achievement of this goal" of getting out of bankruptcy.

Such bonus programs are common in Chapter 11 cases of publicly held companies, said Robert Rock, senior bankruptcy attorney with Albany-based law firm Tully Rinckey.

"The concept is that these bonuses are given to key executives in order to keep them with the reorganizing company at a time when that company desperately needs them," Rock said. "The contingency that the company emerge from bankruptcy gives the executives a strong incentive to see that the Chapter 11 succeeds. The contingency that creditors receive a meaningful payment on their claims ensures that the reorganization is run for the benefit of the creditors and not the company executives."

Bankrupt companies ranging from Blockbuster, the movie rental retailer, to Pilgrim's Pride, a giant meat processor, have paid executive bonuses. And even bankrupt companies that are shutting their doors and liquidating assets can get court approval for handsome executive bonuses tied to maximizing the returns to creditors, as was the case with electronics retailer Circuit City and bookstore chain Borders Group.

In its motion, Kodak didn't identify by name the people who would be eligible for bonuses, saying only that nine executive officers and six key managers were in the pool. But the chief executive officer, Perez, and the chief financial officer, Ann McCorvey, were identified by title. McCorvey could receive as much as \$1.6 million.

Company co-President Laura Quatela, who is helping lead an effort to sell a portfolio of 1,100

digital imaging patents, could receive a separate bonus of up to \$1.5 million depending on terms of that sale.

If the bankruptcy case winds up with creditors getting 10 cents or less on the dollar, Kodak executives would get no bonuses. Under another provision, the bonuses would shrink the longer the bankruptcy process takes, with the company's goal being to emerge in January 2013.

According to Kodak, the unsecured creditors committee supports the bonus plan.

Along with creditors getting paid, the bonuses also would depend on the company surviving in some fashion, though perhaps not as "Kodak." For example, if the assets were sold so that the surviving entity would be a stand-alone operation or have different ownership than today, the bonuses could be paid.

"It's not a requirement there be an ongoing Eastman Kodak Company," spokesman Christopher Veronda said.

Bonuses tied to company performance traditionally have been a big part of executives' paychecks. Perez, for example, was eligible for as much as \$8.6 million in cash in 2010, including \$7.5 million in bonuses tied to the company achieving certain financial milestones. That year he received bonuses of \$341,000 atop his \$1.1 million base salary.

Kodak executives received no cash bonuses in 2011. And base salaries currently are frozen.

In its motion, Kodak argues that the Emergence Performance Plan would serve much the same purpose of tying top bosses' pocketbooks directly to the company's performance.

The bonuses — good news for executives — could also represent some good news for Kodak shareholders. If creditors receive 50 cents or more on the dollar, Kodak executives would receive bonuses half in cash and half in deferred stock shares, which indicates the company's confidence that its stock will have value, said Ken Luskin, president of California wealth management firm Intrinsic Value Asset Management.

Under another scenario, however, people still holding shares today might not see any benefit. The bonus proposal contains a provision that Kodak executives could receive cash instead of stock if Kodak shares are illiquid after the company gets out of bankruptcy.

The bonus proposal is scheduled for a hearing in federal bankruptcy court in New York City on Aug. 6.