

## Local companies sued in Kodak bankruptcy

A trust fund established as part of Eastman Kodak Co.'s bankruptcy is suing hundreds of businesses around the globe, including many in the Rochester region, as it seeks to claw back potentially hundreds of millions of dollars Kodak paid them in the weeks prior to it filing for bankruptcy. The suits were filed earlier this month in U.S. Bankruptcy Court. Whatever money the Kodak General Unsecured Creditors (or GUC) Trust collects is to be divvied up among the legions of unsecured creditors who were left holding unpaid bills and invoices when Kodak filed for Chapter 11 bankruptcy in January 2012. Many of the companies now being sued by the Kodak GUC Trust for money Kodak paid them are also unsecured creditors who had bills that went unpaid. In a statement, Kodak said the GUC Trust "is an independent third party acting on behalf of the unsecured creditors, and Kodak has no control over its actions." "It does seem rather absurd, doesn't it? It's like rubbing salt into a wound," said William Betteridge, president of Mastro Graphic Arts Inc. The Gates company produces industrial labels and overlays for Kodak equipment, and it is being sued for nearly \$18,000 allegedly Kodak paid it in the fall and winter of 2011. When Kodak went bankrupt, meanwhile, it left Mastro with a claim for more than \$11,000 for unpaid bills. Such trusts are common in Chapter 11 bankruptcies, with the end goal often being to collect more money for the army of unsecured creditors above what they received through the company's reorganization. In Kodak's case, that was 4 to 5 cents on the dollar, plus options to buy Kodak stock. In Kodak's case, the GUC Trust apparently is suing pretty much everyone who received a payment from Kodak in the 90 days leading up to its filing for bankruptcy. The targets of the lawsuits are numerous, from a Berkeley, Calif., design studio and specialty chemical manufacturer Champion Photochemistry to economic development non-profit Greater Rochester Enterprise. The dollar amounts range from the thousands of dollars to more than \$14 million being sought from financial services giant Prudential Securities Inc. A variety of Rochester-area businesses — from Alton Manufacturing to Rochester Software Associates to Zeller Electric — are among the defendants. The GUC Trust's trustee, Alan D. Halperin — a partner at Wall Street law firm Halperin Battaglia Raicht LLP — did not return a message seeking comment. Nor did attorneys serving as legal counsel for Halperin in his work as trustee. However, Robert J. Rock, senior counsel of Tully Rinckey PLLC's bankruptcy practice, said the GUC Trust is looking for "preferential payments" — money received from Kodak just before it filed for bankruptcy that was somehow more than would have been received in the bankruptcy proceeding. One common legal method of winnowing out those preferential treatments is to go after anyone who received payment in the 90 days before the bankruptcy filing, Rock said. "If something on its face appears to be a preferential payment, as trustee you've got a fiduciary duty to see if it is," he said. "If you're selling paper towels to Kodak and you give them the paper towels and they pay you, that's not a preference." The overall aim is fairness among unsecured creditors, said John C. Ninfo II, retired U.S. bankruptcy judge for the Western District of New York. "The quality of distribution policy says it is better that everyone gets 8 percent than that some get 20 or 100 percent, and others get 2 percent." John Zarwan, who runs a Canadian consultancy specializing in the printing and packaging industries, said that businesses being sued for relatively small amounts like his — in his case, \$10,500 — would spend that much if not more just on legal fees trying to defend

themselves from the Kodak GUC Trust. "Where insult is added to injury is people who did the work, delivered the product, whether it's widgets or silver or whatever, and then to be asked to disgorge that money when they've already lost money for invoices not already paid ... that's the problem I have. "In my particular case ... if they'd declared bankruptcy one month later, I'd be OK. If they'd paid me on time, I'd be OK." Any business that has to return preferential payments could file a claim and get a small fraction of that money back when repaid as an unsecured creditor, Ninfo said. However, they usually are just asked to pay back an amount that leaves them with what they would receive from an unsecured creditor claim, he said. And such trusts almost always give a discount to avoid a legal fight and get a quick payment, Ninfo said. U.S. Bankruptcy Court this week extended the deadline those 700-plus defendants have to respond to the lawsuits to March 31. In a statement, Kodak said it doesn't expect the GUC Trust and its mountain of lawsuits to cause any further problems with its suppliers. The company said it "maintains strong lines of communications with our suppliers and has communicated with them about this issue. They understand the issue and it has not impacted our strong relationships with them." Zarwan said the GUC Trust lawsuit "doesn't create question marks for me with Kodak." But pointing to the potential financial wallop atop the already big tax and administrative hassles of being an American working in Canada, he said, "It does create a question mark for me in business at all. It's one more hassle."