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Stock Drop ERISA Case Develops For Kodak Execs

By **Evan Weinberger**

Law360, New York (January 31, 2012, 1:22 PM ET) -- An Eastman Kodak Co. employee on Friday launched a purported class action alleging the bankrupt photography icon's top executives and directors allowed employee benefit plans to invest in the company's stock even as it careened toward its Chapter 11 filing.

In a complaint filed in federal court in Rochester, N.Y., Kodak employee Mark Gedek alleged that the company's President and CEO Antonio M. Perez, Chief Financial Officer Antoinette P. McCorvey, several other top executives and the entire board of directors had breached their fiduciary duties to workers by allowing the Eastman Kodak Employees' Savings And Investment Plan and the Kodak Employee Stock Ownership Plan to purchase company stock even as they knew it was not a prudent investment.

"Their fiduciary duties notwithstanding, defendants failed to protect the plans' participants' retirement savings from being imprudently invested in company stock, and as a result, the plans, and ultimately their participants, suffered losses," the complaint said. "A prudent fiduciary facing similar circumstances would not have stood idly by as the plans lost tens of millions of dollars."

Kodak, a onetime photography giant, filed for Chapter 11 bankruptcy protection Jan. 19 after failing to sell some of its digital patents and stem the ballooning losses that have long plagued the trailblazer. The move came after Kodak's ongoing struggle to right itself in the face of intense competition from new technologies.

The company had been refashioning itself since at least 2008, focusing more on its digital and commercial offerings and winnowing its film and consumer products.

According to the complaint, Perez, McCorvey and the other defendants were in breach of their fiduciary duties under the Employee Retirement Income Security Act because they continued to purchase Kodak stock even as the company's share price, and revenues, plummeted.

Kodak's stock has lost 99 percent of its value since 1999, the complaint said.

The stock, once valued at more than \$80 per share, was hovering around the \$1 mark as of November 2011. Once a component of the Dow Jones Industrial Average and traded on the New York Stock Exchange, Kodak shares began trading on the over-the-counter pink sheets in January, just before the bankruptcy filing, the complaint said.

The collapsing stock price did not stop fiduciaries of the two employee benefit plans from investing in the company stock. As of Dec. 30, 2010, the plans held more than \$30.2 million in Kodak stock, the complaint said.

The company's executives and directors held more than 4.2 million shares, or well over 1 percent, of the total employee take of Kodak stock, representing a potential conflict of interest, the complaint said.

The complaint lists a proposed class period ranging from Jan. 1, 2010, to Jan. 27, 2011, the date

the complaint was filed.

Kodak said the complaint was "without merit."

"We will defend vigorously against it," said company spokesman Christopher K. Veronda.

Counsel for the plaintiffs could not immediately be reached for comment.

Gedek and the purported class is represented by Nadeem Faruqi, Jacob A. Goldberg, Gerald D. Wells III and Robert Gray of Faruqi & Faruqi LLP.

The case is Gedek v. Perez et al., case number 6:12-cv-06051, in the U.S. District Court for the Western District of New York.

--Additional reporting by Hilary Russ. Editing by Kat Laskowski.

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