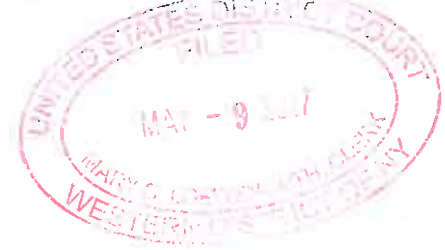


**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

IN RE EASTMAN KODAK ERISA
LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MASTER FILE NO. 6:12-CV-06051-DGL



STIPULATION AND ~~PROPOSED~~ ORDER

WHEREAS, the Plaintiffs in the Consolidated Class Action in this case alleged that the Kodak Defendants breached fiduciary duties under ERISA in connection with their management of the Kodak Stock Fund in the Eastman Kodak Employees' Savings Investment Plan ("SIP"), and The Kodak Employee Stock Ownership Plan (the "ESOP"), both plans sponsored by the Eastman Kodak Company (the "Company");

WHEREAS, this Court issued an Order and Final Judgment (the "Order") on October 24, 2016, which certified a Settlement Class in this case for settlement purposes only and approved both a proposed Settlement and a Plan of Allocation to be used to calculate each Settlement Class member's share of the Settlement Proceeds;

WHEREAS, the Plan of Allocation was designed to calculate the amount that each Settlement Class member was to receive as a percentage of their net losses in the Kodak Stock Fund and in the ESOP, measured against the total losses sustained in both the Kodak Stock Fund and the ESOP;

WHEREAS, under the Plan of Allocation, distribution was to be made through the SIP for Settlement Class members who were either current participants or who were owed more than \$5000 under the Plan of Allocation (for this latter group, new SIP accounts were to be opened);

WHEREAS, former SIP participants who were owed less than \$5000 and more than the *de minimis* amount (set at \$25) were to receive a check, issued by the Settlement Administrator (AB Data, Inc.);

WHEREAS, distribution to the Settlement Class members, with the exception of those Settlement Class members whose accounts were subject to Qualified Domestic Relations Orders, was made between April 11 and April 14, 2017;

WHEREAS, although the Plan of Allocation states that the settlement payments are supposed to be based on a participant's opening and closing balances in the SIP *Kodak Stock Fund* during the class period, the settlement payments were calculated using data regarding participants' opening and closing balances in the *SIP in its entirety* during the class period, rather than in the *SIP Kodak Stock Fund*;

WHEREAS, on Wednesday, April 19, 2017 Class Counsel met and conferred with counsel for the Kodak Defendants, together with representatives of the Settlement Administrator, the SIP Recordkeeper, and the Company, to determine the best method to correct the error and ensure that the Settlement Class members received the correct amounts under the Plan of Allocation;

WHEREAS, the Settlement Administrator was able to calculate, for each class member, the difference between the amount that they were paid and the amount that they should have been paid under the Plan of Allocation;

WHEREAS, the Settlement Administrator determined that \$6,077,722.01 was distributed to Settlement Class members through SIP accounts. Of that distribution, 136 accounts received more money than they should have received under the Plan of Allocation, with an aggregate total overpayment of \$3,163,939.62. Of the checks that were sent to Settlement Class members who did not have a current SIP account, 88 Settlement Class members were sent checks in larger amounts than they were owed under the Plan of Allocation, with an aggregate total overpayment of \$139,805.84;

WHEREAS, 952 Settlement Class members who have current SIP accounts should have received a larger payment than they did, with the total amount of underpayment being \$1,252,178.67, while 9,211 Settlement Class members who should have received a check either did not receive one, or received a check in an amount less than they should have received under the Plan of Allocation, with an aggregate underpayment amount of \$2,170,816.58;

WHEREAS, the Settlement Administrator has provided these figures to the SIP Recordkeeper and to counsel;

WHEREAS, to preserve the *status quo* to the extent possible, the SIP Recordkeeper has placed a hold on withdrawals from SIP accounts that received an overpayment, and the Settlement Administrator has placed a stop-payment on 48 checks that were sent to Settlement Class members who received more than they were owed under the Plan of Allocation, but had not yet cashed their checks;

WHEREAS, the Settlement Administrator sent notices to each of the 48 Settlement Class members that informed them of the error and explained that the Settlement Administrator would pay any bank charges or fees that have been incurred as a result of the stop-payment; and

WHEREAS, the Parties have worked to craft a plan that will correct the error;

NOW THEREFORE, the Parties stipulate and agree that overpayments to Settlement Class members who have SIP Plan accounts will be adjusted in such a way that the amount in the accounts on the date the overpayment is recovered will match what should have been in the account had the proper amount been deposited initially. Similarly, Settlement Class members who received payments through the SIP that were less than what they were owed under the Plan of Allocation will receive an additional amount that will be sufficient to match what would have been in their account if the correct amount had been deposited in the first instance. Since more money was distributed through the SIP than should have been distributed under the Plan of Allocation, the remainder of the recovered funds not reallocated to underpaid SIP accounts will be wired to the Settlement Administrator. The Settlement Administrator will then issue new checks to all persons who received less than they should have received under the Plan of

Allocation in the amount that conforms to what they should have received in the initial distribution. The Settlement Administrator will also contact the 32 Settlement Class members who already cashed checks reflecting an overpayment to attempt to recoup funds (the Settlement Administrator recommends not attempting to recover from eight other Settlement Class members who cashed checks that were in a small amount). Specific details of the proposed plan of action are attached as Appendix A to this Stipulation and Proposed Order.

Dated: May 8, 2017

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The foregoing Stipulation having been duly considered, and good cause appearing for it to be entered, it is HEREBY: GRANTED

May 9, 2017
DATE

David G. Larimer
HON. DAVID G. LARIMER
U.S. DISTRICT JUDGE

APPENDIX A

Proposed Sequence of Steps to Correct Distribution of the Settlement Proceeds

I. Action by the SIP Recordkeeper

Eastman Kodak Employees' Savings and Investment Plan ("Plan") Settlement Contribution Correction Processing.

1. Adjustment to Plan accounts of Settlement Class members overpaid on April 11, 2017, (according to Settlement Administrator's calculations, 136 participant accounts; \$3,163,939.62).
 - a. Settlement Administrator, on behalf of Kodak, has provided Recordkeeper with data identifying the specific dollar amount each Settlement Class member's Plan account was overpaid on April 11, 2017.
 - b. Recordkeeper will calculate the number of Age Appropriate Hybrid Trust ("Hybrid Trust") units each overpaid participant received on April 11, 2017, in excess of what they should have received. Specifically, Recordkeeper will use the dollar amount of each participant's overpayment (as provided by Settlement Administrator) and divide that amount by the NAV of the Hybrid Trust units allocated to participants on April 11, 2017, to determine the number of units of Hybrid Trust overpaid to each participant. NAVs of the Hybrid Trusts on April 11, 2017, were as follows:

Hybrid Trust	Net Asset Value (\$)
TROWE PRICE RET HYB 2005 TR T6	\$ 16.12
TROWE PRICE RET HYB 2010 TR T6	\$ 16.45
TROWE PRICE RET HYB 2015 TR T6	\$ 16.97
TROWE PRICE RET HYB 2020 TR T6	\$ 17.43
TROWE PRICE RET HYB 2025 TR T6	\$ 17.80
TROWE PRICE RET HYB 2030 TR T6	\$ 18.12
TROWE PRICE RET HYB 2035 TR T6	\$ 18.35
TROWE PRICE RET HYB 2040 TR T6	\$ 18.60
TROWE PRICE RET HYB 2045 TR T6	\$ 18.62
TROWE PRICE RET HYB 2050 TR T6	\$ 18.67

- c. Recordkeeper will provide the calculation of overpaid Hybrid Trust units for each affected participant to Kodak for their review and approval.
- d. Once Kodak has approved the unit calculations, Recordkeeper will adjust overpaid participants' Plan accounts, as follows:
 - i. Participants with Hybrid Trust units invested in Source W of their respective Plan account (the designation on the recordkeeping system for Settlement Funds) on the date of adjustment that is equal to or greater than the number of Hybrid Trust units overpaid on April 11, 2017.
 - 1. Recordkeeper will process a miscellaneous debit to redeem the overpaid number of Hybrid Trust units from Source W of the respective participant's Plan account. Proceeds from that redemption will be measured by the respective Hybrid Trusts' NAV on the adjustment date.
 - ii. Participants with Hybrid Trust units invested in Source W of their respective Plan account on the date of adjustment that is less than the number of Hybrid Trust units overpaid on April 11, 2017.
 - 1. Recordkeeper will process a miscellaneous debit to redeem the total number of Hybrid Trust units in Source W of the respective participant's Plan account. Proceeds from that redemption will be measured by the respective Hybrid Trusts' NAV on the adjustment date.
 - 2. Recordkeeper will calculate the number of overpaid Hybrid Trust units in excess of the Hybrid Trust units redeemed from Source W on the date of adjustment in Step 1 above.
 - 3. Recordkeeper will calculate the dollar value of the remaining overpaid Hybrid Trust units based on the respective Hybrid Trusts' NAV on April 11, 2017.
 - 4. Recordkeeper will adjust the dollar value determined in Step 3 above for earnings, measured by the earnings rate applicable to the respective participant's investment choices in Source W from April 11, 2017, through the business day prior to the date of adjustment.
 - 5. Recordkeeper will process a miscellaneous debit in the recordkeeping system to redeem the dollar value determined in Step 4, with such redemption allocated pro-rata across each such participant's remaining investment choices in Source W measured by each investment's respective NAV on the date of adjustment.
 - 6. To the extent an overpaid participant's balance in Source W is less than the amount to be redeemed from Source W in accordance

with the foregoing, Recordkeeper will process a miscellaneous debit to redeem 100% of each such participant's balance in Source W on the date of adjustment. Proceeds from that redemption will be measured by each investment's NAV on the date of adjustment.

- iii. Recordkeeper will transmit recordkeeping system adjustments to BNYM, the Plan's Trustee, in accordance with standard operating procedures for transmitting Plan activity.
2. Adjustments to Plan accounts of Class members underpaid on April 11, 2017 (according to Settlement Administrator's calculations, 952 participant accounts; \$1,252,178.67)
 - a. Settlement Administrator, on behalf of Kodak, has provided Recordkeeper with data identifying the specific dollar amount each participant was underpaid on April 11, 2017.
 - b. Recordkeeper will allocate the dollar amount of each respective participant's underpayment (as provided by the Settlement Administrator) as a miscellaneous credit to Source W of the respective participant's Plan account. The miscellaneous credits will add Age Appropriate Hybrid Trust units into Source W based on the respective Hybrid Trust units' NAV on the date of adjustment.
 - c. Recordkeeper will transmit recordkeeping system adjustments to BNYM in accordance with standard operating procedures for transmitting Plan activity.
 3. Recordkeeper will provide reporting to Kodak summarizing the adjustments processed to the recordkeeping system as outlined above.
 4. After all transactions related to the adjustments processed on the recordkeeping system as outlined above have settled, Recordkeeper will direct BNYM to wire any remaining proceeds from the transaction activity to Settlement Administrator.

II. Action by the Settlement Administrator

The Settlement Administrator will take the following actions:

1. 88 checks were sent to participants who were overpaid (totaling \$154,617.99, which includes the withheld amount sent to the IRS). With respect to these checks, the Settlement Administrator will take the following actions:
 - a. 32 payments representing \$57,533.44 have already been cashed. The Settlement Administrator will contact these Settlement Class members to attempt to recoup funds.
 - b. 48 payments representing \$95,289.31 that were not cashed had a stop payment/void placed on the check on 4/25/17. The Settlement Administrator sent written notice to these class members explaining the issue, advising these class members to not cash their checks, and offering to reimburse any bank fees for

checks that were already presented for payment and returned. The Settlement Administrator will also endeavor to reach these class members by telephone and/or email if such contact information is available.

- c. 8 uncashed payments with overpayment of less than \$100 were not stopped due to insignificance of the overpayment vs. potential fee that may be charged for a stop payment. If any of these funds cash, A.B. Data will contact these Settlement Class members to attempt to recoup funds.
2. 4,466 class members were sent a check that reflected an underpayment. The total underpayment (ranging from \$1.44 to \$13,214.99) to these individuals is \$412,542.34. After receipt by wire sent from the SIP of excess funds initially distributed through the SIP, the Settlement Administrator will send each class member another check reflecting the difference between what they were paid on April 14, 2017 and what they should have been paid pursuant to the Plan of Allocation.
3. 2,641 class members previously determined to not be due a payment are due payments totaling \$1,500,426.03. After receipt by wire sent from the SIP of excess funds initially distributed through the SIP, the Settlement Administrator will send each class member a check in the amount owing under the Plan of Allocation.