NATURE OF THE ACTION

1. This is a securities class action on behalf of all purchasers of the common stock of Eastman Kodak Company (“Kodak” or the “Company”) between April 23, 2003 and September 25, 2003 (the “Class Period”), against Kodak and certain of its officers and directors for violations of the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Throughout the Class Period, Defendants issued materially false and misleading statements concerning the market for Kodak’s products and the Company’s 2003 earnings projections, among other things. All the while, Kodak was experiencing a sharp decline in sales of its film products due to the digital picture boom, which ultimately forced the Company to dramatically slash its historic dividends by more than 72%. Indeed, as detailed herein, by the start of the Class Period, Defendants were considering cutting Kodak’s dividend and knew that the Company’s traditional film business was in a decline from which it would never recover. In addition, to conceal the decline in its traditional film business, Defendants knowingly or recklessly engaged in improper financial reporting in violation of Generally Accepted Accounting Principles that was designed to create a false impression about the demand for Kodak’s products.

3. Numerous former Kodak employees confirm that Defendants possessed undisclosed material adverse facts which undermined Kodak’s 2003 earnings projections, thereby rendering them materially false and misleading. In this regard, Defendants knew and failed to disclose: (1) Kodak experienced a failed multi-pack promotion that resulted in the channels being stuffed with excess products for which there was no market; (2) Kodak experienced problematic mini-lab sales to both CVS and Walgreen’s resulting in a $40 million inflation in the Company’s earnings projections for the second, third and fourth quarters of 2003; (3) Kodak’s earnings guidance failed to consider fierce competition with Fuji whom had been taking over a significant portion of Kodak’s film business; and (4) Kodak’s customers frequently returned products they could not sell and sometimes sat on
products for as long as nine months, without paying Kodak, and then returned the products back to Kodak in exchange for new products.

4. The Individual Defendants were highly motivated to delay disclosing the true state of affairs at Kodak in order to ensure that they would receive substantial cash compensation which was to be voted on by shareholders at the Company’s Annual Meeting set to be held in the middle of the Class Period.

5. Ultimately, Defendants’ fraudulent scheme proved unsustainable. On June 18, 2003, Defendants were forced to partially reveal the Company’s declining operations and financial status. On this news, Kodak’s share price, which had traded at a Class Period high of $32 per share on June 17, 2003, precipitously fell 10% on this news, closing at $28.77 per share, on a day of high trading volume.

6. Then, on September 25, 2003, the last day of the Class Period, in a press release, the truth started to unravel when Kodak disclosed that it was forced to cut its historic dividend by more than 72%. In that release, Defendant Carp finally revealed that the Company’s film sales would decline 7% per year and that the Company would have to make the investment switch to digital photography. This announcement sent the price of Kodak’s stock careening down $4.84, or 18% per share, to $22.15 by the close of trading on September 24, 2003.

7. As a result of this announcement, Kodak’s corporate debt ratings with S&P and Moody’s were slashed to the bottom level investment grade causing its debt yields to rise and the market value of its debt to fall.

JURISDICTION AND VENUE

8. Jurisdiction is conferred by §27 of the Exchange Act. The claims asserted herein arise under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5.
9. Venue is proper in this District pursuant to §27 of the Exchange Act. Many of the false and misleading statements were made in or issued from this District.

THE PARTIES

10. (a) Lead Plaintiff Alaska Electrical Pension Fund (“Alaska Electrical”) purchased Kodak publicly traded securities as described in the certification previously submitted in this action (and incorporated by reference herein) and was damaged thereby.

(a) Lead Plaintiff John Dudek, purchased Kodak publicly traded securities as described in the certification previously submitted in this action (and incorporated by reference herein) and was damaged thereby.

11. Defendant Kodak engages in the developing, manufacturing and marketing of traditional and digital imaging products, and services and products for consumers, professionals, healthcare providers, the entertainment industry and other commercial customers.

12. Defendant Daniel A. Carp (“Carp”) is the Company’s Chairman and CEO. For fiscal 2002, Carp received a cash incentive bonus of over $2.3 million based on the Company’s reported fiscal 2002 financial results and the perception that the Company would continue to be profitable in 2003.

13. Defendant Robert H. Brust (“Brust”) is the Company’s Chief Financial Officer. For fiscal 2002, Brust received a cash incentive bonus of nearly $670,000 based on the Company’s reported fiscal 2002 financial results and the perception that the Company would continue to be profitable in 2003.

14. Defendant Robert P. Rozek (“Rozek”) is the Company’s Controller and signed Kodak’s false and misleading SEC filings on Form 10-Q during the Class Period.

15. The individuals named as defendants in ¶¶12-14 are referred to herein as the “Individual Defendants.” The Individual Defendants, because of their positions with the Company,
possessed the power and authority to control the contents of Kodak’s quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. Each defendant was provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them but not to the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein at ¶¶74, 76, 78, 80-83, 87-88, 90, as those statements were each “group-published” information, the result of the collective actions of the Individual Defendants.

16. Each defendant is liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to him about Kodak. Defendants’ fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Kodak common stock was a success, as it: (i) deceived the investing public regarding Kodak’s prospects and business; (ii) artificially inflated the price of Kodak common stock; (iii) allowed defendants to obtain larger bonuses; (iv) allowed defendants to arrange to sell and actually sell $550 million worth of Kodak debt at artificially inflated prices; (v) allowed defendants to defeat one shareholder proposal that would have adversely affected management’s compensation; and (vi) caused plaintiff and other members of the Class to purchase Kodak common stock at inflated prices.

CONFIDENTIAL SOURCES

17. The allegations made herein are made upon information and belief and are supported by the first-hand knowledge of nine (9) confidential informants (“CI”s). These informants are
comprised of former Kodak employees, each of whom were employed during the Class Period and provided facts from various departments of the Company.

18. Confidential Informant 1 (“CI 1”) is a former Kodak financial director who was employed by the Company from 1992 to November 2003. As a financial director, during 2002/2003, CI 1 was directly responsible for the preparation of Kodak’s 2003 sales forecasts for U.S. consumer capture products. The 2003 forecasts prepared and monitored by CI 1 included more than 35 products and $1.3 billion annual revenues. In April of 2003, CI 1 also prepared revised revenue forecasts related to the sales and leasing of Kodak photo-developing equipment, including “mini-labs,” that are used by retailers for on-site developing of consumer film products. CI 1, reported directly to a Kodak vice president who regularly interacted with Defendant Carp.

19. Confidential Informant 2 (“CI 2”) is a former Kodak field merchandiser from 1999 to 2004 and was responsible for monitoring store display and pricing in the central U.S.

20. Confidential Informant 3 (“CI 3”) is a former Kodak manager (prior to the Class Period) who was employed by Noritsu America Corporation (“Noritsu”) from 2001 through July 2004.

21. Confidential Informant 4 (“CI 4”) is a former Kodak collections representative for the consumer imaging group, located at Kodak’s headquarters in Rochester, who was employed by the Company from 1999 through 2004, was primarily responsible for collection activities related to supermarket and other food retailers in the western region of the U.S., including Super Value, Tom Thumb and H.E. Butt, and was also responsible for collections on certain discounters, such as Price Chopper. From time to time, CI 4 was also asked to assist in collection efforts for CVS and Walgreen’s.
22. Confidential Informant 5 (“CI 5”) is a former Kodak assistant financial controller who was employed at the Company from 1996 through May 2003.

23. Confidential Informant 6 (“CI 6”) is a former Kodak senior sales planner, employed by the company from December 2003 until October 2004.

24. Confidential Informant 7 (“CI 7”) is a former Kodak retail solutions sales manager employed by the Company for nearly 30 years until 2005. CI 7’s recurring duties included the monitoring of retailer inventory levels.

25. Confidential Informant 8 (“CI 8”) is a former Kodak customer service representative for Kodak’s Wal-Mart account. CI 8 was employed by the Company from mid-2002 until March 2005.

26. Confidential Informant 9 (“CI 9”) is a former Kodak director of customer quality and planning in the Kodak’s Qualex division until February of 2004.

SUBSTANTIVE ALLEGATIONS

Background

27. In 1888, George Eastman of Rochester New York developed and marketed the first Kodak camera, a simple black box about the size of a brick which came preloaded with enough film for 100 exposures and sold for $25. Once the film had been used, owners returned the camera to the factory, where the pictures were printed and the camera reloaded and returned. In 1892, Eastman renamed his company, then known as Eastman Dry Plate Company to, the Eastman Kodak Company.

28. By the time of George Eastman’s death on March 14, 1932, Kodak was the world’s pre-eminent photographic firm. Still based in Rochester, the Company had plants in numerous countries, including Canada, and its worldwide employment was more than 20,000 and climbing. Kodak unveiled the Brownie Starmatic camera in 1957 and sold more than 10 million “Brownie’s”
over the next five years. In 1963, the Company introduced its line of Instamatic cameras, producing more than 50 million by 1970. By 1966, Kodak sales topped $4 billion a year and its workforce passed the 100,000 mark. The Company’s employment would peak at 136,000 before beginning a steady decline in the early 1980s.

29. Kodak’s momentum began to subside in the early 1980s and recession forced layoffs. During the 1980s, Kodak also diversified, moving into areas far removed from its core business, such as biotechnology, pharmaceuticals and copiers. The Company spent much of the 1990s shedding those investments. When the economy soured again in the early 1990s, Kodak made further staff reductions.

30. During the 1990s, Japanese film giant Fuji made aggressive moves into Kodak’s North American market. Fuji built a plant in South Carolina and flooded the U.S. market with quality film at prices that undercut Kodak. Meanwhile, as Kodak fell into a slump in its own area of expertise, the Company began spinning out products such as disc photography, photo CDs and APS (Advanced Photo System) that flopped in the marketplace. All the while, the onrushing train of digital photo technology was gaining momentum, posing a devastating threat to Kodak’s annuity: film. Kodak struggled to adapt but layoffs became almost an annual event. The constant layoffs had a demoralizing effect on Kodak’s workforce and the Rochester community.

31. As a result of this confluence of events, the Company’s sales stagnated and its profits deteriorated between 1995 and 2004:

**Kodak’s Financial Performance 1995 - 2004**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>SALES</th>
<th>CHANGE</th>
<th>EARNINGS</th>
<th>CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>$15 B</td>
<td>+10%</td>
<td>$1.4 B</td>
<td>+151%</td>
</tr>
<tr>
<td>1996</td>
<td>$16 B</td>
<td>+7%</td>
<td>$1.4 B</td>
<td>-</td>
</tr>
<tr>
<td>1997</td>
<td>$14.5 B</td>
<td>-3%</td>
<td>$5 M</td>
<td>-100%</td>
</tr>
<tr>
<td>1998</td>
<td>$13.4 B</td>
<td>-8%</td>
<td>$1.3 B</td>
<td>+2500%</td>
</tr>
<tr>
<td>1999</td>
<td>$14 B</td>
<td>+4%</td>
<td>$1.3 B</td>
<td>-</td>
</tr>
<tr>
<td>2000</td>
<td>$13.8 B</td>
<td>-1%</td>
<td>$1.4 B</td>
<td>+8%</td>
</tr>
</tbody>
</table>
2001  $13 B  -6%  $76 M  -95%
2002  $12.5 B  -4%  $770 M  +913%
2003  $12.9 B  +3%  $253 M  -67%
2004  $13.5 B  +5%  $556 M  +120%

**Defendants Issued Materially False and Misleading Statements In Order To Ensure That They Would Continue to Receive Excessive Compensation**

32. As set forth herein, by the start of the Class Period, Defendants knew that: (1) Kodak could not meet its stated earnings projections; (2) that the Company was suffering from a host of undisclosed adverse factors and; (3) that the Company was reporting artificially inflated financial results and materially false and misleading financial statements. Defendants concealed these facts in order to ensure that they would receive excessive cash compensation awards.

33. Despite the Company’s dismal financial performance in the late 90s and early 00s, Kodak’s five highest-compensated executives continued to handsomely compensate themselves – especially after 2001 when the cash portion of their bonuses consistently exceeded their salaries by well over 100% – despite the fact that, as detailed herein, Kodak was not earning a fraction of its previous profits:

**Kodak Executives’ Cash Compensation 1995 - 2004**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>AGGREGATE CASH BONUSES OF TOP FIVE EXECUTIVES</th>
<th>PERCENTAGE OF AGGREGATE SALARIES OF TOP FIVE EXECUTIVES</th>
<th>AGGREGATE SALARIES PAID TO TOP FIVE EXECUTIVES</th>
<th>AVERAGE CASH COMPENSATION PAID TO TOP FIVE EXECUTIVES</th>
<th>CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>$4.6 M</td>
<td>110%</td>
<td>$4.2 M</td>
<td>$1.8 M</td>
<td>+20%</td>
</tr>
<tr>
<td>1996</td>
<td>$4.2 M</td>
<td>100%</td>
<td>$4.2 M</td>
<td>$1.7 M</td>
<td>-6%</td>
</tr>
<tr>
<td>1997</td>
<td>$119,568</td>
<td>2.8%</td>
<td>$4.3 M</td>
<td>$1.88 M</td>
<td>-48%</td>
</tr>
<tr>
<td>1998</td>
<td>$3.1 M</td>
<td>67%</td>
<td>$4.6 M</td>
<td>$1.5 M</td>
<td>+70%</td>
</tr>
<tr>
<td>1999</td>
<td>$4.9 M</td>
<td>111%</td>
<td>$4.4 M</td>
<td>$1.9 M</td>
<td>+27%</td>
</tr>
<tr>
<td>2000</td>
<td>$2.5 M</td>
<td>51%</td>
<td>$4.9 M</td>
<td>$1.5 M</td>
<td>-21%</td>
</tr>
<tr>
<td>2001</td>
<td>$1.7 M</td>
<td>49%</td>
<td>$3.5 M</td>
<td>$1 M</td>
<td>-33%</td>
</tr>
<tr>
<td>2002</td>
<td>$4.9 M</td>
<td>144%</td>
<td>$3.4 M</td>
<td>$1.7 M</td>
<td>+70%</td>
</tr>
<tr>
<td>2003</td>
<td>$4.7 M</td>
<td>138%</td>
<td>$3.4 M</td>
<td>$1.6 M</td>
<td>-6%</td>
</tr>
<tr>
<td>2004</td>
<td>$5.3 M</td>
<td>129%</td>
<td>$4.1 M</td>
<td>$1.9 M</td>
<td>+19%</td>
</tr>
</tbody>
</table>
34. Following the declines in the market price of Kodak’s common stock, the Kodak executives’ stock options became virtually worthless. The exercise price of stock options is equal to the price of the issuers’ stock on the day the options are granted, and with Kodak’s stock price having materially declined year after year, many of the executives’ options were well under water. But-for their ability to cause Kodak to pay them exorbitant bonuses, the pay of Kodak’s senior executives was virtually capped at salary plus other compensation, including cash bonuses. As such, year after year defendants caused Kodak to pay them millions and millions of dollars in cash bonuses based the previous years’ financial results and the Company’s expected profitability going forward. Kodak’s executives wielded tremendous power over the Company’s Board of Directors and the Board rubber-stamped the bonuses years after year.

35. On May 14, 2001, *Fortune* magazine published a story entitled “The Dirty Half-Dozen: America’s Worst Boards; For those who track bad corporate governance, the year 2000 provided an embarrassment of riches.” As to Kodak, the *Fortune* article stated:

Most observers we spoke to gave Kodak’s board an “F.” Why? *Entrenched directors, a history of outrageous pay, and a pronounced inability to adapt to changing times.* For four straight years, the majority of shareholders who voted have chosen to eliminate Kodak’s staggered board (in which only a few of the directors are elected each year), and for four straight years the company has ignored them; company bylaws state that 80% of shares outstanding are needed to change the way the board is elected. *Then there are Kodak’s widely criticized compensation practices. In 1999 the board made economic profit/economic value added (EVA) the sole performance measure to determine the size of management’s bonus pool. But it quickly soured on the EVA standard when it resulted in bonuses being slashed in 2000; Chairman/CEO Dan Carp’s bonus was chopped almost in half. So in Kodak’s latest proxy, the board’s compensation committee has proposed adding 19 new performance measures to the bonus plan, including revenue and cost reduction. The committee can pick and choose which performance measure to use in any given year, so management is virtually guaranteed a cushy bonus. All this while Kodak’s stock recently closed about 40% off its 52-week high.* [Emphasis added.]

36. Thus, by the time the Class Period started in the spring of 2003, in advance of the 2003 annual meeting of shareholders, Defendants were under tremendous pressure from the
Company’s shareholder constituency. Kodak’s large institutional investors, in particular, were agitating for changes at Kodak, including taking steps to reign in executive compensation and limit management’s control over the selection and appointment of the members of Kodak’s Board of Directors, which was supposed to be overseeing management, rather than vice versa.

37. In fact, almost every year between 1996 and 2000, Kodak shareholders owning significant amounts of its common stock had submitted proposals either asking that the Kodak Board be “declassified,” which would have required that each director stand for election each year (rather than serving for three-year terms), and/or attacking the Company’s executive compensation practices. Despite the fact that all of these shareholder proposals received wide support and the board declassification proposals were actually passed on repeated occasions, Kodak’s management and the Board it dominated and controlled refused to implement any of the shareholder proposals:

<table>
<thead>
<tr>
<th>SHAREHOLDER PROPOSAL</th>
<th>BOARD RECOMMENDATION TO SHAREHOLDERS</th>
<th>RESULT OF SHAREHOLDER VOTE</th>
<th>IMPLEMENTED</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1996</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Institute cumulative voting for all classes of stock.</td>
<td>REJECT</td>
<td>DEFEATED</td>
<td>NO</td>
</tr>
<tr>
<td>Discontinue all options, SAR’s, rights to purchase, etc. of stock for management and directors.</td>
<td>REJECT</td>
<td>DEFEATED</td>
<td>NO</td>
</tr>
<tr>
<td><strong>1997</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declassify Board.</td>
<td>REJECT</td>
<td>PASSED</td>
<td>NO</td>
</tr>
<tr>
<td><strong>1998</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complete study of Kodak’s executive compensation.</td>
<td>REJECT</td>
<td>DEFEATED</td>
<td>NO</td>
</tr>
<tr>
<td>Declassify Board</td>
<td>NONE</td>
<td>PASSED</td>
<td>NO</td>
</tr>
<tr>
<td><strong>1999</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declassify Board.</td>
<td>REJECT</td>
<td>PASSED</td>
<td>NO</td>
</tr>
<tr>
<td>Complete study of Kodak’s executive compensation.</td>
<td>REJECT</td>
<td>DEFEATED</td>
<td>NO</td>
</tr>
<tr>
<td><strong>2000</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Discontinue all options, SAR’s, rights to purchase, etc. of stock for management and directors. | REJECT | COMPANY REFUSED TO PERMIT A SHAREHOLDER VOTE ON THE PROPOSAL |
---|---|---|
Declassify Board. | REJECT | PASSED | NO |
Complete study of Kodak’s executive compensation. | REJECT | DEFEATED | NO |

38. Kodak executives went on the offensive against the Company’s vocal shareholder constituency and there were several shareholder proposals submitted between 1996 and 2002 which Kodak and its executives simply refused to present to shareholders at the Company’s annual meetings for various reasons, including:

(a) Much like the shareholder proposals submitted in 1996 and 2000 asking to discontinue stock-related compensation to executives, a similar proposal was also submitted in advance of the 1999 annual meeting but the Company refused to present it to shareholders, claiming it conflicted with management’s own proposal to adopt a new stock option plan and thus would confuse shareholders.

(b) A shareholder tried to submit additional shareholder proposals for review at the 2000 annual meeting which would have restricted executive control over board composition and executive compensation. The Company initially refused to present these proposals to shareholders stating they were compound and had multiple parts in violation of proxy rules. After the shareholder revised the proposal to comply with the proxy rules, the Company ultimately refused stating it addressed compensation issues which were “ordinary business operations” and off limits to shareholder scrutiny.

(c) A Kodak shareholder submitted a proposal designed to address Kodak’s executive compensation practices for a vote at the 2001 annual meeting. However, Kodak refused to
submit the proposal to shareholders stating that because Kodak’s stock traded at below $40 per share for ten days in October 2000, the value of the shareholders’ Kodak stock was worth less than $2,000 on those ten days, disqualifying the shareholder from submitting a proposal at the 2001 meeting.

(d) The same large institutional investor who had for the seven prior years submitted a shareholder proposal asking for declassification of the Kodak Board attempted to once again submit that proposal for shareholder consideration at the 2001 annual meeting. However, the Company, without contesting that the large pension fund owned at least $2,000 worth of Kodak stock, rejected the proposal on a technicality claiming documentary support of shareholdings was inadequate. Despite repeated efforts by the institutional investor to provide additional documentation, Kodak refused to submit the declassification proposal to shareholders in 2001.

39. Through manipulation of the corporate machinery, Kodak’s executives prevented shareholders from seeing, much less voting on, proposals designed to curb their influence over the Board and executive compensation at the 2001 and 2002 annual shareholder meetings. But once again, in advance of the 2003 annual meeting, multiple shareholder proposals addressing executive compensation and board influence were submitted. Defendants successfully rejected at least two such shareholder proposals:

(a) One proposal submitted for shareholder consideration would have provided that “the Top Salary be ‘capped’ at $1,000,000.00 to include bonus, perks, stock options, and that this be pro-rated each year.” The Company and its lawyers refused to present the proposal to shareholders claiming that it was “vague and ambiguous” and that “neither the shareholders nor the company’s board of directors would be able to determine, with any reasonable amount of certainty, what action or measures would be taken if the proposal were implemented.”
(b) Kodak rejected a proposal submitted by a large institutional investor which would have amended the Company’s bylaws to permit shareholders owning 3% or more of the Company’s stock to place competing director nominees on the slate of directors at annual meetings. Kodak’s executives refused to submit the proposal to shareholders claiming it could lead to contested board elections – the precise result the institutional investor undoubtedly sought.

Another proposal submitted by a large institutional investor for inclusion in the proxy statement to shareholders for the 2003 annual meeting would have required that all future stock option grants to senior executives be performance-based. Initially rejecting the proposal, Kodak’s executives proffered that the Company lacked the power to implement the proposal. When the Securities and Exchange Commission (“SEC”) disagreed, Kodak agreed to submit the proposal to shareholders. However, once again the Board recommended that shareholders reject the proposal stating the Company’s then-current method of awarding options “works well.”

40. On March 28, 2003, Kodak filed with the SEC and distributed to shareholders its 2003 Annual Proxy Statement (the “Proxy Statement”) inviting shareholders to attend the Company’s 2003 Annual Meeting of Shareholders on Wednesday, May 7, 2003, at 10:00 a.m. at the Kodak Theatre, 6801 Hollywood Blvd., Hollywood, California. The Proxy Statement was signed by Kodak’s Secretary and Assistant General Counsel, James M. Quinn, at the direction of the Kodak Board of Directors.

41. The Proxy Statement, explaining that the cash incentive bonuses for executives in fiscal 2002 were discretionary and that the factors the Compensation Committee would consider in calculating the bonuses were current business trends expected to affect revenues and earnings stated that:

*The Compensation Committee may use its discretion to adjust (upward or downward) the amount of the corporate funding pool for any year. Examples of*
situations where the Compensation Committee may choose to exercise this discretion include unanticipated economic or market changes, extreme currency exchange effects, management of significant workforce issues, significant changes in investable cash flow, inventory turns, receivables, or capital expenditures, or dramatic shifts in customer satisfaction.

42. The Proxy Statement further stated that based on this analysis the Compensation Committee had decided to increase each of its key executive officer’s pay by approximately 450%, with Chairman and CEO Carp receiving a $2.3 million cash bonus for fiscal 2002 versus his 2001 bonus of $500,000, and CFO Brust receiving a $670,000 cash bonus for fiscal 2002 versus his $151,000 bonus for 2001.

43. The Proxy Statement also recommended that shareholders vote against two shareholder proposals submitted by large institutional shareholders that would adversely affect executive compensation by requiring the Company to index stock option grants and expense stock option compensation. Those proposals, put forth by two large institutional investors, advocated that shareholders adopt proposals requiring that:

   the Board of Directors adopt an executive compensation policy that all future stock option grants to senior executives shall be performance-based. For the purposes of this resolution, a stock option is performance-based if the option exercise price is indexed or linked to an industry peer group stock performance index so that the options have value only to the extent that the Company’s stock price performance exceeds the peer group performance level . . . .

   the Company’s Board of Directors establish a policy of expensing in the Company’s annual income statement the costs of all future stock options issued by the Company.

44. The Board recommended that shareholders reject both proposals, stating the Compensation Committee needed to retain its discretion over the granting of stock options so the Company could retain high-caliber officers and directors and that it did not want to disclose the portion of compensation payable in the form of stock options as an expense. For fiscal 2002, in addition to their cash compensation, Carp and Brust alone would collectively receive as part of their annual compensation packages almost $1.8 million in stock option grants and over $4.6 million in
restricted stock awards. **Including stock options as a 2002 expense would have reduced Kodak’s reported net profit by $105 million, or $0.36 a share.**

45. Defendants knew the Plumbers & Pipefitters National Pension Fund and the Massachusetts Laborers’ Pension Fund, the proponents of the shareholder proposals, collectively owned almost 30,000 shares of Kodak stock and would wage a formidable proxy contest to convince shareholders to pass these resolutions. Defendants also knew that any shareholder perception that the Company was paying its executives was excessive, unearned compensation would hurt the executives’ chances of securing shareholder rejection of the proposals at the annual meeting of shareholders on May 7, 2003. As the Compensation Committee had calculated, the executives’ raises and incentive compensation based on the Company’s perceived financial performance as of March 28, 2003 when the Proxy was issued, it was imperative that Defendants continued to report favorable financial conditions through the date of the annual meeting of shareholders set on May 7, 2003.

46. Prior to and during the Class Period, Kodak was engaged in a program of strategic acquisitions of photo processing labs designed to maintain its position in a market undergoing unprecedented technological transformation. Beginning in the late 1990s, Kodak purchased approximately 54 formerly independent processing labs and integrated them into Kodak’s Qualex division. Kodak intended to use its shares or cash to finance some or all of these acquisitions. Defendants, therefore, were highly motivated to inflate the price of the Company’s shares and keep Kodak’s debt ratings high during the Class Period in order to maximize its ability to acquire additional photo lab acquisitions. Just prior to the Class Period, Kodak completed the acquisition of Burrell Colour Lab on February 5, 2003, for a total purchase price of approximately $63 million, which was composed of approximately $54 million in cash and $9 million in assumed debt.
Kodak’s 2003 Earnings Projections Were Materially False and Misleading When Issued

47. By no later than the start of the Class Period, Defendants knew that Kodak was suffering from numerous undisclosed adverse factors which rendered its stated earnings projections lacking in a reasonable basis and, therefore, materially false and misleading. Defendants’ earnings projections were materially false and misleading and lacking in a reasonable basis for the following reasons.

48. **Failed Multi-Pack Film Sales Promotion:** By March 2003, Defendants were aware that a major sale of certain Kodak film “multi-pack” products made late in the fourth quarter of 2002 had caused a major inventory buildup at a national retailer, thereby reducing demand for such film products in 2003 as the retailer sold off its bloated inventories. Defendants, however, continued to include projected sales to this national retailer in their stated earnings projections, thereby significantly undermining the basis for those projections.¹

49. According to CI 1, a former financial executive of the Company who was responsible, in part, for forecasting Kodak U.S. film sales, by March 2003 Defendants were aware that weak consumer acceptance of certain Kodak film “multi-pack” products, introduced in the United States late in the fourth quarter of 2002, had caused a major build-up of inventories at a national retail customer making it “unlikely” that the retailer would re-order significant quantities of Kodak film products during the remainder of 2003.

¹ A former customer service representative, CI 8, confirmed that the ‘retailer’ referenced by CI 1 was, in fact, Wal-Mart. According to CI 8, during 2003 Kodak executives had been informed by Wal-Mart that its retail stores were overstocked with Kodak film and that Wal-Mart reduced its purchase orders for additional products for the remainder of 2003. CI 8 was also aware that Kodak’s sales managers for the Wal-Mart account had prepared an analysis detailing the impact that reduced ordering by Wal-Mart was expected to have on Kodak’s originally forecasted film sales.
50. According to CI 1, in the second-half of 2002, Kodak began to market a variety of its consumer film products in new packaging and sizes referred to as “multi-pack(s)”\(^2\). CI 1 stated that in the third and fourth quarter 2002, a national retailer agreed to purchase “a tremendous amount of [multi-pack] products” and Kodak began shipping the products in November of 2002. CI 1 explained that multi-packs were an entirely new strategy for Kodak, in that, the large quantities of the initial 2002 multi-pack sales orders meant that “a great deal more film was available at the retail level” during a time when market share for film products was declining compared to digital products.

51. In particular, CI 1 stated that the retailer had developed a “huge display” format that was expected to spur sales of Kodak products at its retail stores and had ordered a “very large quantity” of multi-pack products in late 2002. CI 1 explained that Kodak’s forecasted sales for 2003 assumed sell-through of the initial orders during the following two quarters, followed by re-orders during the final three quarters of 2003. However, CI 1 stated that by March 2003, it was apparent that the initial orders for the “multi-packs” had “accidentally loaded” Kodak’s retail channels as evidenced by the retailer’s sell-through and inventory reports which became available to CI 1 and the Defendants about two months after the November multi-pack shipments began, i.e., during January 2003. CI 1 stated that the sell-through reports indicated that during the fourth quarter 2002 and first quarter 2003 multi-pack sales failed to meet expectations when compared to the Company’s published earnings guidance.

\(^2\) Kodak had at least five different product types designated as “multi-pack” on the market in 2003, including the *Kodak Max Versatility Plus* 800-speed and 400-speed film multi-packs, *Kodak ADVANTiX Film Multi-pack* (400 and 200 speed), *Kodak High Definition Film multi-pack* 400 speed.
52. In fact, the multi-pack sales shortfall was so significant, that CI 1 stated, “it was unlikely” that the retail customer “would buy [any]more” multi-packs during 2003.” CI 1 stated that Kodak “discovered” in March 2003 that the retailer “had huge [multi-pack] inventories” compared to the amount of product that was actually selling-through. CI 1 further explained that from March 2003 forward, the “accidental loading” of Kodak’s retail channels with multi-pack products became a “significant variable to the forecast for 2003.” CI 1 stated that Kodak began to work closely with the retailer to devise sales promotions in order to sell the inventory on hand. CI 1 concluded that the “accidental loading” of Kodak’s retail channels, combined with increasing price competition from Fuji, caused Kodak to lose its ability “to control the price of film” which significantly contributed to the Company’s $184 million in un-forecasted losses related to customer rebate allowances during the last three quarters of 2003. According to CI 1, none of these losses had been included in any of Kodak’s publicly disseminated earnings guidance prior to their being recorded. CI 1 also confirmed that Defendant Carp would have been kept informed of the performance and prospects of the Company’s domestic film sales through bi-weekly teleconferences with CI 1’s immediate superior, among others.

53. According to a former Kodak retail solutions sales manager, CI 7, Kodak’s senior management should have and very likely knew exactly how well or poorly sales were during the Class Period. CI 7 stated that it was worth remembering that Kodak controls the amount of inventory its customers carry. According to CI 7, Kodak is a so-called “CPG company” (CPG stands for “consumer packaged goods.”) CPG companies like Kodak practice so-called “vendor-managed-inventory” (or “VMI”) which is an inventory stocking method in which the vendor (i.e., Kodak) controls how much inventory a retail customer carries. In essence, the vendor and retailer will come to an agreement as to how much inventory the retailer is willing to keep on-hand – i.e.,
whether the retailer wants to maintain a week’s worth, two week’s worth, and so on, worth of inventory. The vendor then ensures that the agreed-upon amount of inventory is always on-hand. The logic of VMI is that the vendor (i.e., Kodak) knows better than the retail customer how much and how often inventory needs to be shipped to the retailer. As such, according to CI 7, Kodak had direct insight into how much inventory the retailers have on hand because it is Kodak’s role to monitor this. CI 7’s recurring duties included the monitoring of retailer inventory levels.

54. According to former Kodak senior sales planner, CI 6, Defendants also had access to financial forecasts that were frequently updated and comparative sales reports that would have included data concerning the failed multi-pack film sales. In particular, CI 6 noted that throughout the course of the year, Kodak’s actual sales were regularly compared against what had been forecasted for a particular period. According to CI 6, Kodak management tracked actual sales versus forecasted sales on a daily basis through Kodak’s financial reporting system which provided ACCESS reports that could be formatted by users to suit their data requirements. Specifically, CI 6 stated that daily “SOOP” reports were distributed to over 150 senior level managers at Kodak and included comparisons of actual sales to forecasts for all North American film and camera sales as well as sales of digital paper products. CI 6 also stated that the sales results were broken down by specific retail accounts. According to CI 6, the Kodak employee in charge of the report’s distribution was Desiree Denman. Although CI 6 was employed by Kodak after the Class Period, CI 6 knew that the same reporting framework had been in place during the Class Period, “it was obvious [Kodak] hadn’t come up with [the SOOP reports] yesterday.”

55. In addition, according to CI 6, there were noted weaknesses in Kodak’s forecasting process. According to CI 6, Kodak’s forecasts were very much a “top-down driven process.” Expanding, CI 6 stated that Kodak’s senior management in Rochester “imposed the sales objectives
onto the Company’s sales and marketing organizations” without “very much” regard for the sales targets that field personnel thought were attainable. While noting that this is not unusual “in corporate America,” CI 6 stated that Kodak senior management differed in one important respect, that once these unattainable goals had been set, “it was a constant battle” to convince Kodak’s senior management to acknowledge that their expectations needed to be adjusted downward.

56. The Company’s SEC filings reveal that over the final three quarters of 2003 Kodak recorded losses related to “customer rebates” of more than $184 million. According to CI 1, Kodak’s original 2003 earnings guidance, reiterated to the market in April 2003, the start of the Class Period, did not include adjustments for these losses.

57. According to CI 2, Kodak had made a massive “sell-in” of multi-pack film at the end of calendar 2002. CI 2, who was employed as a field merchandiser from 1999 though April 2004, in that role CI 2 was responsible for monitoring store display and pricing, primarily in the central U.S. Furthermore, according to CI 2, during late 2002/early 2003 many retailers began resisting Kodak’s “overselling” in order to reduce excess inventories.

58. **Problematic Mini-Lab Sales**: Defendants’ Class Period earnings projections were further inflated by the inclusion of at least $40 million in revenues from the sales and/or lease of Kodak “mini-lab” equipment to CVS and Walgreen’s, which were projected for the second, third and fourth quarters of 2003. Defendants knew that there were significant problems with the software for Kodak’s mini-labs and, therefore, the Company would not be able to recognize any revenues on the “sale” of the systems because the “sales” were not complete as the customers were not provided with fully functioning products.

59. According to CI 1, Kodak’s 2003 earnings forecasts were further inflated by at least $40 million in revenues from the sales and/or lease of Kodak “mini-lab” equipment to CVS and
Walgreen’s, projected for the second, third and fourth quarters of 2003. Specifically, CI 1 stated that Defendants had access to information at the time of the forecasts that the chance of Kodak recognizing any revenues from these transactions during 2003 was, at best, remote.

60. In addition to performing forecasting functions for Kodak’s film sales, CI 1 “transitioned” to the “equipment side of the business” in March and April 2003. CI 1’s review of Kodak’s forecasts for 2003 developing equipment sales revealed that the Company had originally forecasted sales of mini-labs to CVS and Walgreen’s of at least $40 million (CI 1 quantified the CVS sales as $30 to $40 million but did not quantify the Walgreen’s sales – for ease of reference plaintiffs’ refer to the combined amount of the two sales transactions as “at least $40 million.”). The forecasted sales transaction related to the roll-out of Kodak’s core mini-lab system – the Series 3200 – which produced silver halide prints that preserved higher digital resolutions than inkjet prints. The developing equipment was manufactured by the Noritsu Koki Co. and operated with software developed by Kodak. The Company’s earnings guidance anticipated sales to CVS beginning in the second quarter 2003 and sales to Walgreen’s in the third and fourth quarters.

61. However, beginning with the first shipments of the Series 3200 to CVS in May 2003 it became apparent that Kodak’s software, known as Digital Lab Software (“DLS”) was not functioning properly. As a result the revenue from the CVS sales had to be deferred until the software problems were resolved. CI 1 stated that thereafter, Walgreen’s cancelled its orders for the Series 3200 and purchased a mini-lab system from Fuji in 2003, nevertheless Defendants’ published earnings guidance continued to include revenues from these two transactions.

62. According to CI 3, a former Kodak manager (prior to the Class Period) who was employed by Noritsu from 2001 through July 2004, Kodak experienced software problems with the Series 3200 software. CI 3 also stated that in light of the problems experienced by CVS, CVS opted
not to purchase the Series 3200 but instead agreed to pay Kodak a “click rate” for processed prints, thus further invalidating Defendants’ earnings guidance based on sales of the equipment. In particular CI 3 noted that the DLS software had been “rushed to market” following extended development delays. CI 3 implied that Kodak senior management began marketing the Series 3200 and its defective software despite knowing of the software issues.

63. According to a former Kodak director of customer quality and planning, CI 9, the DLS software problems were due to “inadequate testing”. CI 9 confirmed that in May/June 2003, Qualex/Kodak introduced a Noritsu mini-lab with Kodak software that was released without adequate “testing” and with known bugs. CI 9 stated that Kodak management was eager to fulfill “customer demand” for the pre-orders of the Series 3200. However, in doing so, CI 9 stated that Kodak definitely released the Noritsu machines “prematurely.” CI 9 compared the premature release to software companies like Microsoft that release software prematurely that must be fixed or patched “in the field” after it has been sold.

64. **Competition With Fuji:** In addition to the foregoing, Kodak’s earnings guidance failed to take into consideration price competition with Fuji. According to CI 1, Kodak’s original earnings guidance was significantly inflated because it failed to include the realities of price competition with Fuji.

65. According to CI 2, the former Kodak merchandiser, Defendants’ numerous public comments regarding Kodak’s success in maintaining its film market share in the face of increasing competition from Fuji were materially false and misleading. In this regard, CI 2 stated that prior to and during the class period, “Fuji had been taking over a lot of our business.” CI 2 based this statement on first-hand empirical observations at the various retail stores CI 2 serviced. According to CI 2, another indication of Fuji’s success at Kodak’s expense was Kodak’s loss of the Walgreen’s
account. Even before the Walgreen’s account was completely lost, CI 4 recalled that at one point (prior to the Class Period), Walgreen’s had had as much as nine-feet of retail shelf space per store, which was then suddenly reduced to just three-feet. CI 2 characterized Kodak during the Class Period as a time when “everyone was working hard because everyone knew” that digital photography was gaining rapid inroads on sales of traditional silver-halide film while, at the same time, Kodak faced increasing competition from Fuji. Because CI 2 dealt directly with customer accounts at the individual store level, CI 2 explained “I really saw it” in terms of the inroads made by Fuji at Kodak’s expense. CI 2 further explained that the overall decline in Kodak’s sales performance was clearly evident in the number of photographs being processed in the mini-labs. As CI 4 put it, the actual picture developing “is the name of the game” in terms of how well Kodak is performing.

66. Additional former employees of the Company confirmed that Kodak’s original 2003 business plan failed to deal with increased price competition from Fuji and weakening of the Company’s consumer film sales. CI 4, a former collections representative for the consumer imaging group, located at Kodak’s headquarters in Rochester, stated that during the Class Period Kodak had under reserved for hundreds of millions of dollars in uncollectible trade receivable balances. CI 4, who was employed by Kodak from 1999 through June 2004, stated that the source of the problem accounts was threefold: 1) that as sales of film products continued to decline, Kodak’s sales representatives resorted to the use of undocumented side agreements that offered customers concessions in order to complete the sales; 2) that customers were granted rights of return for unsold products; and 3) that Kodak had failed to accrue sufficient rebate allowances for the promotional activities related to clearing the Company’s retail channels of excess film inventories.
67. **Problematic Sales Practices**: In addition to the foregoing, Defendants’ earnings projections were further undermined by certain problematic and improper sales practices: undocumented sales concessions and consignment sales.

68. Kodak sales people would regularly grant undocumented sales concessions which Kodak simply washed through its ledgers by labeling them as rebate allowances or bad debt. According to CI 4, who was primarily responsible for collection activities related to supermarket and other food retailers in the western region of the U.S., including Super Value, Tom Thumb and H.E. Butt, among others, undocumented sales concessions would surface during collection efforts as “unauthorized” or “excessive” deductions taken against Kodak’s invoices when customers remitted payment. CI 4 stated that the deduction activities were endemic to the sales process and included extended payment terms and “product display discounts” that were not documented in the terms of sales invoices and had to be cleared from Kodak’s ledgers through the use of “rebate allowances” or “bad debt charges.”

69. Further confirming the existence of such practices, according to CI 5, a former assistant financial controller who was employed from 1996 through May of 2003, improper sales practices at the Company’s wholly owned subsidiary Qualex also included the widespread use of undocumented sales concessions. CI 5 stated that Qualex experienced widespread “credit and collection problems,” especially after 2001 when the division’s dedicated sales force was integrated into Kodak’s corporate sales force. CI 5 explained that these problems were in part due to sales personnel extending terms to customers that were not indicated in the documentation supporting the transactions and therefore made full collection of what had been invoiced on the transactions unlikely. CI 5 further explained that the main impact of losing the division’s sales force was that Qualex no longer had control of the sales force. CI 5 added that Qualex could not enforce policies
that might prevent the sales personnel from engaging in problematic practices like extending undisclosed terms or failing to provide complete detail to support sales transactions.

70. CI 4 stated that customers frequently returned products they could not sell. CI 4 has personal knowledge of shipments at the ends of quarters that were frequently followed by large-scale returns of those same products just a week or ten days into the ensuing quarter. CI 4 stated that on occasion the reason for the return would be that the merchandise being returned was “outdated.” However, CI 4 stated this was not always the true reason for the return. CI 4 noted that certain customers “sat on product” for as long as nine months, not paying Kodak, and then returned those products back to Kodak in exchange for new product, without ever having paid Kodak for the products they had originally received. Such a situation meant that Kodak had “a nine-month old receivable” that was never paid. CI 4 stated that based on collection efforts which often involved an investigation into the reasons for the returns these kinds of sales followed by returns of the unsold products by the customer were found to be “consignment” sales in which Kodak only received payment if the customer was able to sell the products. However, CI 4 emphasized that these kinds of terms would have never been “authorized” because CI 4 understood that Kodak “doesn’t sell on consignment.”

**Defendants Failed To Disclose That The Financial Condition Of The Company Was Weakening Such That Kodak Was Considering A Dividend Cut**

71. By the start of the Class Period, unbeknownst to investors, the possibility of a dividend cut was being formally considered by Kodak’s Board of Directors. Not surprisingly, Defendants waited until after their cash compensation had been approved by shareholders to announce, at the end of the Class Period, that Kodak was reducing its annual dividend by 72%.

72. According to CI 1, it was widely known throughout the company in 1H03 that it was very likely the Company would have to reduce the dividend. CI 1 noted that Kodak had during this
period of time brought in “all these people from Hewlett Packard,” which CI 1 said was a tacit acknowledgement that Kodak was no longer relying on film as part of its “long-term solution.” Instead, these executives from Hewlett-Packard were indicative of Kodak’s need to shift to alternative technologies, like inkjet. As CI 1 put it, these new executives were a clear indication that the company was “going in a different direction.”

73. According to CI 1, the possibility of cutting the dividend had been formally evaluated in March/April 2003 as part of an analysis that the Company “might be” confronted with overall lower earnings. In connection with this analysis, CI 1 prepared a detailed long-term forecast for film demonstrating, among other things, declining cash flow for Kodak’s consumer film products. CI stated that the analysis was presented to senior Kodak management. According to CI 1, the analysis contributed to Defendants’ decision to change Kodak’s dividend policy sooner rather than being forced into it later.

Materi ally False And Misleading Statements
Issued During The Class Period

74. On April 23, 2003, the Company issued a press release entitled “Kodak Reports 1st-Quarter Net Income of 4 Cents Per Share; Sales Rise 1 Percent to $2.740 Billion.” Defendant Carp commented on the results stating in pertinent part as follows:

“In these difficult times, Kodak continues to deliver on its commitment to shareholders by managing well those things within our control and by pursuing our strategies for growth,” said Chairman and Chief Executive Officer Daniel A. Carp. “We contained costs and strengthened the financial position of the company by paying down debt, compared with the year-ago level, and by driving money-saving operational improvements through our Kodak Operating System. We also benefitted from the company’s broad-based product portfolio, as solid demand for Health Imaging and Entertainment Imaging products and services helped offset the reduced demand for consumer film caused by the weak economy. [Emphasis added.]

With regards to the Company’s Q2 2003, then approximately one-third underway, the press release stated in pertinent part as follows:
Earnings Outlook:

- Significant volatility exists in the company’s operational business estimates for the future. **If current trends continue into the second quarter, it is possible that second-quarter operational earnings could fall into the range of 60 cents per share to 80 cents per share.** However, if a pick-up in consumer film consumption occurs, there could be upside to this estimate. **As a result, Kodak currently expects full-year earnings to come in at the low end of the non-GAAP range of $2.35 to $2.95 per share provided by the company in January.** [Emphasis added.]

75. The statement referenced above in ¶74 that Defendants had “strengthened the financial position of the Company by paying down debt” was materially false and misleading because it was not true that Defendants had strengthened the financial position of the Company as Kodak’s financial position was then weakening and the Company was then considering dramatically slashing its historic dividend in light of declining film sales and its weakening financial condition, as detailed above in ¶¶71-73. The statement referenced above in ¶74 that “If current trends continue into the second quarter, it is possible that second-quarter operational earnings could fall into the range of 60 cents per share to 80 cents per share” was lacking in a reasonable basis and materially false and misleading for the reasons set forth above in ¶¶48-70.

76. At the earnings conference held that same day, Carp assured investors that:

**If current trends in the consumer business continue into the second quarter, it is possible that the second quarter operating earnings could fall in a range of 60 to 80 cents per share.** However, we saw a pick up in consumer film consumption, we would see an upside to this . . .

Consistent with this view, our full year outlook is now falling at the low end of our $2.95 to $2.35 per share operational earnings range that we provided you in January. **It is interesting and also encouraging to note that our second quarter out look, if one excludes the traditional consumer business from the analysis, is actually forecasted to grow revenues in the 5 to 9% range.** While our traditional consumer markets are experiencing challenging times, I am pleased with our share performance. Our focus on cost and cash and the results of our nontraditional consumer business. Our digital portfolio continues to gain traction in the market with consumer digital cameras continuing their journey toward profitability. [Emphasis added.]
77. The statement referenced above in ¶76 that “If current trends in the consumer business continue into the second quarter, it is possible that the second quarter operating earnings could fall in a range of 60 to 80 cents per share” was lacking in a reasonable basis and materially false and misleading for the reasons set forth above in ¶¶48-70.

78. During the Q&A portion of the call, defendant Carp took questions from an analyst concerning the roll-out of the Series 3200 photo lab systems using Kodak’s DLS software. The conference call transcript stated in pertinent part as follows:

[ANALYST:] The DLS system, is everything on track, is that shipping along with expectations?

[DEFENDANT CARP:] Yeah, it’s gone fine. It’s gone fine. It will be rolling out through the U.S. [in] May of this year [2003].

[ANALYST:] Any ideas on installs or anything we can expect?

[DEFENDANT CARP:] I don’t have those numbers in the top of my head, but the customer reception has been good.

[ANALYST:] And it’s shipping right now?

[DEFENDANT CARP:] I think we start shipping the software in May.

79. The statement referenced above in ¶78 that “everything is on-track” regarding Kodak’s May 2003 rollout of the Series 3200 mini-lab using Kodak’s DLS software was materially false and misleading for the reasons set forth at ¶¶58-63.

80. On April 24, 2003, the Company filed with the SEC and distributed its Q1 2003 Form 10-Q, signed by defendant Rozek, reporting the revenues and net income as disclosed in its press release. For the quarter the Company reported that its photography segment net sales in the U.S. were $687 million for the current quarter as compared with $799 million for the first quarter of 2002, representing a decrease of $112 million, or 14%. Defendants attributed declining consumer film and camera sales in the U.S. to “soft retail sales,” Kodak’s Form 10-Q stated in pertinent part as follows:
Sales of the Company’s consumer film products within the U.S. decreased 24%, reflecting declines in volume of approximately 16% and negative price/mix of approximately 9%. ... The soft retail sales have resulted in significant inventory levels in the retail distribution channels during and as of the end of the first quarter of 2003. The Company believes that these high inventory levels will continue to impact the Company’s sales volume to dealers in the second quarter of 2003.

81. The statement referenced above in ¶80 that “soft retail sales have resulted in significant inventory levels in the retail distribution channels during and as of the end of the first quarter of 2003” was materially false and misleading because it falsely attributed the significant inventory levels to soft retail sales when, in truth, and in fact, as detailed above in ¶¶48-57, rising inventory levels were directly attributable to Kodak’s massive failed multi-pack film promotion which had destroyed the Company’s retail channels for the foreseeable future.

82. With regard to Kodak’s trade receivables and rebate allowances, Kodak’s Form 10-Q stated in pertinent part as follows:

Of the total trade receivable amounts of $1,714 million and $1,896 million as of March 31, 2003 and December 31, 2002, respectively, approximately $344 million and $371 million are expected to be settled through customer deductions in lieu of cash payment.

83. In addition, the Form 10-Q represented that the financial statements therein had been prepared in accordance with GAAP, stating in pertinent part as follows:

In the opinion of management, the accompanying unaudited consolidated financial statements were prepared following the same policies and procedures used in the preparation of the audited financial statements and reflect all adjustments (consisting of normal recurring adjustments) necessary to present fairly the financial position of Eastman Kodak Company and its subsidiaries (the Company).

84. The statements referenced above in ¶¶80-83 were each materially false and misleading because they failed to disclose and misrepresented the following adverse facts which were known or recklessly disregarded by Defendants:
(a) That Kodak was materially overstating its financial performance by failing to properly account for trade receivables and rebates and was carrying old uncollectible receivables on its books, as detailed herein in ¶¶48-57, 67-70;

(b) As detailed herein in ¶¶98-112, 118-119 Kodak’s interim financial statements were not prepared in accordance with GAAP and, therefore, it was not true that the financial statements “reflect all adjustments (consisting of normal recurring adjustments) necessary to present fairly the financial position of Eastman Kodak Company and its subsidiaries (the Company).” Indeed, Kodak’s interim financial statements were materially false and misleading.

85. During May 2003, Kodak issued and sold $100 million worth of Medium-Term Notes, Series A Floating Rate Notes with a maturity date of November 15, 2005, $200 million worth of Medium-Term Notes, Series A Floating Rate Notes with a maturity date of November 8, 2004, and $250 million worth of Medium-Term Notes, Series A Fixed Rate Notes with a maturity date of May 15, 2008.

86. Kodak held its annual meeting of shareholders on May 7, 2003. As to the shareholder proposals:

<table>
<thead>
<tr>
<th>SHAREHOLDER PROPOSAL</th>
<th>BOARD RECOMMENDATION</th>
<th>RESULT OF SHAREHOLDER VOTE</th>
<th>IMPLEMENTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adopt requirement that future stock option grants be performance based.</td>
<td>REJECT</td>
<td>DEFEATED</td>
<td>NO</td>
</tr>
<tr>
<td>Expensing of stock options.</td>
<td>REJECT</td>
<td>PASSED</td>
<td>NO</td>
</tr>
</tbody>
</table>

87. Defendants would later explain in an SEC filing on July 25, 2003 that despite the fact that the Company’s shareholders had overwhelming approved the proposal to expense stock options, they would not do so:

The shareholder proposal requesting the expensing of stock options was approved, with 104,410,216 shares voting for, 80,996,183 shares voting against,
6,959,479 shares abstaining, and 40,962,112 non-votes. This shareholder proposal received a majority of the votes cast. The Company’s Board of Directors did not oppose the expensing of stock options in principle, but recommended a vote against this proposal because of the absence of a uniform methodology for the expensing of stock options and the lack of comparability arising from the fact that most large companies were not taking this step. The Board of Directors has considered the shareholders’ vote, and has concluded that it is advisable to await the issuance of any final rule by the Financial Accounting Standards Board on the subject before taking any action.

88. On June 18, 2003, the Company issued a press release, entitled “Kodak Reduces 2nd-Quarter Earnings Guidance; Operational EPS from Continuing Operations to Total 25 to 35 Cents,” which stated in relevant part,

Eastman Kodak Company said today that its second-quarter reported net income, in accordance with Generally Accepted Accounting Principles (GAAP) in the U.S., is expected to be in the range of approximately 5 cents to 25 cents per share. Operational earnings from continuing operations are estimated to be 25 cents to 35 cents per share, which is less than the guidance of 60 cents to 80 cents per share that the company provided on April 23.

Kodak’s second-quarter reported net income is expected to be affected by a number of recent non-recurring items, the earnings impact of which cannot in every case be estimated precisely at this time. Included are charges associated with exiting the Phogenix joint venture and certain asset impairments, the execution of previously announced restructuring actions, and agreements reached in connection with licenses to use certain intellectual property, which are expected to total approximately 20 cents to 10 cents per share.

The new operational forecast primarily reflects significantly lower-than-expected sales of consumer film and photographic paper in Asia because of the outbreak of SARS. For example, industrywide sales of consumer film in China during April and May were nearly half of the amount sold during the same two months a year ago.

Sales of consumer film and paper in the U.S. and Europe were also moderately lower than expected, stemming from persistent economic weakness, a somewhat more competitive pricing environment, and the increased popularity of digital photography. In the U.S., for example, industry wide sales of consumer film at retail fell about 8% in April and May combined compared to the same period a year ago. As a result of reduced film and paper volumes, Kodak’s unit manufacturing costs associated with a number of traditional products across the company, as well as photo finishing, were higher than anticipated.
Kodak expects total company sales to be unchanged in the second quarter compared with the second quarter of 2002. Excluding the impact of foreign exchange, the company expects sales to be down approximately 5% compared with the second quarter of 2002.

In the second quarter of 2002, Kodak had reported net income of 97 cents per share, or 85 cents per share excluding a one-time tax benefit of 15 cents and a one-time asset write-down of 3 cents. Sales in the second quarter of 2002 totaled $3.339 billion.

“As we have said for some time, companies today face external challenges beyond their control,” said Kodak Chairman and Chief Executive Officer Daniel Carp. “In April, our guidance assumed that the effect of SARS on picture-taking would be much less than it has turned out to be. The SARS outbreak, as well as concern about geopolitical tensions, is keeping people from participating in activities that foster picture-taking. Travel and leisure spending is weak, for example, and that means fewer pictures are being taken worldwide.

“While many of our commercial operations and our consumer digital business continue to perform relatively well, their success at this point doesn’t fully offset the present earnings difficulty that our traditional consumer business is experiencing,” Carp said. “In this environment, we will continue to focus on generating cash, strengthening our balance sheet and developing new products and services. We also see a clear need to increase and accelerate our continuous effort to reduce costs, and we will discuss those efforts in more detail when we release our second-quarter earnings report.”

Kodak expects that economic weakness, reduced tourism and geopolitical turmoil will continue to affect sales and earnings for the balance of the year. The company will update its plans for guidance for the full year on July 23, when it will release the second-quarter earnings report. An investors’ conference call will take place at 11:00 a.m. EDT on July 23, hosted by Robert Brust, Kodak’s Chief Financial Officer.

89. Kodak’s share price, which had traded at a Class Period high of $32 per share on June 17, 2003, precipitously fell 10% on this news, closing at $28.77 per share. Trading volume was over 18 million shares versus the typical daily trading volume average of just 2.4 million shares.

90. Then, on July 23, 2003, the Company issued a press release entitled “Kodak Reports 2nd-Quarter Net Income of 39 Cents Per Share; Sales Unchanged at $3.352 Billion - EPS from Continuing Operations, Excluding Charges and Other Items, Total 60 Cents.” The press release, designed to mollify investor concerns, stated in relevant part that:
Eastman Kodak Company today said that second-quarter net income, in accordance with Generally Accepted Accounting Principles (GAAP) in the U.S., totaled 39 cents per share and that sales were unchanged compared with the year-ago period.

Excluding the impact of previously announced focused cost reductions and other non-operational items, earnings from continuing operations were 60 cents per share, higher than the forecast of 25 cents to 35 cents per share that the company issued on June 18. Relative to the June 18 forecast, the actual results primarily reflect a more favorable sales mix of health imaging and traditional consumer products and services. Better-than-expected performance from joint ventures and a lower-than-expected tax rate also contributed to the difference between actual and forecasted results.

For the second quarter of 2003:

- Sales totaled $3.352 billion, unchanged from the second quarter of 2002. Excluding foreign exchange, sales declined 6%.
- The company reported net income of $112 million, or 39 cents per share, compared with net income of $284 million, or 97 cents per share, in the second quarter of 2002.
- Earnings from continuing operations, excluding the impact of focused cost reductions and other non-operational items, were $172 million, or 60 cents per share. The after-tax non-operational items include a charge of $36 million, or 13 cents per share, related to the previously announced focused cost reductions; a charge of $9 million, or 3 cents per share, in connection with the settlement of a patent infringement claim; a charge of $9 million, or 3 cents per share, in connection with a prior-year acquisition; and a charge of $6 million, or 2 cents per share, to write down certain assets held for sale following the acquisition of the Burrell companies. In the second quarter of 2002, earnings from continuing operations, excluding non-operational items, totaled $250 million, or 86 cents per share. The after-tax, non-operational items from the year-ago quarter include a one-time tax benefit totaling 15 cents per share resulting from the closure of a subsidiary, and a one-time write-down of assets associated with venture investments totaling 3 cents per share.

“We are pleased to report quarterly earnings that are stronger than we had previously expected,” said Kodak Chairman and Chief Executive Officer Daniel A. Carp. “Most of our businesses continue to perform well in a difficult economic environment. We are encouraged by the market’s acceptance of the innovative products and services Kodak is creating from our latest computed radiography systems and Vision2 motion-picture film, to the newest EasyShare consumer digital cameras and the well-received EasyShare Printer Dock.”
“Our traditional consumer film and processing operations continue to face challenges associated with the increasing popularity of digital photography as well as persistent economic weakness, continuing price pressure and an associated decline in travel and tourism,” Carp said. “Consumer adoption of digital photography is growing at a more rapid pace than a year ago, and this is trimming demand for consumer film. At the same time, we are seeing evidence that more consumers want to print their digital photos at retail and at home. This trend presents a huge opportunity for Kodak to generate profitable sales of our market-leading Picture Maker kiosks and inkjet paper, which will help offset declining sales from traditional film.

“Given these developments, we remain cautious about a material upturn in the traditional consumer products and services for the balance of 2003,” Carp said. “In this environment, we remain committed to reducing costs aggressively, strengthening our balance sheet and bringing to market more innovative products for the benefit of our customers.” [Emphasis added.]

91. On this positive news the Company’s stock price rose as much as 11% in intraday trading.

92. The statements referenced above in ¶¶88, 90 were each materially false and misleading because they failed to disclose and misrepresented the following adverse facts which were known or recklessly disregarded by Defendants:

(a) That Kodak was materially overstating its financial performance by failing to properly account for trade receivables and rebates and was carrying old uncollectible receivables on its books, as detailed herein in ¶¶48-57, 67-70;

(b) That Kodak’s financial position was weakening to such an extent that the Company was considering dramatically slashing its dividend;

(c) That the Company’s 2003 film sales had been negatively impacted by the Company’s massive failed multi-pack film promotion in late 2002. In other words, the Company had materially pre-sold its 2003 film sales in 2002; and
(d) As detailed below in ¶¶113-117, Kodak lacked sufficient internal controls necessary to properly manage its business and provide its management with timely and accurate financial information.

93. On September 3, 2003, Kodak announced it would “hold a meeting with the institutional investment community on Thursday, September 25, in New York City” in order to “provide an update on Kodak’s strategic direction.”

94. But on September 25, 2003, Carp shocked the market by announcing that the Company’s new strategic direction would require cutting its dividend by 72%. Carp finally conceded that the Company’s film sales would decline 7% per year and that the Company would have to make the investment to switch to digital photography. As even exceptional digital margins are only 5% or less, and Kodak’s film margins had averaged 50%, the market realized that the switch to digital, which Defendants had long proclaimed would not be necessary, would cut deep into the Company’s bottom line.

95. On Carp’s announcement, the Company’s stock price plummeted 18% to $22.15 – an 18-year low – on more than 36 million in volume from its close of $26.99 on September 24, 2003. The Company’s corporate debt ratings with S&P and Moody’s were slashed to the bottom level of investment grade causing its debt yields to rise and the market value of its debt to fall. Kodak’s position on the Dow Jones Industrial Average was questioned. It was rumored Kodak’s removal from the Dow, a position it had held for 30 years, could prompt investors to dump over 7 million of its shares. By Friday September 26, 2003, the Company’s stock had fallen to a 23-year low of $21.40 per share.

Restatement Of Previously Issued Financial Statements

96. On or about April 6, 2005, the Company filed with the SEC its Form 10-K for the year ended December 31, 2004, reporting that Kodak restated its consolidated financial statements as
of and for the year ended December 31, 2003. In addition, the Company restated its quarterly consolidated financial statements for each of the quarterly periods in 2003 and for the first three quarters of 2004. The restatement reflects adjustments to correct errors in the Company’s accounting for income taxes, accounting for pensions and other postretirement benefits as well as other miscellaneous adjustments. The restatement resulted in the Company adjusting its previously reported 2003 net income of $265 million ($0.92 per share) to net income of $253 million ($0.88 per share).

97. On or about August 9, 2005, Kodak announced that the SEC had notified the Company in March 2005 that it was investigating the “accounting errors” that forced the Company to restate its profits for the past two years.

**Kodak’s Financial Statements Issued During The Class Period Were Materially False And Misleading**

98. In an attempt to mask the declining trends in its traditional film business, defendants knowingly or recklessly engaged in improper financial reporting that was designed to create a false impression about the demand for such products. These practices violated GAAP and inflated Kodak’s operating results during the Class Period.

99. GAAP provides that revenue should not be recognized until it is realized or realizable and earned. FASB Statement of Concepts (“Concepts Statement”) No. 5, par. 83. The conditions for revenue recognition ordinarily are met when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the seller’s price is fixed or determinable, collectibility of the sales price is reasonably assured and when the entity has substantially performed

3Regulation S-X [17 C.F.R. §210.4-01(a)(1)] states that financial statements filed with the SEC that are not prepared in conformity with GAAP are presumed to be misleading and inaccurate.
the obligations which entitle it to the benefits represented by the revenue. Generally, revenue should not be recognized until an exchange has occurred and the earnings process is complete. A transfer of risk has to occur in order to effect an “exchange” for the purposes of revenue recognition. SEC Staff Accounting Bulletin (“SAB”) Nos. 101 and 104; FASB Concept Statement Nos. 2 and 5; FASB Statement of Financial Accounting Standards (“SFAS”) No. 48; Accounting Research Bulletin (“ARB”) No. 43; Accounting Principles Board (“APB”) Opinion No. 10; and American Institute of Certified Public Accountants (“AICPA”) Statement of Position (“SOP”) 97-2.

In its financial statements for the year ended December 31, 2002, filed with the SEC on Form 10-K, the Company disclosed the following policy of accounting for revenue:

The Company’s revenue transactions include sales of the following: products; equipment; services; equipment bundled with products and/or services; and integrated solutions. The Company recognizes revenue when realized or realizable and earned, which is when the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred; the sales price is fixed and determinable; and collectibility is reasonably assured. At the time revenue is recognized, the Company provides for the estimated costs of warranties and reduces revenue for estimated returns. At the time revenue is recognized, the Company also records reductions to revenue for customer incentive programs offered including cash and volume discounts, price protection, promotional, cooperative and other advertising allowances, slotting fees and coupons.

For product sales, the recognition criteria are generally met when title and risk of loss have transferred from the Company to the buyer, which may be upon shipment or upon delivery to the customer sites, based on contract terms or legal requirements in foreign jurisdictions.

---

4In December 2003, SAB No. 101 was superceded by SAB No. 104, which updated portions of SAB No. 101 to make it consistent with then current authoritative accounting guidance. The principal revisions to SAB No. 101 included the deletion of certain interpretive guidance because of the issuance of private sector U.S. GAAP, and the incorporation of certain sections of the staff’s “Revenue Recognition in Financial Statements — Frequently Asked Questions and Answers” into SAB No. 101.
Service revenues are recognized as such services are rendered. For equipment sales, the recognition criteria are generally met when the equipment is delivered and installed at the customer site. In instances in which the agreement with the customer contains a customer acceptance clause, revenue is deferred until customer acceptance is obtained, provided the customer acceptance clause is considered to be substantive. For certain agreements, the Company does not consider these customer acceptance clauses to be substantive because the Company can and does replicate the customer acceptance test environment and performs the agreed upon product testing prior to shipment. In these instances, revenue is recognized upon installation of the equipment.

The sale of equipment combined with services, including maintenance, and/or other elements, including products and software, represent multiple element arrangements. The Company allocates revenue to the various elements based on verifiable objective evidence of fair value (if software is not included or is incidental to the transaction) or Kodak–specific objective evidence of fair value if software is included and is other than incidental to the sales transaction as a whole. Revenue allocated to an individual element is recognized when all other revenue recognition criteria are met for that element.

Revenue from the sale of integrated solutions, which includes transactions that require significant production, modification or customization of software, is recognized in accordance with contract accounting. Under contract accounting, revenue should be recognized utilizing either the percentage–of–completion or completed–contract method. The Company currently utilizes the completed–contract method for all solution sales as sufficient history does not currently exist to allow the Company to accurately estimate total costs to complete these transactions. Revenue from other long–term contracts, primarily government contracts, is generally recognized using the percentage–of–completion method.

The Company may offer customer financing to assist customers in their acquisition of Kodak’s products, primarily in the area of on–site photofinishing equipment. At the time a financing transaction is consummated, which qualifies as a sales–type lease, the Company records the total lease receivable net of unearned income and the estimated residual value of the equipment. Unearned income is recognized as finance income using the interest method over the term of the lease. Leases not qualifying as sales–type leases are accounted for as operating leases. The underlying equipment is depreciated on a straight–line basis over the assets’ estimated useful life.

The Company’s sales of tangible products are the only class of revenues that exceeds 10% of total consolidated net sales. All other sales classes are individually less than 10%, and therefore, have been combined with the sales of tangible products on the same line in accordance with Regulation S–X. [Emphasis added.]

101. Kodak falsely represented that it complied with GAAP and its publicly disclosed policy of revenue recognition during the Class Period. For example, CI 4 stated that Kodak’s
customers frequently returned products they could not sell, and specifically noted that quarter-end shipments were frequently followed by large-scale returns of those same products just a week or ten days into the ensuing quarter. CI 4 also noted that in certain instances, customers “sat on product” for as long as nine months, not paying Kodak, and then returned those products back to Kodak in exchange for new products, without ever having paid Kodak for the products they had originally received.

102. In such instances, the shipments of Kodak’s products were tantamount to consignment sales as their obligation to pay for Kodak’s products were, in substance, contingent on the resale of the product. In fact, CI 4 stated that his/her collection efforts often involved an investigation into the reasons for the returns and that such investigations often revealed that the shipments were “consignment” type arrangements whereby Kodak would only receive payment if the customer was able to sell the products.

103. As noted in SAB No. 101, consignment arrangements are not sales and do not qualify for revenue recognition because the seller retains the risks and rewards of ownership of the product shipped.

104. Prior to and during the Class Period, Kodak also engaged in channel stuffing practices which caused the Company’s customers to be overstocked with Kodak products. As a result, Company sales representatives were forced to issue price concessions to Kodak’s customers to induce them to take shipment of additional products. In ponzi-scheme type fashion, Kodak granted price concessions on the inventory of older, outdated Kodak inventory that it could not sell. This practice rendered Kodak’s policy of recognizing revenue upon the shipment of product to its customers in such instances a violation of GAAP because at the time of shipment, Kodak’s sales
price was not “fixed or determinable” as contemplated by GAAP, and collectibility of the sales price was not reasonably assured when such “revenue” was recognized by Kodak.

105. In furtherance of their attempt to inflate the Company’s operating results, defendants also understated Kodak’s accounting reserves during the Class Period.⁵

106. GAAP requires that financial statements account for existing uncertainties as to probable losses. Such loss contingencies should be recognized and reported as a charge to income when: (a) information existing at the date of the financial statements indicates that it is probable (e.g., a likely chance) that an asset has been impaired or a liability has been incurred; and, (b) the amount of such loss can be reasonably estimated. SFAS No. 5, par. 8.

107. During the Class Period, Kodak’s publicly issued financial statements failed to timely account for its customer rebates, sales charge-backs, and/or sales discounts in accordance with GAAP and its publicly disclosed accounting policies.

108. As noted above, Kodak’s December 31, 2002 financial statements filed with the SEC on Form 10-K, disclosed:

At the time revenue is recognized, the Company provides for the estimated costs of warranties and reduces revenue for estimated returns. At the time revenue is recognized, the Company also records reductions to revenue for customer incentive programs offered including cash and volume discounts, price protection, promotional, cooperative and other advertising allowances, slotting fees and coupons.

109. When the Company’s customers were overstocked with Kodak product due, in part, to the improper revenue recognition practices noted above, the Company’s sales representatives were forced to issue price concessions to Kodak’s customers to induce them to take shipment of additional products.

⁵ Generally, increases to accounting reserves results in a charge against earnings.
110. In addition, CI 4 stated that the undocumented sales concessions would surface during collection efforts as “unauthorized” or “excessive” deductions taken against Kodak’s invoices when customers remitted payment. CI 4 stated that the deduction activities were endemic to the sales process and included extended payment terms and “product display discounts” that were not documented in the terms of sales invoices and had to be cleared from Kodak’s ledgers through the use of “rebate allowances” or “bad debt charges.” In fact, CI 4 stated that in many instances, the collections department would not be aware that special terms were granted to customers until after the customers claimed the deduction.

111. These practices were confirmed by CI 5 who stated that widespread use of undocumented sales concessions occurred at the Company’s wholly-owned subsidiary Qualex. CI 5 explained that these problems were, in part, due to sales personnel extending terms to customers that were not indicated in the documentation supporting the transactions and therefore made full collection of what had been invoiced on the transactions unlikely. CI 5 explained that Qualex lost control of the sales force and could not enforce policies that might prevent the sales personnel from engaging in problematic practices like extending undisclosed terms or failing to provide complete detail to support sales transactions.

112. As a result of such practices, Kodak’s sales-related accounting reserves were materially understated during the Class Period, as defendants knew or recklessly ignored, forcing the Company to increase its customer rebate reserves during the last three quarters of 2003 by approximately $184 million. Indeed, CI 4 stated that rebate credits extended by the sales staff often exceeded rebate budgets allocated to the collections department.
Kodak’s False and Misleading Reporting and Certifications of Disclosure and Internal Controls

113. Defendants also had the responsibility to design, implement, and maintain a system of internal accounting controls that would provide accounting records to assure that the financial information disseminated by Kodak, including the financial statements contained in filings made with the SEC and press releases, were fairly stated in compliance with GAAP and Kodak’s stated accounting policies.

114. As §13 of the Securities Exchange Act of 1934 provides:

Every issuer which has a class of securities registered pursuant to Section 12 of this title and every issuer which is required to file reports pursuant to Section 15(d) of this title shall –

A. make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

B. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that –

i. transactions are executed in accordance with management’s general or specific authorization;

ii. transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;

iii. access to assets is permitted only in accordance with management’s general or specific authorization; and

iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.
115. During the Class Period, Kodak made the following representations about the effectiveness of its disclosure and internal controls in its March 31, 2003 and June 30, 2003 Forms 10-Q:

In accordance with the Securities Exchange Act Rules 13a−15 and 15d−15, the Company’s management, under the supervision of the Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of the Company’s disclosure controls and procedures within 90 days of the filing date of this quarterly report. Based on that evaluation, the Company concluded that the design and operation of its disclosure controls and procedures were effective. There have been no significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of such evaluation.

116. Concerning the Company’s Disclosure Controls, GAAP, in Accounting Principles Board (“APB”) Opinion No. 22, par.7, provides that the usefulness of financial statements in making economic decisions depends significantly upon the user’s understanding of the accounting policies followed by a company. In fact, GAAP states that information about the accounting policies adopted by a reporting company is “essential” for financial statement users.

117. Kodak’s representations about its internal and disclosure controls were materially false and misleading because, prior to and during the Class Period, Kodak’s accounting policies failed to disclose its practice of recognizing revenue on consignment arrangements and that its sales personnel routinely granted customer credits in excess of what was noted on customer invoices.

These misrepresentations were then wrongfully certified by defendants Carp and Brust and filed as part of Kodak’s March 31, 2003 Form 10-Q, which were repeated in all material respects and filed as part of Kodak’s June 30, 2003 Form 10-Q:

I, ..., certify that:

1. I have reviewed this quarterly report on Form 10−Q;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the
statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant’s other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a−14 and 15d−14) for the registrant and we have:

   a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   b) evaluated the effectiveness of the registrant’s disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the “Evaluation Date”); and

   c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant’s other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant’s auditors and the audit committee of registrant’s board of directors (or persons performing the equivalent function):

   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant’s ability to record, process, summarize and report financial data and have identified for the registrant’s auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal controls; and

6. The registrant’s other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

118. As a result of the foregoing practices, defendants repeatedly disseminated financial information about Kodak that was materially false and misleading. In addition to the accounting
improprieties stated above, Kodak presented its financial statements during the Class Period in a manner which also violated at least the following provisions of GAAP:

(a) The concept that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions (Concepts Statement No. 1, par. 34);

(b) The concept that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions, events and circumstances that change resources and claims to those resources (Concepts Statement No. 1, par. 40);

(c) The concept that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (Concepts Statement No. 1, par. 50);

(d) The concept that financial reporting should provide information about an enterprise’s financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors’ expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (Concepts Statement No. 1, par. 42);

(e) The concept that financial reporting should be reliable in that it represents what it purports to represent. That information should be reliable as well as relevant is a notion that is central to accounting (Concepts Statement No. 2, pars. 58-59);
(f) The concept of completeness, which means that nothing is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions (Concepts Statement No. 2, par.79); and

(g) The concept that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (Concepts Statement No. 2, pars. 95, 97).

119. In failing to file financial statements with the SEC which conformed to the requirements of GAAP, Kodak repeatedly disseminated financial statements that were presumptively misleading and inaccurate. The Company’s Class Period Forms 10-Q filed with the SEC were also materially false and misleading in that they failed to disclose known trends, demands, commitments, events, and uncertainties that were reasonably likely to have a materially adverse effect on the Company’s liquidity, net sales, revenues and income from continuing operations, as required by Item 303 of Regulation S-K.

**Loss Causation/Economic Loss**

120. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Kodak’s stock price and operated as a fraud or deceit on Class Period purchasers of Kodak stock by misrepresenting the Company’s operating success and future business prospects. Defendants achieved this façade of success, growth and strong future business prospects by blatantly misrepresenting the selling success of the Company’s products and its internal operations. Later, however, when Defendants’ prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, Kodak stock fell precipitously as the prior artificial inflation came out of Kodak’s stock price. As a result of
their purchases of Kodak stock during the Class Period, Plaintiffs and other members of the Class suffered economic loss, i.e., damages, under the U.S. federal securities laws.

121. During the Class Period, Defendants presented a misleading picture of Kodak’s business and growth prospects. Thus, instead of truthfully disclosing during the Class Period that Kodak’s film sales were not as healthy as represented, Defendants caused Kodak to falsely forecast future revenues, earnings and profit margins.

122. These false claims of strong future results and the success of the Company’s efforts to grow revenues and maintain market share caused and maintained the artificial inflation in Kodak’s stock price throughout the Class Period and until the truth was revealed to the market.

123. Defendants’ false and misleading statements had the intended effect and caused Kodak stock to trade at artificially inflated levels throughout the Class Period, permitting the Company to sell more than $550 million worth of debt and allowing Kodak insiders to justify the receipt of millions of dollars in cash bonuses.

124. On June 18, 2003, Defendants were forced to partially reveal the Company’s declining operations and financial status but made further misstatements in order to prevent investors from learning and reacting to the truth about the Company’s predicament. Finally, on September 25, 2003, Defendants were forced to publicly disclose that Kodak’s film business had failed and that they were cutting the Company’s historical dividend by 72%. As investors and the market became aware that Kodak’s actual business prospects were poorer than represented, which had been obfuscated by Defendants, the prior artificial inflation came out of Kodak’s stock price, damaging investors.

125. As a direct result of Defendants’ admissions and the public revelations regarding the truth about Kodak’s previous representations and its actual business prospects going forward,
Kodak’s stock price plummeted from $31.99 on June 17, 2003 to close at $28.77 per share on June 18, 2003 (on over 18 million shares in trading volume), a decline of $3.22 per share or 10%, and from its close of $26.99 on September 24, 2003 down to $22.15 per share on September 25, 2003 (on over 36 million shares in trading volume), a decline of $4.84 per share or 18%. These drops removed the inflation from Kodak’s stock price, causing real economic loss to investors who had purchased the stock during the Class Period. In sum, as the truth about defendants’ fraud and Kodak’s business performance was revealed, the Company’s stock price plummeted, the artificial inflation came out of the stock and plaintiff and other members of the Class were damaged, suffering economic losses of at least $8 per share.

126. The 10% decline in Kodak’s stock on June 18, 2003 and the 18% decline in Kodak’s stock price at the end of the Class Period were direct results of the nature and extent of defendants’ fraud finally being revealed to investors and the market. The timing and magnitude of Kodak’s stock price declines negate any inference that the loss suffered by Plaintiffs and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company specific facts unrelated to the defendants’ fraudulent conduct. During the same period in which Kodak’s stock price fell as a result of Defendants’ fraud being revealed, the Standard & Poor’s 500 securities index was essentially flat. The economic loss, *i.e.*, damages, suffered by Plaintiffs and other members of the Class was a direct result of defendants’ fraudulent scheme to artificially inflate Kodak’s stock price and the subsequent significant decline in the value of Kodak’s stock when defendants’ prior misrepresentations and other fraudulent conduct was revealed.

**No Safe Harbor**

127. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as “forward-looking statements”
when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

128. In fact, despite the immense magnitude of the problems that immediately lay before Kodak, Defendants failed to provide any meaningful discussion of the risks which throughout the Class period were materially and adversely impacting the Company’s operations. For example, at the start of the Class Period, the Company’s April 23, 2003 press release included the following boiler-plate language related to certain unidentified “forward looking” statements:

Certain statements in this press release may be forward looking in nature, or “forward-looking statements” as defined in the United States Private Securities Litigation Reform Act of 1995. For example, references to the Company’s 2003 revenue, earnings and cash flow expectations are forward-looking statements.

Actual results may differ from those expressed or implied in forward-looking statements. The forward-looking statements contained in this press release are subject to a number of risk factors, including the successful:

-- Implementation of product strategies (including category expansion, digitization, OLED, and digital products);

-- Implementation of intellectual property licensing strategies;

-- Development and implementation of e-commerce strategies;

-- Completion of information systems upgrades, including SAP;

-- Completion of various portfolio actions;

-- Reduction of inventories;

-- Improvement in manufacturing productivity;

-- Improvement in receivables performance;

-- Reduction in capital expenditures;

-- Improvement in supply chain efficiency;

-- Implementation of restructurings, including personnel reductions;
Development of the Company’s business in emerging markets like China, India, Brazil, Mexico, and Russia.

The forward-looking statements contained in this press release are subject to the following additional risk factors:

-- Inherent unpredictability of currency fluctuations and raw material costs;
-- Competitive actions, including pricing;
-- The nature and pace of technology substitution, including the analog-to-digital shift;
-- Continuing customer consolidation and buying power;
-- General economic and business conditions.
-- Other factors disclosed previously and from time to time in the Company’s filings with the Securities and Exchange Commission.

Any forward-looking statements in this press release should be evaluated in light of these important risk factors.

129. Indeed, Kodak did not see fit to change in any substantive manner any of the language describing the purported risks that “could cause actual results to differ materially” from the Company’s earnings projections and forecasts, either prior to or during the Class Period. Accordingly, its risk disclosures were nothing more than boilerplate and were not meaningful.

130. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Kodak who knew that those statements were false when made.

For Violation of §10(b) of the 1934 Act
and Rule 10b-5 Against All Defendants

131. Plaintiffs incorporate ¶¶1-130 by reference.
132. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

133. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Kodak common stock during the Class Period.

134. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Kodak common stock. Plaintiffs and the Class would not have purchased Kodak common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants’ misleading statements.

135. As a direct and proximate result of these Defendants’ wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their purchases of Kodak common stock during the Class Period.

For Violation of §20(a) of the 1934 Act
Against All Defendants

137. The Individual Defendants acted as controlling persons of Kodak within the meaning of §20(a) of the 1934 Act. By reason of their positions as officers and/or directors of Kodak, and their ownership of Kodak stock, the Individual Defendants had the power and authority to cause Kodak to engage in the wrongful conduct complained of herein. Kodak controlled each of the Individual Defendants and all of its employees. By reason of such conduct, the Individual Defendants and Kodak are liable pursuant to §20(a) of the 1934 Act.

CLASS ACTION ALLEGATIONS

138. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased Kodak common stock on the open market during the Class Period (the “Class”). Excluded from the Class are defendants.

139. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of October 2004, Kodak had more than 286 million shares of stock outstanding, owned by hundreds if not thousands of persons.

140. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) Whether the Exchange Act was violated by Defendants;
(b) Whether Defendants omitted and/or misrepresented material facts;
(c) Whether Defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
(d) Whether Defendants knew or deliberately disregarded that their statements were false and misleading;
(e) Whether the price of Kodak common stock was artificially inflated; and
(f) The extent of damage sustained by Class members and the appropriate measure of damages.

141. Plaintiffs’ claims are typical of those of the Class because Plaintiffs and the Class sustained damages from Defendants’ wrongful conduct.

142. Plaintiffs will adequately protect the interests of the Class and have retained counsel who are experienced in class action securities litigation. Plaintiffs have no interests which conflict with those of the Class.

143. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;

B. Awarding Plaintiffs and the members of the Class damages, interest and costs;

C. Awarding Plaintiffs reasonable costs, including attorneys’ fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: January 20, 2006

HARRIS, CHESWORTH, O’BRIEN, JOHNSTONE, WELCH & LEONE, LLP
EUGENE WELCH

/s/ Eugene Welch
EUGENE WELCH

- 53 -
300 Linden Oaks, Suite 100
Rochester, NY  14625
Telephone:  585/899-1400
585/899-1424 (fax)

**Liaison Counsel**

LERACH COUGHLIN STOIA GELLER
 RUDMAN & ROBBINS LLP
SAMUEL H. RUDMAN
RUSSELL GUNYAN
58 South Service Road, Suite 200
Melville, NY  11747
Telephone:  631/367-7100
631/367-1173 (fax)

Lerach Coughlin Stoia Geller Rudman & Robbins
LLP
655 West Broadway, Suite 1900
San Diego, CA  92101-3301
Telephone:  619/231-1058
619/231-7423 (fax)

SCHIFFRIN & BARROWAY, LLP
STUART L. BERMAN
SEAN M. HANDLER
ROBIN WINCHESTER
280 King of Prussia Road
Radnor, PA  19087
Telephone:  610/667-7706
610/667-7056 (fax)

**Co-Lead Counsel for Plaintiffs**
I hereby certify that on January 20, 2006, I electronically filed the Consolidated Amended Complaint for Violation of the Federal Securities Laws with the Clerk of the Western District Court using the CM/ECF system, which sent electronic notification of such filing to the following:

Carolyn G. Nussbaum, Esq.
Nixon Peabody, LLP
Clinton Square
P.O. Box 31051
Rochester, NY 14603

A correct hard copy was served on January 20, 2006 by U. S. Mail on the following:

John C. Millian, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave., N.W.
Washington, DC 20036-5306

Dated: January 20, 2006

/s/ Eugene Welch
Eugene Welch
300 Linden Oaks, Suite 100
Rochester, New York 14625
Telephone: (585) 899-1400
Fax:(585) 899-1424
ewelch@rochester.rr.com