

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

-----X
**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

EASTMAN KODAK,

Defendant.
-----X

CIVIL ACTION NO:

JURY TRIAL DEMANDED

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000-e *et seq.* (“Title VII”), Title I of the Civil Rights Act of 1991 (“CRA 1991”), and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 *et seq.* (“ADEA”), to have the Court declare that certain provisions of the releases and waivers used by Defendant Eastman Kodak (“Kodak”) violate Title VII and the ADEA by providing that employees who sign them cannot “assist” the EEOC, other “persons[s],” or any other “entity” in bringing Title VII or ADEA lawsuits, by mandating that employees tenderback all severance payments if they breach them by assisting the EEOC and others, and by requiring that employees pay all of Kodak’s legal fees and costs if they breach them by assisting the EEOC and others.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e-5(f)(1) and (3) (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. This action is

further authorized and instituted pursuant to Section 7(b) of the ADEA, 29 U.S.C. §626(b), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§216(c) and 217.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Western District of New York.

PARTIES

3. Plaintiff Equal Employment Opportunity Commission (the “Commission”) is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §§2000e-5(f)(1) and (3).

4. The Commission is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7 of the ADEA, 29 U.S.C. §626, as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

5. At all relevant times, Kodak has continuously been a company doing business in the State of New York and the county of Monroe, and has continuously had at least twenty (20) employees.

6. At all relevant times, Kodak has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e(b), (g) and (h).

7. At all relevant times, Kodak has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§630(b), (g) and (h).

CONCILIATION

8. Prior to the institution of this lawsuit the EEOC's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with Title VII through informal methods of conciliation, conference, and persuasion within the meaning of Section 706(b) of Title VII, 42 U.S.C. §2000e-5.

9. Prior to the institution of this lawsuit the EEOC's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference, and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. §626(b).

STATEMENT OF CLAIMS

10. Since at least January 1, 2003, Kodak has required employees who receive severance upon separating from employment to sign a release and/or waiver.

11. Kodak's releases and waivers provide that employees will not assist the EEOC and other persons or entities in bringing lawsuits in state or federal court, including claims brought under Title VII and the ADEA (the "non-cooperation clause").

12. By using the non-cooperation clause, Kodak has violated Section 704(a) of Title VII, 42 U.S.C. §2000e-3(a), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under Title VII.

13. By using the non-cooperation clause, Kodak has violated Section 4(d) of the ADEA, 29 U.S.C. §623(d), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA.

14. By using the non-cooperation clause, Kodak has violated Section 7(f)(4) of the ADEA, 29 U.S.C. §626(f)(4), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA.

15. Kodak's releases and waivers provide that if an employee breaches the release or waiver, including but not limited to a violation of the non-cooperation clause, the employee will immediately tenderback all severance benefits received from Kodak (the "tenderback clause").

16. By using the tenderback clause, Kodak has violated Section 704(a) of Title VII, 42 U.S.C. §2000e-3(a), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under Title VII.

17. By using the tenderback clause, Kodak has violated Section 4(d) of the ADEA, 29 U.S.C. §623(d), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA.

18. By using the tenderback clause, Kodak has violated Section 7(f)(4) of the ADEA, 29 U.S.C. §626(f)(4), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA.

19. Kodak's releases and waivers provide that if an employee breaches the release or waiver, including but not limited to a violation of the non-cooperation clause, the employee will be responsible for all of Kodak's legal fees and costs in any lawsuit related to the breach (the "legal fees clause").

20. By using the legal fees clause, Kodak has violated Section 704(a) of Title VII, 42 U.S.C. §2000e-3(a), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under Title VII.

21. By using the legal fees clause, Kodak has violated Section 4(d) of the ADEA, 29 U.S.C. §623(d), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA.

22. By using the legal fees clause, Kodak has violated Section 7(f)(4) of the ADEA, 29 U.S.C. §626(f)(4), by interfering in an employee's protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA.

23. The effect of the practices complained of above has been to deprive employees of their protected rights to testify, assist, or participate in any investigation, proceeding, or hearing brought under Title VII, and otherwise affect their status as employees because of their protected rights.

24. The effect of the practices complained of above has been to deprive employees of their protected rights to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA, and otherwise affect their status as employees because of their protected rights.

25. The unlawful employment practices complained of above were and are intentional.

26. The unlawful employment practices complained of above were and are done with malice or with reckless indifference to the federally protected rights of employees.

27. The unlawful employment practices complained of above were and are willful within the meaning of the ADEA.

JURY TRIAL DEMAND

28. The EEOC requests a jury trial on all questions of fact raised by its Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff EEOC respectfully that this Court:

A. Declare that certain provisions of Kodak's releases and waivers interfere with employees' protected rights to testify, assist, or participate in any investigation, proceeding, or hearing brought under Title VII, and otherwise affect their status as employees because of their protected rights under Title VII;

B. Declare that certain provisions of Kodak's releases and waivers interfere with employees' protected rights to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA, and otherwise affect their status as employees because of their protected rights under the ADEA;

C. Grant a permanent injunction restraining Kodak, its officers, management personnel, employees, agents, successors assigns, and all persons in active concert or participation with them, from engaging in employment practices which interfere with employees' protected rights to testify, assist, or participate in any investigation, proceeding, or hearing brought under Title VII, and otherwise affect their status as employees because of their protected rights under Title VII;

D. Grant a permanent injunction restraining Kodak, its officers, management personnel, employees, agents, successors assigns, and all persons in active concert or participation with them, from engaging in employment practices which interfere with employees' protected rights to testify, assist, or participate in any investigation, proceeding, or hearing

brought under the ADEA, and otherwise affect their status as employees because of their protected rights;

E. Order Kodak to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals who participate in activity protected by Title VII, and which eradicate the effects of its past and present unlawful employment practices;

F. Order Kodak to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals who participate in activity protected by the ADEA, and which eradicate the effects of its past and present unlawful employment practices;

G. Order Kodak to provide such other affirmative relief as is necessary to eradicate the effects of its unlawful practices, including, but not limited to, providing notice to all persons who signed a release or waiver of the invalidity of certain provisions therein, and of their protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under Title VII;

H. Order Kodak to provide such other affirmative relief as is necessary to eradicate the effects of its unlawful practices, including, but not limited to, providing notice to all persons who signed a release or waiver of the invalidity of certain provisions therein, and of their protected right to testify, assist, or participate in any investigation, proceeding, or hearing brought under the ADEA;

I. Order Kodak to provide such other affirmative relief as is necessary to eradicate the effects of its unlawful practices, including, but not limited to, providing notice to all

persons who signed a release or waiver of the invalidity of certain provisions therein, and of their right to pursue discrimination charges against Kodak under Title VII;

J. Order Kodak to provide such other affirmative relief as is necessary to eradicate the effects of its unlawful practices, including, but not limited to, providing notice to all persons who signed a release or waiver of the invalidity of certain provisions therein, and of their right to pursue discrimination charges against Kodak under the ADEA;

K. Enjoin Kodak from raising a timeliness or statute of limitations defense to Title VII charges, or suits based upon such charges, filed by employees who did not earlier file their Title VII charges because they had signed a release or waiver;

L. Enjoin Kodak from raising a timeliness or statute of limitations defense to ADEA charges, or suits based upon such charges, filed by employees who did not earlier file their ADEA charges because they had signed a release or waiver;

M. Grant such further relief as the Court deems necessary and proper in the public interest;

N. Award the EEOC its costs in this action.

Dated: September 29, 2006
New York, NY

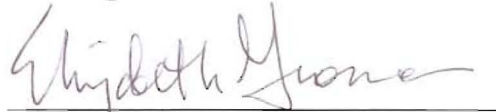
Respectfully submitted,

Ronald S. Cooper
General Counsel

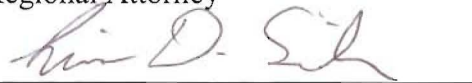
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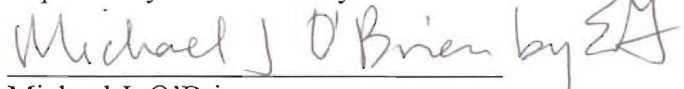
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