

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA**

IN RE:)	Chapter 11
)	
EAST WEST COPOLYMER, LLC)	Case No. 17-10327
DEBTOR)	
)	
LIQUIDATING TRUSTEE FOR)	AP No. _____
EAST WEST COPOLYMER, LLC)	
LIQUIDATING TRUST)	
)	
VERSUS)	
)	
LOUISIANA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY)	

**COMPLAINT TO AVOID PREFERENTIAL TRANSFER OF FUNDS AND TO
RECOVER AND PRESERVE AVOIDED TRANSFER PURSUANT TO 11 U.S.C. §§ 547,
550(a), AND 551**

NOW INTO COURT, through undersigned counsel, comes the Liquidating Trustee for East West CoPolymer, LLC (“Trustee”), who respectfully files this adversary proceeding and represents as follows:

PARTIES

1.

Trustee was appointed by the order confirming the Joint Plan of Liquidation filed by the Debtor and the Official Committee of Unsecured Creditors. The confirmed Plan which, among other things, empowered Trustee to prosecute avoidance actions, became effective on December 14, 2017.

2.

Made Defendant herein is the State of Louisiana, Department of Environmental Quality (“DEQ”), a state agency located in Baton Rouge, Louisiana who can be served through its Secretary, Chuck Carr Brown, Ph.D.

JURISDICTION, VENUE, AND CORE STATUS

3.

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 157 and 1334(b) and 11 U.S.C. §§ 457, 550(a), and 551, in that it arises in and relates to East West CoPolymer’s bankruptcy and the action seeks avoidance, recovery, and preservation of transfers of property for the benefit of the estate, which is now the Liquidating Trust. The confirmed Joint Plan expressly reserved the Bankruptcy Court’s jurisdiction to hear and determine, among other matters, any and all adversary proceedings arising out of the bankruptcy case. *See* Article XI of the Joint Plan.

4.

This adversary proceeding arises in the case of *East West CoPolymer, LLC*, Case No. 17-10327, currently pending before the Court.

5.

Venue is proper in this Court, the Middle District of Louisiana Bankruptcy Court, pursuant to 28 U.S.C. § 1409(a) in that the voluntary petition initiating this case was filed in this district.

6.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(F).

7.

The Trustee consents to entry of a final order or judgment by the Bankruptcy Court.

FACTS

8.

East West CoPolymer, LLC (“EWC” or “Debtor”), now acting through the Trustee, operated a synthetic rubber manufacturing plant in East Baton Rouge Parish for several years.

9.

By the first quarter of 2017, if not earlier, EWC began contemplating a restructure and/or liquidation through bankruptcy. Among other things, EWC retained the services of a Chief Restructuring Officer on or about February 5, 2017.

10.

The Chapter 11 Petition was filed April 7, 2017. The plant was sold very early on in the bankruptcy via a court approved auction in May 2017 for approximately \$5.6 million. The primary secured creditor, Main Street Capital, was left with an unsecured deficiency claim of approximately \$10 million following the sale. Additionally, Brown & Root and TCTM Financial filed secured claims against the plant aggregating more than \$18 million. Further, there are several more allowed unsecured claims, leaving no doubt that EWC was insolvent in the 90 days prior to the filing of the bankruptcy Petition.

11.

At that time, EWC had outstanding licensing and other fees owed to DEQ, which were provided as invoices due for payment within 30 days of the invoice date. The invoices and payments are as follows:

INVOICE	DIVISION	INVOICE DATE	DUE DATE	PAYMENT	DATE RECEIVED
2017-555609	Accident Prevention	9/1/2016	10/1/2016	\$3,300.00	2/16/2017

2017-539183	Water and Oyster	7/18/2016	8/17/2016	\$45,665.23	2/23/2017
2017-556027	Air	9/1/2016	10/1/2016	\$9,530.95	2/23/2017
2017-563345	Air	9/1/2016	10/1/2016	\$7,792.24	2/24/2017
2017-564362	Solid Waste	8/2/2016	9/1/2016	\$7,920.00	2/24/2017
2017-NTA052233	Ground Water, Annual and Late Fee	8/17/2016	9/16/2016	\$10,644.40	3/24/2017

As shown, the invoices were all paid long after their due dates.

12.

As shown in the table above, EWC made payment on each invoice at least 120 days after the date it was due for payment. Each of the payments listed above was made well within 90 days prior to the bankruptcy filing, which would have begun January 7, 2017.

13.

According to DEQ's records, no further payments were made.

COUNT ONE – PREFERENTIAL TRANSFERS

14.

All allegations contained in paragraphs 1 through 13 are repeated with the same force and effect as if fully set forth at length herein.

15.

A transfer occurred when DEQ received payments of \$3,300.00, \$55,196.18, \$15,712.24, and \$10,644.40 on February 16, 2017, February 23, 2017, February 24, 2017, and March 24, 2017, respectively. These payments were made for antecedent debts owed by Debtor to DEQ.

16.

The February 16, 2017, February 23, 2017, February 24, 2017, and March 24, 2017 transfers were all made after January 7, 2017, which is 90 days prior to the April 7, 2017 Petition filing date. Thus, they were all made within 90 days before the filing of the Petition.

17.

As described in Paragraph 10, EWC was insolvent at the time the payments were received.

18.

These transfers enabled DEQ to receive more than it would have received had these payments not been made, had the assets been sold in a Chapter 7 proceeding, and had DEQ's claims been paid in accordance with the distribution scheme contemplated within the Bankruptcy Code.

COUNT TWO – RECOVERY FOR THE ESTATE

19.

The allegations contained in Paragraphs 1 through 18 are repeated with the same force and effect as if set forth fully at length herein. Pursuant to 11 U.S.C. § 550(a)(1), the Trustee is entitled to recover, for the benefit of the Estate, the property avoided, or the value of such property, under section 547. In this case, the Trustee seeks payment of \$84,852.82, the value of the transfers, from DEQ.

20.

Pursuant to 11 U.S.C. § 551, any transfer avoided under section 547 of the Bankruptcy Code is preserved for the benefit of the Estate. Therefore, to the extent the payments made to DEQ are avoided, the value of those avoided transfers must be preserved for the benefit of the Estate.

WHEREFORE, the Liquidating Trustee for East West CoPolymer, LLC respectfully prays for judgment in his favor against Louisiana Department of Environmental Quality as follows:

1. Under Count One, declaring that the payments made on February 16, 2017, February 23, 2017, February 24, 2017, and March 24, 2017, in the amounts of \$3,300.00, \$55,196.18, \$15,712.24, and \$10,644.40, respectively be avoided under 11 U.S.C. § 547 as preferential transfers; and
2. Under Count Two, to the extent payments totaling \$84,852.82 are avoided, recovering value from the Louisiana Department of Environmental Quality pursuant to 11 U.S.C. § 550(a) and preserving the transfers avoided for the benefit of the Estate.

Respectfully Submitted,

PHELPS DUNBAR LLP

BY: /s/ Shelton Dennis Blunt

Shelton Dennis Blunt, Bar Roll No. 21230
II City Plaza | 400 Convention Street, Suite 1100
Baton Rouge, Louisiana 70802-5618
Post Office Box 4412
Baton Rouge, Louisiana 70821-4412
Telephone: 225-346-0285
Facsimile: 225-381-9197
Email: dennis.blunt@phelps.com

ATTORNEY FOR LIQUIDATING TRUSTEE

PLEASE ISSUE SUMMONS TO:

**Louisiana Department of Environmental Quality
Through its Secretary
Chuck Carr Brown, Ph.D.
602 N. Fifth Street
Baton Rouge, LA 70802**