

993001IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

In re:

East West Copolymer, LLC,

Debtor

Case No. 17-10327

Chapter 11

MOTION FOR THE ENTRY OF ORDERS (I) APPROVING THE SALE OF ASSETS FREE AND CLEAR, (II) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE, (III) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES AND APPROVING THE PROCEDURES TO BE EMPLOYED WITH ASSUMPTION AND ASSIGNMENT, AND (IV) GRANTING RELATED RELIEF

NOW INTO COURT, through undersigned counsel, comes East West Copolymer, LLC (the “Debtor” or “EWC”), who moves for the entry of Orders (i) approving the sale of assets free and clear; (ii) approving bid procedures in connection with the sale; (iii) approving the assumption and assignment of certain contracts and leases and approving the procedures to be employed with assumption and assignment; and (iv) granting related relief. In support, the Debtor represents:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408. The statutory predicates for the relief sought in this Motion include 11 U.S.C. §§ 105, 363, 365 and Rules 2002, 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure.

General Background

2. Contemporaneously herewith, (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtor is a Delaware limited liability company that owns and operates a synthetic rubber manufacturing plant on Scenic Highway in Baton Rouge, Louisiana which produced a variety of cold polymerized emulsion rubber and other copolymer products, primarily for use in the tire industry. The operations of EWC required the use of certain toxic chemicals, specifically, butadiene, styrene, acrylonitrile and ammonia (the "Chemicals"). EWC presently has a stock of the Chemicals which must be preserved in an environmentally controlled facility to avoid degradation and potential environmental contamination.¹

4. Prior to the Petition Date, EWC obtained financing from Main Street. EWC entered into a certain Credit Agreement dated as of October 17, 2014² (the "Credit Agreement"). The Credit Agreement provided for the making of term loans to EWC. Under the Main Street financing package, EWC secured its borrowings from Main Street with a mortgage upon the immovable property and improvements thereon located at its north Baton Rouge facility along with a security interest in all the Debtor's movable property, including but not limited to machinery, equipment, raw materials, inventory, finished goods, accounts receivable and furniture located at such facility. As of the date of the filing of the petition, EWC owed Main Street the approximate sum of \$13,500,000.00.

5. While EWC was initially profitable, the market for its rubber and other synthetic chemical polymers declined. EWC competes with a number of international rubber and

¹ A large purpose of the chapter 11 filing is to obtain the use of cash collateral sufficient to continue disposal efforts of the Chemicals, as well as to avoid the cessation of electricity and other utilities (a termination notice with regard to the Debtor's electrical utility, Entergy, has been received and termination of services was scheduled by Entergy for April 10, 2017) which are necessary to preserve the Chemicals while disposal efforts are conducted.

² Reference to the Credit Agreement shall include any amendments, supplements, or other modifications thereto, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as any of such documents may themselves have been amended, restated, supplemented or modified in accordance with the terms thereof.

copolymer producers, and believes that precipitous price declines for its products have arisen due to below-cost dumping of product by foreign producers in the domestic market.

6. EWC engaged restructuring professionals to assist it with determining whether it could successfully emerge from the market turn-down. Additionally, EWC engaged at least two investment banks to assess the market for refinancing and/or a sale of its assets to a third party. The professionals worked with EWC to attempt to locate potential buyers for the assets and several parties indicated interest. However, after conducting due diligence, in each instance such interested parties notified EWC that they were not going to proceed with purchase of the EWC assets.

7. Since the shutdown of its revolving credit facility, EWC has been unable to locate additional financing. EWC has been operating based upon cash collections from its accounts receivable. Main Street, exercising its statutory and contractual rights, has issued notices to EWC's accounts receivable debtors to pay Main Street directly.

8. Left with little to no other options, EWC has been forced to enter into a wind-down of operations. The sole purpose of the continued operations during the budget period is two-fold: (i) disposal or treatment of the hazardous Chemicals, and clean-up of equipment on site at the EWC facility; and (ii) the sale of its operations or assets to a suitable purchaser.

Relief Requested

9. The Debtor seeks the entry of two Orders.

10. The first order (the "Bid Procedures Order")³ (a) authorizing and approving bid procedures (the "Bid Procedures") to be employed in connection with the proposed sale and transfer (the "Sale") of the assets (the "Purchased Assets") of the Debtor, (b) scheduling an

³ Attached hereto as **Exhibit 1**.

auction (the "Auction") and a hearing (the "Sale Hearing") to consider approval of the Sale, (c) authorizing and approving procedures (the "Assignment Procedures") to be employed in connection with the assumption and assignment of certain contracts (the "Assumed Contracts") and leases (the "Assumed Leases") of the Debtor, (d) approving the manner and form of notice of the auction with respect to the Sale, the Sale Hearing and the Assignment Procedures, substantially in the form attached to the Bid Procedures Order as Exhibit "2" (the "Sale Notice"), Exhibit "3" (the "Publication Notice") and Exhibit "4" (the "Assignment Notice") and (e) granting related relief. The Debtor requests a hearing on the Sale and Procedures Order on a special setting as a first day order and intends to move separately for such a hearing.

11. The second order (the "Sale Order")⁴ (a) authorizing the sale of the Purchased Assets to the highest and best bidder, free and clear of liens, claims and interests, with liens, claims and interests attaching to the proceeds, by and through the Purchase and Sale Agreement, substantially in the form attached to the Bid Procedures Order as Exhibit "1" (the "Purchase Agreement"), (b) approving the Purchase Agreement of the (i) the highest and best bidder and (ii) the second highest and best bidder; (c) determining that the Successful Bidder and Backup Bidder are good faith purchasers pursuant to 11 U.S.C. § 363(m); (d) approving the Assumption and Assignment of the Contracts and Leases; (e) abrogating the fourteen (14) day stay imposed by FED. R. BANKR. P. 6004(h); and (f) other related relief. The Debtor requests hearing on the Sale Consummation Order ("Sale Hearing") to occur within twenty-one days following the entry of the Sale and Procedures Order.

I. The Sale Free and Clear

A. Approval of Sale under § 363(b)(1)

⁴ Attached hereto as **Exhibit 2**.

12. This Motion contemplates that a Purchaser will buy the Purchased Assets through the relevant Purchase Agreement (attached to the Bid Procedures Order as Exhibit “1”). A summary of the terms of the proposed sale are as follows:⁵

- **Purchased Assets to be Purchased.** Some or all assets which were used in the Debtors business.
- **Excluded Purchased Assets.** None.
- **Purchase Price.** The amount bid by the Successful Bidder.
- **Break-Up Fee.** None.
- **Closing.** The sale of the Purchased Assets shall be closed within five (5) days from the entry of the Sale Order.

13. This purchase will be accomplished pursuant to 11 U.S.C. § 363, which provides that the Debtor, “after notice and a hearing, may [...] sell [...], other than in the ordinary course of business, property of the estate.”⁶

14. The Court should approve the sale of the Purchased Assets to Purchaser if it finds that the Debtor demonstrates a sound business reason for the sale and the parties acted in good faith to sell the Purchased Assets at a fair and reasonable price.⁷ Section 105(a) provides in

⁵ This section is intended as a summary. For a full recitation of all terms and conditions, parties should consult the Purchase and Sale Agreement and the Bid Procedures. In the event of any conflict between the terms of the Purchase and Sale Agreement and any Order of this Court, the Order shall control.

⁶ 11 U.S.C. § 363(b)(1). *See Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (“bankruptcy court can authorize a sale of all a Chapter 11 debtor’s assets under [Section] 363(b)(1) when a sound business purpose dictates such action.”); *In re Gucci*, 126 F. 3d 380, 387 (2d Cir. 1997) (“A sale of a substantial part of a Chapter 11 estate may be conducted if a good business reason exists to support it.”); *In re Lionel Corp.*, 722 F. 2d 1063, 1071 (2d Cir. 1983); *In re Chateaugay Corp.*, 973 F. 2d 141, 143 (2d Cir. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”).

⁷ *See In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983) (holding that the proper standard to use when considering a proposed motion to sell is the business judgment test). *See also In re 240 N. Brand Partners*, 200 B.R. 653, 659 (9th Cir. B.A.P. 1996) (citing to *Lionel* for proposition that “debtors who wish to utilize section 363(b) to dispose of property of the estate must demonstrate that such disposition has a valid business justification.”).

relevant part that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”⁸

15. Courts typically consider the following four factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale, (b) whether adequate and reasonable notice of the sale was given to interested parties, (c) whether the sale will produce a fair and reasonable price for the property and (d) whether the parties have acted in good faith.⁹

16. Once a debtor articulates a valid business reason for a sale, the business judgment rule acts as a presumption that the debtor has acted on an informed basis, in good faith, and in the honest belief that the sale is in the best interests of the estate.¹⁰

17. The Debtors’ decision to sell the Purchased Assets to Purchaser is based on its sound business judgment. The Debtor seeks to liquidate the Estate so that it may justly and equitably compensate creditors. The sale of the Purchased Assets will generate value for the Estate, and their sale will help expedite payment to the holders of allowed claims.

18. Here, each of the preceding four factors has been satisfied. The Debtor currently has inadequate liquidity to continue operating. In fact, the Debtor is not operating. The rapid, but orderly sale of the Purchased Assets will monetize the Purchased Assets for the benefit of the Debtor’s creditors. As discussed above, the Debtor will be providing adequate and reasonable notice to interested parties of the opportunity to bid on the Purchased Assets and of the

⁸ 11 U.S.C. § 105(a).

⁹ See, e.g., *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

¹⁰ See *In re Gulf States Steel Inc. of Ala.*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002) (“The Trustee is responsible for the administration of the estate and his or her judgment on the sale and the procedure for the sale is entitled to respect and deference from the Court, so long as the burden of giving sound business reasons is met.”).

opportunity to object to the sale of those assets.¹¹ The procedure proposed herein will provide for an open and competitive bidding process for the Purchased Assets. The Debtor is proceeding in good faith and will make a showing at the Sale Hearing that the purchaser of the Purchased Assets has acted in good faith. Courts generally conclude that parties have acted in good faith with respect to a proposed sale if the purchase price is adequate and reasonable and the terms of the sale are disclosed fully.¹²

19. As previously discussed, the Purchase Price is fair and reasonable consideration for the sale of the Purchased Assets and represents the product of an open market bidding procedure and auction. The Auction and sale of the Purchased Assets pursuant to the Bid Procedures proposed herein should therefore be approved.

B. Approval of the Sale Under § 363(f)

20. Pursuant to this motion, the Debtor also requests authorization to sell the Purchased Assets free and clear of any liens, claims, encumbrances, or other interests that may be asserted against the Purchased Assets. Section 363(f) provides for the sale of property of the estate by the debtor “free and clear of any interest in such property of any entity other than the estate.”¹³ Such “free and clear” provision permits a sale free and clear of interests beyond liens and permits a sale free and clear of claims,¹⁴ contractual rights,¹⁵ and statutory interests.¹⁶

¹¹ See, e.g., *Folger Adam Security Inc. v. DeMatteis/MacGregor*, 209 F. 3d 252, 265 (3d Cir. 2000) (stating that notice is sufficient if it includes “the time and place of any public sale, the terms and conditions of any private sale, states the time for filing objections and, if real estate is being sold, provides a general description of the property”); *In re WBQ P’ship*, 189 B.R. 97, 103 (Bankr. E.D. Va. 1995) (“notice is sufficient if it includes the terms and conditions of the sale, if it states the time for filing objections, and if the estate is selling real estate, it generally describes the property”) (quoting *In re Karpe*, 84 B.R. 926, 929 (Bankr. M.D. Pa. 1988)).

¹² See, e.g., *In re Abbotts Dairies of Pa., Inc.*, 788 F. 2d 143, 149-50 (3d Cir. 1986).

¹³ 11 U.S.C. § 363(f).

¹⁴ *In re Trans World Airlines, Inc.*, 322 F.3d 283 (3d. Cir. 2003)

21. Section 363(f) permits a debtor to sell “free and clear” of an interest if any one of the following conditions is satisfied:

- 1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- 2) the lienholder or claimholder consents;
- 3) such interest is a lien, and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- 4) such interest is in bona fide dispute; or
- 5) the lienholder or claimholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.¹⁷

In addition, a court may authorize the sale of a debtor’s assets free and clear of any liens, claims, or encumbrances under Section 105 of the Bankruptcy Code.¹⁸

46. While Section 363(f) permits the sale of assets “free and clear of any interests,” the term “any interest,” as used in section 363(f), is not defined anywhere in the Bankruptcy Code.¹⁹ In *Folger Adam*, the Third Circuit specifically addressed the scope of the term “any interest.”²⁰ The Third Circuit observed that while some courts have “narrowly interpreted that phrase to mean only *in rem* interests in property,” the trend in modern cases is towards “a broader interpretation which includes other obligations that may flow from ownership of the

¹⁵ See *Unsecured Creditors' Comm. of Robert L. Helms Constr. & Development v. Southmark Corp.*, 139 F.3d 702 (9th Cir. 1998)

¹⁶ See *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 543-548 (7th Cir. 2003)).

¹⁷ 11 U.S.C. § 363(f).

¹⁸ See *In re White Motor Credit Corp.*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

¹⁹ *Folger Adam Security v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000).

²⁰ *Id.* at 258.

property.”²¹ As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited approvingly and extensively by the Third Circuit in *Folger Adam*, the scope of 11 U.S.C. § 363(f) is not limited to *in rem* interests. Thus, the Third Circuit in *Folger Adam* stated that *Leckie* held that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.”²² Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the Estate’s sale of the Purchased Assets free and clear of all interests and claims, except with respect to any interests and claims that may be assumed liabilities under the applicable sale agreement.²³

22. According the information in the possession of undersigned counsel, the Liens, Claims and Interests against and/or in which the Purchased Assets which are known to the Debtor as of the filing of this motion are listed on **Exhibit 3**. Undersigned counsel will supplement this Motion if additional Liens, Claims and Interests are discovered.

23. The Debtor requests that the Court approve any sale of the Purchased Assets as free and clear on any liens, claims and interests whether now known, with any such liens, claims and interests attaching instead to the proceeds of any such sale. Moreover, the Debtor proposes to hold any proceeds realized from a Court-approved sale until such time as further proceedings are had to determine the validity, priority and extent of such liens, claims and interests are determined.

²¹ *Id.* at 258 (citing 3 COLLIER ON BANKRUPTCY 363.06[1]).

²² *Folger Adam*, 209 F.3d at 258.

²³ See *Citicorp Homeowners Services, Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

III. Approval of Bid Procedures

24. The Debtor requests that this Court approve the attached Bid Procedures (set forth in the proposed order attached as Exhibit 1) for the implementation of the sale process. The Bid Procedures provide a (a) structured marketing and overbid qualification process, (b) overbid and auction methodology and (c) bid selection and closing framework. The Bid Procedures may be summarized as follows:

- a. **Due Diligence.** The Bid Procedures establish a procedure for parties interested in the Purchased Assets to gain access to due diligence materials needed to review prior to making an “as is, where is” offer.
- b. **Qualified Bidders.** In order to qualify as a bidder for the Purchased Assets, the Bid Procedures require that interested parties (a) an executed confidentiality agreement, (b) provide a 10% deposit that remains non-refundable through the closing of the sale if they are selected as the Successful or Back-up Bidder, and (c) an executed asset purchase agreement on substantially the terms of, or on more favorable terms than those set forth in, the form of Asset Purchase Agreement attached to the Bid Procedures Order as Exhibit “1”, which asset purchase agreement shall (a) specify the amount of cash or other form of consideration acceptable to the Debtor (in consultation with the Consultation Party), offered by the bidder for the Purchased Assets, (b) constitute an irrevocable offer by such the bidder to complete its proposed purchase upon the terms set forth therein, and must be irrevocable until closing of the Sale of the Purchased Assets to the Successful Bidder, (c) include a copy of a board resolution or similar document demonstrating the authority of the bidder to submit an offer to purchase the Purchased Assets on the terms proposed by such the bidder and identifies the officer(s) or authorized agent(s) appearing on behalf of the bidder, and (d) be accompanied by a marked-up version of such asset purchase agreement reflecting changes from the Agreement (e) acknowledge that it will not be entitled to a break-up fee, termination fee, expenses, or substantial contribution claim of any type.
- c. **Credit Bidding.** The Bid Procedures do not prohibit credit bidding.
- d. **Bids.** Qualified Bidders are required to submit a bid of at least the Minimum Bid by no later than 4:20 p.m., _____, 2017, via email to Mr. P. Douglas Stewart, Jr., dstewart@stewartrobbins.com to be eligible to participate in the auction of the Purchased Assets. The bid must be made using the Debtor’s Purchase Agreement, which allow for the bidder’s name and amount of offer, and be accompanied by acknowledgments that (a) that it will not be entitled to a break-up fee, termination fee, expenses, or substantial contribution claim of any

type and (b) that the bid is not conditioned upon financing or internal approval of any type.

- e. **No Bids/One Qualified Bid.** In the event the Debtor does not receive one or more Qualified Bids, the Debtor shall, in its sole and absolute discretion, either (i) extend the Bid Deadline for thirty (30) days, or (ii) not conduct an Auction and modify the Order granting relief from the automatic stay to the Administrative Agent to allow such agent to immediately foreclose on the Purchased Assets. In the event the Debtor receives only one Qualified Bid, the Debtor shall (i) cancel the Auction, (ii) announce such Qualified Bid as the Successful Bidder (as defined below), (iii) request at the Sale Hearing that the Bankruptcy Court approve the Sale of the Purchased Assets to the Successful Bidder, and (iv) request that the Sale Order be immediately effective upon entry.
- f. **The Auction.** The Bid Procedures establish an auction process, should there be more than one Qualified Bidder. The auction will occur at the offices of Stewart Robbins & Brown LLC, 620 Florida Street; Suite 100, Baton Rouge, LA 70801 on the day of the Sale Hearing. After announcing the current high bid, the Debtor will preside over an auction using \$100,000.00 bidding increments, ultimately leading to the selection of a Successful Bidder and Back-up Bidder.
- g. **Break-up Fee.** None.
- h. **Court Approval of Successful and Back-up Bidders.** Immediately after the auction in open court, the Debtor will present the bids he considers the Successful and Back-up Bids to the court for approval.
- i. **Failure to Consummate Purchase.** Should the Successful Bidder fail to consummate the sale within five (5) days of the issuance of the Sale Consummation Order, the Debtor will call upon the Back-up Bidder to close the sale and the Successful Bidder shall forfeit its Deposit. Should the Back-up Bidder fail to close the sale, the Back-up Bidder will likewise forfeit its deposit.

25. “When conducting an asset sale, the ultimate responsibility of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold.”²⁴ In furtherance of that goal, bidding procedures, such as those proposed here, may be used in court-

²⁴ John J. Jerome & Robert D. Drain, *Bankruptcy Court is Newest Arena for M&A Action*, N.Y.L.J., June 3, 1991.

supervised asset sales because they streamline the acquisition process, “help to provide an adequate basis by which to compare offers” and ultimately, maximize value.²⁵

26. The Bid Procedures are reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably anticipated values.

27. The Debtor believes that the Bidding Procedures are appropriate under 11 U.S.C. §§ 105 and 363 to ensure that the bidding process is fair and reasonable and will yield the maximum value for the estate and its creditors. The Bidding Procedures proposed herein are designed to maximize the value received for the Purchased Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids.

28. The Bidding Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. Thus, the Debtor and all parties in interest can be assured that the consideration for the Purchased Assets will be fair and reasonable. At the same time, the Bidding Procedures provide the Debtor with the opportunity to consider all competing offers and to select, in his reasonable business judgment the highest and best offer for the Purchased Assets.

29. The Debtor submits that the Bidding Procedures proposed herein are fair and appropriate under the circumstances, consistent with the procedures routinely approved by courts in this state and in the best interest of the Estate. The Debtor believes that it is imperative that he promptly move forward in hope that higher and better offers are generated for the Purchased Assets. Accordingly, the Bidding Procedures were developed consistent with the Estate’s need to expedite the sale process, but with the objective of promoting further active bidding that will

²⁵ See *id.* See also *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets.”).

result in the highest or better offer for the Purchased Assets. The Bidding Procedures are designed to facilitate the orderly, yet competing, bidding to maximize the net value realized from the sale by the Estate. In particular, the Bidding Procedures contemplate an auction process with minimum (but appropriate) barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

30. At the same time, the bidding procedures provide the Debtor with an adequate opportunity to consider competing bids and select the highest and best offer for the completion of the sale. Entering into the Purchase and Sale Agreement with Purchaser ensures the Estate obtains fair market value by setting a minimum purchase price that will be tested in the marketplace. As such, the Debtor's creditors can be assured that, taking into account the financial condition of the Debtor and the economy, the consideration obtained will be fair and reasonable and at or above market.

IV. Assumption and Assignment

27. By this motion, the Debtor requests the assumption of the Contracts and Leases pursuant to 11 U.S.C. § 365 and FED. R. BANKR. P. 6006 and 9014, and the assignment to the Successful Bidder in association with the purchase of the Purchased Assets. In association therewith, the Debtor seeks approval of the Assignment Procedures, which will govern the determination any cure payments and objections. The Assignment Procedures are set forth in that proposed order attached hereto as Exhibit 1.

28. Pursuant to Section 365 of the Bankruptcy Code, the Debtor can assume or reject any unexpired lease or executory contract. But if there has been a default, the Debtor can only assume: after curing any default or providing adequate assurances of promptly curing any

default; and (ii) providing adequate assurances of future performance. 11 U.S.C. §§ 365(a), 365(b) and 365(b)(C). The Debtor's decision to assume or reject agreements under § 365 is governed by the business judgment test. *Richmond Leasing Company v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985).

29. The business judgment standard mandates that a court approve a debtor's business decision unless the decision is the product of bad faith, whim or caprice with approval withheld if the "judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." See *Lubrizol Enters. v. Richmond Metal Finishes*, 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986); *Allied Technology, Inc. v. R.B. Brueman & Sons*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982).

30. The Debtors submit that the assumption and assignment of the Contracts and Leases is in the best interests of the estate. The Contracts and Leases were all utilized in the Debtor's conduct of business. The assumption and assignment to the Successful Bidder will help maximize the value of the Purchased Assets.

V. Procedure Where There Exists no Qualified Bidder

31. Should no party wish to bid on the Assets, or no potential purchaser qualify as a bidder, the Auction shall be cancelled, the § 362 automatic stay shall be modified to allow the immediate foreclosure by Main Street and Main Street shall credit the Debtor in an amount equal to the greater of one and a half times the highest offer made on the Assets by a non-qualifying buyer or two million dollars.

VI. Relief from Bankruptcy Rule 6004(h) is Appropriate

32. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, lease of property... is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h).

33. All creditors and interested parties will receive notice of the sale or a competing transaction and will be provided with an opportunity to be heard. The Debtor submits that such notice is adequate for entry of an order approving this motion and waiving the fourteen (14) days waiting period under Bankruptcy Rule 6004(h).

VII. Purchaser Acted in Good Faith

34. A condition to the consummation of the purchase of the Purchased Assets is that the Court find that the ultimate purchaser has acted in “good faith” within the meaning of 11 U.S.C. § 363(m). Section 363(m) provides that “[t]he reversal or modification on appeal of an authorization under [section 363(b) or (c)] of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith.”²⁶

35. The good-faith requirement in § 363(m) is not specifically defined. Many courts turn to “traditional equitable principles and [hold] that the phrase encompasses one who purchases in good faith and for value.”²⁷ “Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the debtor, or an attempt to take grossly unfair advantage of other

²⁶ 11 U.S.C. § 363(m).

²⁷ *Hytken v. Williams*, 2007 U.S. Dist. LEXIS 27671, *14 (S.D. Tex. Mar. 30, 2007) (quoting *In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997), *aff’d*, 2008 U.S. App. LEXIS 12240 (5th Cir. June 6, 2008) (per curiam)).

bidders.”²⁸ “The requirement that a purchaser act in good faith, of course, speaks to the integrity of his conduct in the course of the sale proceedings.”²⁹ The good-faith requirement prohibits “fraudulent, collusive actions specifically intended to affect the sale price or control the outcome of the sale.”³⁰

36. A bankruptcy court is not required to make an explicit finding of good faith in order to authorize a sale under the Bankruptcy Code.³¹ Although the Bankruptcy Code does not define “good faith purchaser,” courts interpreting Section 363(m) of the Bankruptcy Code have held that “to show lack of good faith [a party] must show fraud, collusion... or an attempt to take grossly unfair advantage of other bidders.”³² Yet, because there is no bright line test, courts examine the facts of each case by concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.”³³

37. Under these standards – and by any other – the Successful Bidder has acted in good faith. The Purchase and Sale Agreement, and the sale of the Purchased Assets pursuant

²⁸ *Hytken*, 2007 U.S. Dist. LEXIS 27671 at **14-15 (quoting *Dick's Clothing & Sporting Goods, Inc. v. Phar-Mor, Inc.*, 212 B.R. 283, 290 (N.D. Ohio 1997) (quoting *In re Rock Indus. Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978))).

²⁹ *Id.* at *15 (quoting *Rock Indus.*, 572 F.2d at 1198).

³⁰ *Id.* (quoting *In re Made in Detroit, Inc.*, 414 F.3d 576, 581 (6th Cir. 2005)).

³¹ See *In re Zinke*, 97 B.R. 155, 156 (E.D.N.Y. 1989) (finding that a duty to make an explicit finding of good faith before permitting a sale “has not been imposed by the Second Circuit or the United States Supreme Court”).

³² *In re Coated Sales, Inc.*, No. 89 Civ. 37-4 (KMW), 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990). See also *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Asocs., Ltd.*, 706 F. 2d 301, 305 (10th Cir. 1983)).

³³ *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus.*, 572 F.2d at 1198). See also *In re Abbotts Dairies of Pa., Inc.*, 788 F. 2d 143, 147 (3d Cir. 1986) (“The requirement that a purchaser act in good faith...speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”) (citations omitted).

thereto, is the product of an open market sale. The consideration to be received by the Estate is substantial, fair and reasonable. Debtor will supplement this with any additional relevant facts following the Sale Consummation Hearing, additional facts will be shown. At such time, this Court should find that the Successful Bidder should be considered a “good faith purchaser” within the meaning of § 363(m) with respect to the Purchase and Sale Agreement and the sale of the Purchased Assets.

VIII. Notice

38. The Debtor intends to notice a full copy of this motion and exhibits on the (a) United States Trustee, (b) all potential holders of liens and interests against property of the Estate which the Debtor is aware according to a review of current available information records, (c) all creditors that have filed a proof of claim, and (d) all parties that have requested notice in this case.

39. In addition, Debtor proposes to provide the following:

a. The Sale Notice is reasonably calculated to provide parties in interest with proper notice of the potential sale of the Purchased Assets, the related Bid Procedures, the Sale Hearing, the structure of the Sale and related implication on interested parties, including, without limitation, creditors, customers, suppliers and employees.

b. The Assignment Notice is reasonably calculated to provide all counterparties to the Assumed Contracts and Assumed Leases with proper notice of the potential assumption and assignment of their executory contracts or unexpired leases and Cure Payment Liabilities (as defined below) relating thereto and the Assignment Procedures.

c. Publication of the Publication Notice is reasonably calculated to provide all potential claimants and all unknown creditors and parties not otherwise required to be served

with a copy of the Sale Notice pursuant to this Order with proper notice of the potential sale of the Purchased Assets, the related Bid Procedures, the Auction and the Sale Hearing.

WHEREFORE, the Debtor requests the entry of two Orders:

The first order (the “Bid Procedures Order”)³⁴ (a) authorizing and approving bid procedures (the “Bid Procedures”) to be employed in connection with the proposed sale and transfer (the “Sale”) of the assets (the “Purchased Assets”) of the Debtor, (b) scheduling an auction (the “Auction”) and a hearing (the “Sale Hearing”) to consider approval of the Sale, (c) authorizing and approving procedures (the “Assignment Procedures”) to be employed in connection with the assumption and assignment of certain contracts (the “Assumed Contracts”) and leases (the “Assumed Leases”) of the Debtor, (d) approving the manner and form of notice of the auction with respect to the Sale, the Sale Hearing and the Assignment Procedures, substantially in the form attached to the Bid Procedures Order as Exhibit “2” (the “Sale Notice”), Exhibit “3” (the “Publication Notice”) and Exhibit “4” (the “Assignment Notice”) and (e) granting related relief. The Debtor requests a hearing on the Sale and Procedures Order on a special setting as a first day order and intends to move separately for such a hearing.

The second order (the “Sale Order”)³⁵ (a) authorizing the sale of the Purchased Assets to the highest and best bidder, free and clear of liens, claims and interests, with liens, claims and interests attaching to the proceeds, by and through the Purchase and Sale Agreement, substantially in the form attached to the Bid Procedures Order as Exhibit “1” (the “Purchase Agreement”), (b) approving the Purchase Agreement of the (i) the highest and best bidder and (ii) the second highest and best bidder; (c) determining that the Successful Bidder and Backup Bidder are good faith purchasers pursuant to 11 U.S.C. § 363(m); (d) approving the Assumption

³⁴ Attached hereto as **Exhibit 1**.

³⁵ Attached hereto as **Exhibit 2**.

and Assignment of the Contracts and Leases; (e) abrogating the fourteen (14) day stay imposed by FED. R. BANKR. P. 6004(h); and (f) other related relief. The Debtor requests hearing on the Sale Consummation Order (“Sale Hearing”) to occur within twenty-one days following the entry of the Sale and Procedures Order.

Respectfully Submitted,

STEWART ROBBINS & BROWN LLC
P. O. Box 2348
620 Florida Street; Suite 100 (70801)
Baton Rouge, LA 70821-2348
(225) 231-9998 Telephone
(225) 709-9467 Fax

By: /s/ Paul Douglas Stewart, Jr.
Paul Douglas Stewart, Jr. (La. #24661)
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Attorneys for East West Copolymer, LLC

UNITED STATES BANKRUPTCY COURT FOR MIDDLE DISTRICT OF LOUISIANA

In re) Chapter 11
East West Copolymer, LLC,) Case No.
Debtor.)

ORDER (A) AUTHORIZING AND APPROVING BID PROCEDURES TO BE EMPLOYED IN CONNECTION WITH THE PROPOSED SALE OF THE DEBTOR'S ASSETS, (B) SCHEDULING AN AUCTION AND SALE HEARING, (C) AUTHORIZING AND APPROVING ASSIGNMENT PROCEDURES, (D) APPROVING THE MANNER AND FORM OF NOTICE OF THE AUCTION AND ASSIGNMENT PROCEDURES AND (E) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of East West Copolymer, LLC (the "Debtor"), the debtor and debtor in possession in the above-captioned case (the "Case"), for entry of an Order, pursuant to sections 105, 363 and 365 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), and Rules 2002, 6004 and 9008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (a) authorizing and approving bid procedures (the "Bid Procedures") to be employed in connection with the proposed sale and transfer (the "Sale") of the assets (the "Purchased Assets") of the Debtor, (b) scheduling an auction (the "Auction") and a hearing (the "Sale Hearing") to consider approval of the Sale, (c) authorizing and approving procedures (the "Assignment Procedures") to be employed in connection with the assumption and assignment of certain contracts (the "Assumed Contracts") and leases (the "Assumed Leases") of the Debtor, (d) approving the manner and form of notice of the auction with respect to the Sale (the "Auction"), the Sale Hearing and the Assignment Procedures, substantially in the form attached to this Bid Procedures Order as Exhibit "2" (the "Sale Notice"), Exhibit "3" (the "Publication Notice") and Exhibit "4" (the "Assignment Notice")



and (e) granting related relief, all as more fully set forth in the Motion; and no previous motion for similar relief having been made; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion as set forth therein is sufficient under the circumstances and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. All objections to the Motion and/or the entry of the Bid Procedures Order not otherwise withdrawn are overruled.

3. The following Bid Procedures shall govern the bidding and the Auction with respect to the Sale of the Purchased Assets:

- a. Qualified Bids. Each bidder shall, on or before _____, 2017 (the "Bid Deadline"), deliver to the Debtor a bid, which bid shall only be considered a qualified bid (a "Qualified Bid") if the bidder (a "Qualified Bidder") complies with, and such Qualified Bid contains, in the discretion of the Debtor, in consultation with Main Street Capital Corporation, as administrative agent and collateral agent (the "Consultation Party") all of the following:
- i. An executed confidentiality agreement in a form reasonably satisfactory to the Debtor, which shall include appropriate and customary protections associated with confidential and proprietary information and inure to the benefit of the Successful Bidder (as defined below) (the "Confidentiality Agreement");
 - ii. A cash deposit of 10% of the purchase price (the "Deposit"), which will be retained by the Debtor as a refundable deposit for application against the purchase price at the closing of the transaction, or returned to the bidder within five (5) business days following conclusion of the Auction, unless the bidder is the Successful Bidder or the Back-Up Bidder whose Deposits shall be held as set forth below;

- iii. An executed asset purchase agreement on substantially the terms of, or on more favorable terms than those set forth in, the form of Asset Purchase Agreement attached hereto as Exhibit "1" (the "Agreement"), which asset purchase agreement shall (a) specify the amount of cash or other form of consideration acceptable to the Debtor (in consultation with the Consultation Party), offered by the bidder for the Purchased Assets, (b) constitute an irrevocable offer by such the bidder to complete its proposed purchase upon the terms set forth therein, and must be irrevocable until closing of the Sale of the Purchased Assets to the Successful Bidder, (c) include a copy of a board resolution or similar document demonstrating the authority of the bidder to submit an offer to purchase the Purchased Assets on the terms proposed by such the bidder and identifies the officer(s) or authorized agent(s) appearing on behalf of the bidder, and (d) be accompanied by a marked-up version of such asset purchase agreement reflecting changes from the Agreement;
- iv. A disclaimer of any right of the bidder to receive a fee analogous to a break-up fee or to compensation under Section 503(b) of the Bankruptcy Code for making a substantial contribution; and
- v. Such other information reasonably requested by the Debtor, in consultation with the Consultation Party.

Nothing in the Bid Procedures shall prevent the Debtor, in the exercise of its business judgment and in consultation with the Consultation Party, from considering bids for the purchase of less than substantially all of the Debtor's assets. The Debtor shall provide copies of all bids received by the Bid Deadline to the Consultation Party promptly upon receipt.

- b. Qualified Bidders. The Debtor shall determine, in consultation with the Consultation Party, whether a bid qualifies as a Qualified Bid. Only those persons who have submitted a Qualified Bid in compliance with this Bid Procedures Order shall be a "Qualified Bidder." If a bid submitted on or before the Bid Deadline fails to meet all the requirements of a Qualified Bid, the Debtor is entitled to work with such bidder in an effort to cure any defects in the bid and to cause such bid to become a Qualified Bid, in consultation with the Consultation Party, prior to the commencement of the Auction.
- c. Due Diligence. Upon execution of the Confidentiality Agreement, any bidder that wishes to conduct due diligence on the Debtor or its assets shall be granted access to all material information that has been or will be provided to other bidders, subject, in all cases, to the terms and conditions of the Confidentiality Agreement, applicable law or other restrictions the Debtor may deem necessary or appropriate to protect the proprietary of the

information of the Debtor. The due diligence period for bidders will end one business day prior to the Bid Deadline. The Debtor shall coordinate all reasonable requests for additional information and due diligence access from potential bidders. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline. The Purchased Assets shall be sold on an "as is, where is" basis and by submitting a bid, each potential bidder acknowledges such. The due diligence period for bidders may be extended by the Debtor, in consultation with the Consultation Party.

- d. No Bids/One Qualified Bid. In the event the Debtor does not receive one or more Qualified Bids, the Debtor shall, in its sole and absolute discretion, either (i) extend the Bid Deadline for thirty (30) days, or (ii) not conduct an Auction and modify the Order granting relief from the automatic stay to the Administrative Agent to allow such agent to immediately foreclose on the Purchased Assets. In the event the Debtor receives only one Qualified Bid, the Debtor shall (i) cancel the Auction, (ii) announce such Qualified Bid as the Successful Bidder (as defined below), (iii) request at the Sale Hearing that the Bankruptcy Court approve the Sale of the Purchased Assets to the Successful Bidder, and (iv) request that the Sale Order be immediately effective upon entry.
- e. The Auction. In the event the Debtor receives more than one Qualified Bid, an Auction shall commence at ___:___ .m. (prevailing Central Time) on _____, 2017. Each Qualified Bidder shall be invited to attend the Auction at the office of Debtor's counsel, Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801, which Auction must be attended in person. The Consultation Party and their advisors shall be able to attend the Auction in person. The Purchased Assets shall be sold free and clear of all liens, claims and encumbrances to the fullest extent allowed under section 363(f) of the Bankruptcy Code. The following rules shall govern the Auction:
 - i. Subject to the limitations set forth in these Bid Procedures, the opening price at such Auction shall be the highest and/or best offer of a Qualified Bidder selected, in consultation with the Consultation Party, and announced by the Debtor;
 - ii. Only Qualified Bidders may attend and bid at the Auction. If multiple Qualified Bids are received, each Qualified Bidder shall have the right to continue to improve its Qualified Bid at the Auction;
 - iii. Each subsequent overbid must provide an incremental amount of at least \$100,000.00 of value to the Debtor, or such other amount as designated by the Debtor from time to time, in consultation with the Consultation Party;

- iv. Each bidder will be permitted a fair, but limited, amount of time to respond to the previous bid at the Auction;
 - v. The Auction shall be conducted openly and each bidder will be informed of the terms of the previous bid determined by the Debtor, in consultation with the Consultation Party, to have been the highest and otherwise best bid;
 - vi. At the conclusion of the Auction and subject to Court approval following the Auction, the Debtor, in consultation with the Consultation Party, shall announce the highest or otherwise best bid for the Purchased Assets (the “**Successful Bidder**”) and the backup bidder (the “**Backup Bidder**”);
 - vii. The Auction may be adjourned by the Debtor, in consultation with the Consultation Party, from time to time without further notice other than an announcement of such adjournment by the Debtor at the Auction; and
 - viii. The bidding at the Auction shall be transcribed.
- f. Successful Bidder. The Debtor, in consultation with the Consultation Party, may base the selection of the Successful Bidder and Backup Bidder on the following factors, among others: purchase price; liabilities assumed in the bid; the markup of the Agreement submitted with the bid; and various forms of consideration that may be included in such bid. The Debtor may, in consultation with the Consultation Party, (a) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures or the terms and conditions of sale, or (iii) contrary to the best interests of Sellers, their estates and creditors, and/or (b) refuse to consider any bid that fails to comply with the Bid Procedures. After the determination of the Successful Bidder, the Debtor shall promptly execute the asset purchase agreement previously executed and submitted by such Successful Bidder, together with any changes thereto necessitated by the parties’ actions at the Auction.
- g. Backup Bidder. If the Successful Bidder fails to consummate the sale, breaches the asset purchase agreement executed by the Successful Bidder or otherwise fails to perform, (a) the Debtor, in consultation with the Consultation Party, may consummate the proposed sale with the next highest or best bidder at the Auction (i.e., the Backup Bidder), which hereafter shall be included in the definition of “Successful Bidder,” without the need for further Court approval, (b) the Debtor, in consultation with the Consultation Party, will retain the Deposit of such bidder, and (c) the Debtor will maintain the right to pursue all available remedies against such bidder.

- h. Deposits. All Deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or Backup Bidder no later than five (5) business days following the conclusion of the Auction. The Deposit of the Backup Bidder shall be returned to the Backup Bidder no later than 72 hours after the closing of the transaction. If the Successful Bidder timely closes the transaction, its Deposit shall be credited towards the Purchase Price. If the Successful Bidder fails to timely close the transaction, and the Purchased Assets are sold to the Backup Bidder, such Backup Bidder's Deposit shall be credited towards the Purchase Price.
- i. Reservation of Rights. The Debtor reserves the right, in consultation with the Consultation Party, to modify the Bid Procedures in any manner that will best promote the goals of the Sale.
- j. Fees and Expenses. All bidders submitting bids shall bear their own fees and expenses in connection with the bid, the bid process, the Auction and the proposed sale, whether or not such sale is ultimately approved, unless otherwise agreed to by the Debtor and approved by the Court, in consultation with the Consultation Party.

4. The Sale Hearing shall be held on _____, 2017 at __:__ .m. (prevailing Central Time), or as soon thereafter as counsel may be heard, before the Honorable Douglas D. Dodd, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Middle District of Louisiana, 707 Florida Street, Baton Rouge, LA 70801. At the Sale Hearing, the Debtor will seek entry of the Sale Order. The Sale Hearing may be adjourned from time to time without further notice other than an announcement by the Debtor in Court on the date scheduled for the Sale Hearing. Notwithstanding anything herein or in the Motion to the contrary, the Debtor may elect to seek to consummate all or part of the Sale in connection with and pursuant to a chapter 11 plan in this Case.

5. The form of Sale Notice and the form of Publication Notice are hereby approved. The Debtor shall (a) serve within two (2) business days (by first class mail, postage prepaid) after entry of this Bid Procedures Order (the "Mailing Deadline"), the Sale Notice upon the Service Parties, and (b) on the Mailing Deadline, or as soon as practicable thereafter, submit for publication the Publication Notice in the _____.

6. Notice as set forth in the preceding paragraph shall constitute good and sufficient notice of the Motion as it relates to the Debtor's request for approval of the Sale Order, the Auction and the Sale Hearing, and no other or further notice of the Motion, the Auction and/or the Sale Hearing shall be necessary or required.

7. Responses or objections, if any, to the entry of the Sale Order shall be filed with this Court and served, so as to be actually received no later than _____, 2017 at ____:____.m. (prevailing Eastern Time) (the "**Objection Deadline**") on: (i) the Debtor, c/o Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 (Attn: Paul Douglas Stewart, Jr., Esq.); (ii) counsel to the Successful Bidder; (iii) the Administrative Agent, c/o Cole Schotz P.C., 301 Commerce Street, Suite 1700, Fort Worth, TX 76102 (Attn: Michael Warner, Esq.); and (iv) the Office of the United States Trustee for the Middle District of Louisiana, Texaco Center, Suite 2110, 400 Poydras Street, New Orleans, LA. 70130 (Attn: Robert Gravolet, Esq.). If the Debtor seeks to consummate the Sale pursuant to confirmation of a chapter 11 plan after the Objection Deadline, no party in interest that failed to file a timely objection to entry of the Sale Order shall be permitted to object to confirmation of such Chapter 11 plan on any grounds that could have formed the basis for an objection to entry of the Sale Order.

8. The Debtor is authorized and empowered to take such steps, incur and pay such costs and expenses and do such things as may be reasonably necessary to fulfill the notice requirements established by this Bid Procedures Order.

9. The following Assignment Procedures shall govern the assumption and assignment of the Assumed Contracts and Assumed Leases in connection with the Sale of the Purchased Assets to the Successful Bidder:

- a. Not later than fourteen (14) days prior to the Sale Hearing (as may be adjourned from time to time), the Debtor shall file with the Court a list (the "**Cure Schedule**") identifying such contracts and leases which may constitute Assumed Contracts and Assumed Leases in connection with the Sale and the amounts necessary to cure defaults and/or provide compensation or adequate assurance of compensation for actual pecuniary loss resulting from a default at the time of assumption as determined by the Debtor (such amounts, "**Cure Payment Liability**"). The Debtor shall serve all counterparties to such contracts and leases with the Assignment Notice, specifically stating that the Debtor is or may be seeking the sale, assumption and assignment of such contracts and leases and notifying such parties of the deadline for objecting (a "**Cure/Assignment Objection**") to the amount of any Cure Payment Liability related thereto, which deadline shall be three (3) business days prior to the Sale Hearing (the "**Cure/Assignment Objection Deadline**"), so as to enable any such party to object to the proposed Cure Payment Liability and the Court to determine such Cure Payment Liability as promptly as is reasonably possible.
- b. In cases in which the Debtor is unable to establish that a default exists, the relevant Cure Payment Liability shall be set at \$0.00 in the Assignment Notice.
- c. Notwithstanding anything herein to the contrary, the Debtor may, from time to time, modify the Cure Schedule to add or remove a contract or lease counterparty or to modify the proposed Cure Payment Liability with respect to any counterparty. The non-debtor counterparty to any such contract or lease will be provided written notice of any such modification and at least fourteen (14) days advance notice of its deadline to object to such modification, and the Debtor will seek to set any such objection for hearing before the Court as promptly as is reasonably possible.

10. The form of notice of the Assignment Notice is hereby approved in all respects.

11. The notice provided in the Assignment Procedures of (a) the Assumed Contracts and Assumed Leases and the amounts necessary to cure defaults under each of such Assumed Contracts and Assumed Leases determined by the Debtor, and (b) the deadline for objecting to the proposed Cure Payment Liabilities, shall constitute adequate and sufficient notice and no additional notice need be provided.

12. To the extent this Bid Procedures Order is inconsistent with any prior order or pleading with respect to the Motion in this Case, the terms of this Bid Procedures Order shall govern.

13. Notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004(h), or otherwise, this Court, for good cause shown, orders that the terms and conditions of this Bid Procedures Order shall be immediately effective and enforceable upon its entry.

14. The Court shall retain exclusive jurisdiction over any matter or dispute arising from or relating to the implementation of this Bid Procedures Order.

EXHIBIT 1

(Purchase Agreement)

TO BE SUPPLEMENTED

EXHIBIT 2

(Sale Notice)

UNITED STATES BANKRUPTCY COURT FOR MIDDLE DISTRICT OF LOUISIANA

In re) Chapter 11
East West Copolymer, LLC,) Case No.
Debtor,)

NOTICE OF (I) PROPOSED SALE OF THE ASSETS OF EAST WEST COPOLYMER, LLC FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) BID PROCEDURES AND (III) AUCTION RELATED THERETO

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On , 2017, East West Copolymer, LLC, the debtor and debtor in possession (the "Debtor") filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Louisiana (the "Court"). On , 2017, the Debtor filed with the Court a motion [Docket No.] (the "Sale Motion") seeking, among other things: (a) authority to sell the assets of the Debtor free and clear of all liens, claims, interests and encumbrances (the "Sale"); (b) approval of certain procedures (the "Bid Procedures") for the solicitation of bids with respect to the Sale (the "Bid Procedures Relief"); (c) approval of certain procedures (the "Assignment Procedures") in connection with the identification and assumption of certain contracts and leases in connection with the Sale; and (d) scheduling an auction (the "Auction") and a final hearing with the Court for approval of the Sale (the "Sale Hearing").

2. The Debtor filed that certain form of Asset Purchase Agreement (including all exhibits, schedules and ancillary agreements related thereto, the "Agreement"), which contemplates the sale of the Sellers' assets (as described in Section of the Agreement, the "Purchased Assets"), subject to higher and better offers made pursuant to the Bid Procedures.

3. A hearing on the Bid Procedures was held before the Court on , 2017, and thereafter the Court entered an Order, among other things, approving the Bid Procedures Relief [Docket No.] (the "Bid Procedures Order"). The Bid Procedures Order establishes the Bid Procedures that govern the manner in which the Purchased Assets are to be sold. All bidders must comply with the Bid Procedures and (i) submit a letter of intent so as to be received not later than , 2017, and (ii) submit bids so as to be received not later than , 2017.

5. Pursuant to the Bid Procedures, each Qualified Bidder (as defined in the Bid Procedures) shall be invited to participate in the Auction at the office of Debtor's counsel, Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801, which

Auction must be attended in person and which shall commence at __: __.m. (prevailing Eastern Time) on _____, 2017.

6. The Sale Hearing currently is scheduled to be conducted on _____, 2017 at __: __.m. (prevailing Eastern Time) at the United States Bankruptcy Court for the Middle District of Louisiana, 707 Florida Street, Baton Rouge, LA 70801, before the Honorable Douglas D. Dodd, United States Bankruptcy Judge, to consider the approval the highest and best offer by a Qualified Bidder (the "**Successful Bidder**") and of the Agreement (as modified by the Successful Bidder) and seeking entry of an order approving the Sale substantially in the form of the Order attached to the Sale Motion as Exhibit "B" (the "**Sale Order**"). The Sale Hearing may be adjourned or rescheduled from time to time without further notice other than an announcement by the Debtor in the Court of such adjournment on the date scheduled for the Sale Hearing.

7. The Debtor shall have the right, in its sole discretion, to elect to seek to close all or part of the Sale through or in connection with a chapter 11 plan (a "**Plan Election**"). If a Plan Election is made, then, among other things, the hearing to confirm such chapter 11 plan (the "**Confirmation Hearing**") may be deemed the Sale Hearing and the order confirming such chapter 11 plan (the "**Confirmation Order**") may be deemed the Sale Order approving the Sale. As such, the Bid Procedures reserve the Debtor's rights to seek approval of the Sale in connection with and pursuant to a chapter 11 plan in this Case.

8. A copy of the Bid Procedures Order, the Agreement (attached to the Bid Procedures Order as Exhibit "1") and the Sale Motion (including the proposed Sale Order) may be obtained by sending a written request to counsel to the Debtor, Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 (Attn: Paul Douglas Stewart, Jr., Esq.).

9. OBJECTIONS TO ENTRY OF THE SALE ORDER (OTHER THAN THE PROPOSED ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES OR TO ANY PROPOSED CURE PAYMENT LIABILITY AMOUNTS IN CONNECTION THEREWITH), INCLUDING THE DEBTOR'S REQUEST TO APPROVE THE SALE OF THE PURCHASED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS TO PURCHASER (AS DEFINED IN THE AGREEMENT) OR ANOTHER SUCCESSFUL BIDDER (EACH, AN "**OBJECTION**"), MUST BE MADE IN WRITING, FILED AND SERVED SO AS TO BE ACTUALLY RECEIVED BY __: __.M. (PREVAILING EASTERN TIME) ON _____, 2017 (THE "**OBJECTION DEADLINE**").

10. ANY OBJECTION MUST BE SERVED IN ACCORDANCE WITH THE PRECEDING PARAGRAPH ON EACH OF THE FOLLOWING PARTIES: (i) the Debtor, c/o Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 (Attn: Paul Douglas Stewart, Jr., Esq.); (ii) counsel to the Successful Bidder; (iii) the Administrative Agent, c/o Cole Schotz P.C., 301 Commerce Street, Suite 1700, Fort Worth, TX 76102 (Attn: Michael Warner, Esq.); and (iv) the Office of the United States Trustee for the Middle District of Louisiana, Texaco Center, Suite 2110, 400 Poydras Street, New Orleans, LA. 70130 (Attn: _____, Esq.).

11. The Bid Procedures Order approves the Assignment Procedures, which set forth: (i) the manner in which the Debtor will (a) identify the Assumed Contracts and the Assumed Leases (each as defined in the Sale Motion), and (b) identify amounts the Debtor believes are necessary to cure defaults under each of such Assumed Contracts and Assumed Leases as determined by the Debtor; and (ii) procedures to be followed by any party that wishes to object to the proposed assumption and assignment of any Assumed Contract and Assumed Lease, or the cure amounts proposed by the Debtor in respect thereof. An additional notice setting forth the specific Assumed Contracts and Assumed Leases to be assumed by the Debtor and the proposed cure amounts for such contracts will be served upon all counterparties to the Assumed Contracts and Assumed Leases.

12. The failure of any person or entity to file an objection on or before the Objection Deadline shall be deemed a consent to the Sale of the Purchased Assets to the Successful Bidder and the other relief requested in the Sale Motion and be a bar to the assertion, at the Confirmation Hearing or thereafter, of any objection to the Bid Procedures, the Sale Motion, the Auction, the sale of the Purchased Assets, the Debtor's consummation and performance of the Agreement (or marked-up agreement) with the Successful Bidder (including in any such case, without limitation, the transfer of the Purchased Assets free and clear of all liens, claims, encumbrances and interests). If a Plan Election is made after the Objection Deadline, no party in interest that failed to file a timely objection to entry of the Sale Order shall be permitted to object to confirmation of the Plan on any grounds that could have formed the basis for an objection to entry of the Sale Order.

13. This Notice is subject to the full terms and conditions of the Sale Motion, the Bid Procedures Order and the Bid Procedures, which shall control in the event of any conflict. The Debtor encourages parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

Dated: _____, 2017

Stewart Robbins Brown, LLC
Paul Douglas Stewart, Jr., Esq.
620 Florida Street, Suite 100
Baton Rouge, LA 70801
Tel: (225) 231-9998
Facsimile: (225) 709-9467
dstewart@stewartrobbins.com

EXHIBIT 3

(Publication Notice)

UNITED STATES BANKRUPTCY COURT FOR MIDDLE DISTRICT OF LOUISIANA

In re) Chapter 11
East West Copolymer, LLC,) Case No.
Debtor.)

NOTICE OF (I) PROPOSED SALE OF THE ASSETS OF EAST WEST COPOLYMER, LLC FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) BID PROCEDURES AND (III) AUCTION RELATED THERETO

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on , 2017, East West Copolymer, LLC, the debtor and debtor in possession (the "Debtor") filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Louisiana (the "Court"). On , 2017, the Debtor filed with the Court a motion [Docket No.] (the "Sale Motion") seeking, among other things: (a) authority to sell the assets of the Debtor free and clear of all liens, claims, interests and encumbrances (the "Sale"); (b) approval of certain procedures (the "Bid Procedures") for the solicitation of bids with respect to the Sale (the "Bid Procedures Relief"); (c) approval of certain procedures (the "Assignment Procedures") in connection with the identification and assumption of certain contracts and leases in connection with the Sale; and (d) scheduling an auction (the "Auction") and a final hearing with the Court for approval of the Sale (the "Sale Hearing").

PLEASE TAKE FURTHER NOTICE that the Debtor filed that certain form of Asset Purchase Agreement (including all exhibits, schedules and ancillary agreements related thereto, the "Agreement"), which contemplates the sale of the Sellers' assets (as described in Section of the Agreement, the "Purchased Assets").

PLEASE TAKE FURTHER NOTICE a hearing on the Bid Procedures was held before the Court on , 2017, and thereafter the Court entered an order, among other things, approving the Bid Procedures Relief [Docket No.] (the "Bid Procedures Order"). The Bid Procedures Order establishes the Bid Procedures that govern the manner in which the Purchased Assets are to be sold.

PLEASE TAKE FURTHER NOTICE that all bidders must comply with the Bid Procedures and (i) submit a letter of intent so as to be received not later than , 2017 and (ii) submit a bid so as to be received not later than , 2017.

PLEASE TAKE FURTHER NOTICE that pursuant to the Bid Procedures, each Qualified Bidder (as defined in the Bid Procedures) shall be invited to participate in an auction (the "**Auction**") at the office of the Debtor's counsel, Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801, which Auction must be attended in person and which shall commence at __:__.m. (prevailing Eastern Time) on _____, 2017.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing (as defined in the Bid Procedures Order) currently is scheduled to be conducted on _____, 2017 at __:__.m. (prevailing Eastern Time) at the United States Bankruptcy Court for the Middle District of Louisiana, 707 Florida Street, Baton Rouge, LA 70801, before the Honorable Douglas D. Dodd, United States Bankruptcy Judge, to consider the approval the highest and best offer by a Qualified Bidder (the "**Successful Bidder**") and of the Agreement (as modified by the Successful Bidder) and seeking entry of an order approving the Sale substantially in the form of the order attached to the Sale Motion as Exhibit "B" (the "**Sale Order**"). The Sale Hearing may be adjourned or rescheduled from time to time without further notice other than an announcement by the Debtor in the Court of such adjournment on the date scheduled for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE THAT the Debtor shall have the right, in their sole discretion, to elect to seek to close all or part of the Sale through or in connection with a chapter 11 plan (a "**Plan Election**"). If a Plan Election is made, then, among other things, the hearing to confirm such chapter 11 plan (the "**Confirmation Hearing**") may be deemed the Sale Hearing and the order confirming such chapter 11 plan (the "**Confirmation Order**") may be deemed the Sale Order approving the Sale. As such, the Bid Procedures reserve the Debtor's rights to seek approval of the Sale in connection with and pursuant to a chapter 11 plan in this Case.

PLEASE TAKE FURTHER NOTICE that objections to entry of the Sale Order must be made in writing, filed with the Court and served in accordance with the terms and conditions established by the Bid Procedures Order so as to be actually received by __:__.m. (prevailing Eastern Time) on _____, 2017. If a Plan Election is made after the Objection Deadline, no party in interest that failed to file a timely objection to entry of the Sale Order shall be permitted to object to confirmation of the Plan on any grounds that could have formed the basis for an objection to entry of the Sale Order.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITHOUT FURTHER NOTICE TO YOU OR THE OPPORTUNITY TO OBJECT.

PLEASE TAKE FURTHER NOTICE that a copy of the Agreement, the Bid Procedures Order and the Sale Motion (including the proposed Sale Order) may be obtained by sending a written request to counsel to the Debtor, Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 (Attn: Paul Douglas Stewart, Jr., Esq.).

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the full terms and conditions of the Sale Motion, the Bid Procedures Order and the Bid Procedures, which shall

control in the event of any conflict. The Debtor encourages parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

Dated: _____, 2017

Stewart Robbins Brown, LLC
Paul Douglas Stewart, Jr., Esq.
620 Florida Street, Suite 100
Baton Rouge, LA 70801
Tel: (225) 231-9998
Facsimile: (225) 709-9467
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EXHIBIT 4

(Assignment Notice)

UNITED STATES BANKRUPTCY COURT FOR MIDDLE DISTRICT OF LOUISIANA

In re) Chapter 11
East West Copolymer, LLC,) Case No.
Debtor.)

NOTICE OF DEBTOR'S INTENT TO ASSUME AND ASSIGN CERTAIN CONTRACTS AND LEASES

PLEASE TAKE NOTICE THAT on , 2017, East West Copolymer, LLC, the debtor and debtor in possession (the "Debtor") filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Louisiana (the "Court"). The Debtor continues to operate its businesses and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE THAT on , 2017, the Debtor filed a motion [Docket No.] (the "Motion") with the Court seeking, among other things, approval of certain procedures (the "Assignment Procedures") applicable to the identification and assumption of certain contracts (the "Assumed Contracts") and leases (the "Assumed Leases"), and assignment thereof, in connection with the Sale¹ by which the Debtor intends to sell its assets.

PLEASE TAKE FURTHER NOTICE THAT on , 2017, the Court entered an order (the "Order") granting the Motion as set forth therein [Docket No.] and approving the procedures for the assumption and assignment of the Assumed Contracts and Assumed Leases. A copy of the Order is attached hereto as Exhibit "1".

PLEASE TAKE FURTHER NOTICE THAT the Debtor may assume and assign to the Successful Bidder the Assumed Contracts and Assumed Leases listed on Exhibit "2" annexed hereto pursuant to section 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE THAT the Debtor has set forth on Exhibit "2" hereto (the "Cure Schedule") the amounts due and owing, if any, under the Assumed Contracts and Assumed Leases through the date hereof (the "Cure Amounts"). The Bankruptcy Code requires that the Cure Amounts (which include any amounts owing on account of the Debtor's obligations under the Assumed Contracts and Assumed Leases as of the date of assumption) be paid in full to the parties owed such amounts upon the Debtor's assumption of the Assumed Contracts and Assumed Leases.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE THAT the Debtor shall have the right, in its sole discretion, to elect to seek to close all or part of the Sale through or in connection with a chapter 11 plan (a "**Plan Election**"). If a Plan Election is made, then, among other things, the hearing to confirm such chapter 11 plan (the "**Confirmation Hearing**") may be deemed the Sale Hearing and the order confirming such chapter 11 plan (the "**Confirmation Order**") may be deemed the Sale Order approving the Sale. As such, the Bid Procedures reserve the Debtor's rights to seek approval of the Sale in connection with and pursuant to a chapter 11 plan in this Case.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY SEEKING TO ASSERT AN OBJECTION TO THE ASSUMPTION BY THE DEBTOR AND ASSIGNMENT TO PURCHASER OF ANY CONTRACT OR LEASE, INCLUDING AS TO THE VALIDITY OF ANY CURE AMOUNT AS DETERMINED BY THE DEBTOR OR TO OTHERWISE ASSERT THAT ANY OTHER AMOUNTS, DEFAULTS, CONDITIONS OR PECUNIARY LOSSES MUST BE CURED OR SATISFIED UNDER THE ASSUMED CONTRACTS AND ASSUMED LEASES (NOT INCLUDING ACCRUED BUT NOT YET DUE OBLIGATIONS) MUST FILE AND SERVE ITS OBJECTION (ANY SUCH OBJECTION, AN "ASSUMPTION OBJECTION**") SETTING FORTH WITH SPECIFICITY ANY AND ALL CURE OBLIGATIONS OR OTHER CONDITIONS WHICH SUCH PARTY ASSERTS MUST BE CURED OR SATISFIED WITH RESPECT TO SUCH CONTRACT, LEASE OR INTELLECTUAL PROPERTY RIGHT SO THAT SUCH ASSUMPTION OBJECTION IS ACTUALLY RECEIVED BY (i) the Debtor, c/o Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 (Attn: Paul Douglas Stewart, Jr., Esq.); (ii) counsel to the Successful Bidder; (iii) the Administrative Agent, c/o Cole Schotz P.C., 301 Commerce Street, Suite 1700, Fort Worth, TX 76102 (Attn: Michael Warner, Esq.); and (iv) the Office of the United States Trustee for the Middle District of Louisiana, Texaco Center, Suite 2110, 400 Poydras Street, New Orleans, LA. 70130 (Attn: _____, Esq.), **BY _____, 2017 (THE "**OBJECTION DEADLINE**").****

PLEASE TAKE FURTHER NOTICE THAT Assumption Objections must set forth the cure amount or other obligation the objecting party asserts is due, the specific types and dates of the alleged defaults, pecuniary losses and conditions to assignment and the support therefor, if any.

PLEASE TAKE FURTHER NOTICE THAT if, as to any Assumed Contract, or Assumed Lease, no Assumption Objection is received by the Objection Deadline, such Assumed Contract or Assumed Lease shall be deemed assumed by the Debtor and assigned to Successful Bidder without further order of the Court, effective as of the later of (i) the Objection Deadline, (ii) the payment of the applicable Cure Amount, if any, set forth in Exhibit "2" hereto or (iii) the date specified in the Agreement. If an Assumption Objection is received by the Objection Deadline and the Debtor and/or the Successful Bidder are unable to resolve such objection consensually, the proposed assumption and assignment which is the subject of such Assumption Objection shall be subject to further order of the Court and the Debtor and/or the Successful Bidder shall promptly schedule a hearing to consider such Assumption Objection.

PLEASE TAKE FURTHER NOTICE THAT hearings with respect to Assumption Objections shall be held on such date as the Court may designate.

PLEASE TAKE FURTHER NOTICE THAT the Debtor may, from time to time, modify the Cure Schedule to add or remove a contract or lease counterparty or to modify the proposed Cure Amount with respect to any counterparty. The non-debtor counterparty to any such contract or lease will be provided separate written notice of any such modification and at least fourteen (14) days advance notice of its deadline to object to such modification, and the Debtor will seek to set any such objection for hearing before the Court as promptly as is reasonably possible.

PLEASE TAKE FURTHER NOTICE THAT IF YOU AGREE WITH THE CURE AMOUNTS SET FORTH ON EXHIBIT "2" AND DO NOT OTHERWISE OBJECT TO THE DEBTOR'S ASSUMPTION AND ASSIGNMENT OF YOUR CONTRACT OR LEASE YOU NEED NOT TAKE ANY FURTHER ACTION.

PLEASE TAKE FURTHER NOTICE THAT a complete copy of the Motion may be obtained by sending a written request to counsel to the Debtor, Stewart Robbins Brown, LLC, 620 Florida Street, Suite 100, Baton Rouge, LA 70801 (Attn: Paul Douglas Stewart, Jr., Esq.).

Dated: _____, 2017

Stewart Robbins Brown, LLC
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