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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
: :
MPM Silicones, LLC, et al.,¹ : Case No. 14-_____ ()
: :
Debtors. : (Joint Administration Pending)
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**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS:
(I) AUTHORIZING DEBTORS TO PAY (A) PREPETITION
EMPLOYEE WAGES, SALARIES AND OTHER COMPENSATION,
(B) PREPETITION EMPLOYEE BUSINESS EXPENSES AND
(C) OTHER MISCELLANEOUS EMPLOYEE EXPENSES AND
EMPLOYEE BENEFITS; AND (II) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The debtors and debtors in possession in the above-captioned cases (collectively,
the “**Debtors**”) hereby move for entry of interim and final orders, substantially in the forms
attached hereto as Exhibit A and Exhibit B, pursuant to sections 105(a), 363(b) and 507(a) of

¹ The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Juniper Bond Holdings I LLC (9631); (ii) Juniper Bond Holdings II LLC (9692); (iii) Juniper Bond Holdings III LLC (9765); (iv) Juniper Bond Holdings IV LLC (9836); (v) Momentive Performance Materials China SPV Inc. (8469); (vi) Momentive Performance Materials Holdings Inc. (8246); (vii) Momentive Performance Materials Inc. (8297); (viii) Momentive Performance Materials Quartz, Inc. (9929); (ix) Momentive Performance Materials South America Inc. (4895); (x) Momentive Performance Materials USA Inc. (8388); (xi) Momentive Performance Materials Worldwide Inc. (8357); and (xii) MPM Silicones, LLC (5481). The Debtors’ executive headquarters are located at 260 Hudson River Road, Waterford, NY 12188.



title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (i) authorizing the Debtors to pay (a) prepetition employee wages, salaries and other compensation, (b) prepetition employee business expenses and (c) other miscellaneous employee expenses and employee benefits; and (ii) granting related relief (the “**Motion**”). In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of William H. Carter, Chief Financial Officer of Momentive Performance Materials Inc., in Support of Chapter 11 Petitions and First Day Pleadings (the “**First Day Declaration**”), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

BACKGROUND

1. On the date hereof (the “**Petition Date**”), MPM Silicones, LLC (“**MPM**”) and each of the other Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors intend to continue in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no trustee, examiner or official committee has been appointed in any of the Debtors’ cases.

2. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration.

JURISDICTION

3. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief

requested herein are sections 105(a), 363(b) and 507(a) of the Bankruptcy Code and Bankruptcy Rule 6003.

RELIEF REQUESTED

4. Prior to the Petition Date, the Debtors paid their employees' wages, salaries and other compensation and benefits in the ordinary course of business. As employee obligations accrue on an ongoing basis, but are paid periodically in arrears, at any given time, the Debtors owe their employees accrued but unpaid prepetition wages, salaries, commissions and/or other compensation. From time to time, the Debtors, in the ordinary course of business, will review and adjust their employees' wages, salaries and other compensation and benefits based on certain factors, including, but not limited to, cost of living or other applicable increases.

5. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 363(b) and 507(a) of the Bankruptcy Code: (a) authorizing, but not directing, the Debtors to: (i) pay and/or perform, as applicable, certain prepetition obligations with respect to the Debtors' current employees (the "**Employees**"), consisting of accrued prepetition wages, salaries, commissions and other cash and non-cash compensation claims (collectively, the "**Employee Wage Claims**"); (ii) reimburse the Employees for travel and other business expenses incurred prepetition by the Employees on behalf of the Debtors in the ordinary course of their duties (the "**Employee Expense Obligations**"); (iii) administer employee benefit plans, policies and programs (collectively, the "**Employee Benefit Programs**," and, together with Employee Wage Claims and the Employee Expense Obligations, the "**Prepetition Employee Obligations**"); (iv) continue the Debtors' severance policy applicable to exempt Employees who are not insiders and do not otherwise have employment agreements with the Debtors and who may be terminated after the Petition Date (the "**Severance Policy**"); (v) continue and honor all obligations under SERO (as defined below) and IEA (as defined below) including, but

not limited to, making any payments accrued prepetition to certain former Employees; and (vi) pay all related prepetition withholdings and payroll-related taxes (the “**Withholdings**”) and Employer Tax Contributions (as defined below) associated with the Employee Wage Claims and the Employee Benefit Programs; (b) authorizing and directing the Banks (as defined below) to receive, process, honor and pay all of the Debtors’ prepetition checks and fund transfers on account of any of the Prepetition Employee Obligations; and (c) authorizing, but not directing, the Debtors to issue new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected inadvertently.²

6. The Debtors’ Employees are their most valuable assets. The Debtors’ success is dependent on their Employees who, among other things, produce silicones and silicone derivatives, develop and manufacture specialty chemicals and materials, establish and foster sales relationships with customers, and provide necessary administrative, managerial, and financial support services attendant thereto. The Employees’ knowledge and understanding of the Debtors’ products, operations, services, customer relations and infrastructure are essential to the Debtors’ effective reorganization. Absent the relief requested herein, not only would the Employees suffer enormous personal hardship, but the Debtors’ businesses would be immediately and irreparably harmed. Put simply, without their Employees, the Debtors would be unable to continue to operate their businesses.

² Out of an abundance of caution, the proposed order provides that the relief granted therein shall not constitute or be deemed an assumption pursuant to section 365(a) of the Bankruptcy Code of any employment and service agreements to which the Debtors may be a party or any of the Debtors’ employee benefit policies, plans, programs, practices and procedures.

7. The filing of a chapter 11 petition is a stressful and uncertain time for a debtor's employees. Such stress and uncertainty often damages employee morale at a critical time when a debtor most needs its employees' loyalty. Honoring the Prepetition Employee Obligations will minimize the hardship the Employees may otherwise endure if payroll and Employee Benefit Programs are interrupted. Honoring such obligations would also prevent a rapid loss of Employees that would otherwise occur if Employees were to lose the reasonable expectation that they will be compensated for their services. The Debtors believe that the continued payment of the Prepetition Employee Obligations is both critical and justified because of the vital importance of the Employees to the Debtors.

A. **Prepetition Wages, Salaries and Other Compensation**

(a) Wages

8. As of the Petition Date, the Debtors employ approximately 2,214 full-time employees (who are paid on either an hourly or salary basis) and 17 part-time employees (who are paid on an hourly basis). As of the Petition Date, approximately 42% of the Employees are members of unions who are subject to two collective bargaining agreements with (a) two bargaining units of the IUE-CWA, the Industrial Division of the Communication Workers of America, AFL-CIO, CLC and (b) the Local 698-C of the International Chemical Workers Union Council of the United Food and Commercial Workers.

9. The aggregate average gross monthly payroll for all Employees is approximately \$19,314,000. The Debtors estimate that as of the Petition Date, the prepetition Employee Wage Claims with respect to all Employees will equal approximately \$3,259,000. As of the Petition Date, no Employee is owed Employee Wage Claims in an amount exceeding the \$12,475 priority cap imposed by section 507(a)(4) of the Bankruptcy Code.

10. The Debtors' payroll process is administered through Automatic Data Processing ("**ADP**"). ADP initiates payroll processing each Monday and the Debtors fund a payroll account the following business day, which is subsequently debited by ADP. After initiating the payroll process and coordinating payment amounts, ADP issues Employees their pay through either direct deposit or checks.

(b) *Withholdings*

11. For each applicable pay period, the Debtors are obligated to withhold certain amounts from the pay of Employees, and to pay such Withholdings to third parties on behalf of Employees, including, without limitation, garnishments, employee portions of 401(k) contributions, contributions under flexible and health savings accounts, union contributions, FICA (Social Security and Medicare), and federal, state, and in some instances, local income and other payroll taxes. The Debtors are also required to pay the employer portion of certain payroll-related taxes to federal and state taxing authorities ("**Employer Tax Contributions**"). Typically, Withholdings and Employer Tax Contributions arising in connection with the Debtors' payroll for all Employees are approximately \$9,035,000 per month.

12. Prior to each payroll, ADP calculates the Withholdings and Employer Tax Contributions to be made from such payroll and the Debtors then fund their payroll account. Thereafter, either the Debtors or ADP, depending on the applicable jurisdiction, remit the Withholdings and Employer Tax Contributions to the appropriate third parties. Withholdings and Employer Tax Contributions may be remitted to the applicable third-party recipient, weekly, monthly or quarterly, depending on state and local laws or relevant contractual arrangements. Consequently, as of the Petition Date, the Debtors may be in possession of Withholdings and Employer Tax Contributions relating to the prepetition period. As the Withholdings and Employer Tax Contributions are held in trust, they likely do not constitute

property of the Debtors' estates. Moreover, the Withholdings and Employer Tax Contributions likely give rise to priority claims pursuant to section 507(a)(8) of the Bankruptcy Code if not paid. The Debtors estimate that as of the Petition Date, the amount of accrued but unpaid Withholdings and Employer Tax Contributions equal approximately \$1,790,000. Accordingly, the Debtors request authority to pay any accrued but unpaid Withholdings and Employer Tax Contributions that may relate to the prepetition period as and when they become due in the ordinary course of the Debtors' businesses.

13. The Debtors believe that all of their Employees have priority claims with respect to their accrued but unpaid prepetition wages or salaries pursuant to section 507(a)(4) of the Bankruptcy Code. Due to the critical importance of the Employees to the Debtors' business and the inability of the Debtors to replace such Employees, the Debtors hereby request authority to pay the Employee Wage Claims described above as well as any Withholdings or Employer Tax Contributions associated with those claims.

(c) *Temporary Employee Claims*

14. To support the Employees in their day-to-day operations, the Debtors also currently employ 222 individuals (the "**Temporary Employees**") through employee staffing agencies (the "**Staffing Agencies**") in a wide variety of roles, including engineers, technicians, health and safety consultants, on-site medical center workers, security, logistics, and administrators. The Temporary Employees work at the Debtors' various facilities in Florida, Indiana, New York, Ohio, and West Virginia. The Debtors estimate that their obligations with respect to the Temporary Employees are approximately \$1,440,000 per month in the aggregate. As of the Petition Date, the Debtors estimate that they owe the Staffing Agencies approximately \$2,600,000 in the aggregate for prepetition services performed by the Temporary Employees. Because the Temporary Employees are also necessary to the Debtors' operations and any

disruption in the services provided by the Temporary Employees would impact the Debtors' operations disproportionately to the amount owed with respect to the Temporary Employees, the Debtors hereby request the authority to pay, in their discretion, prepetition claims related to the Debtors' employment of the Temporary Employees ("**Temporary Employee Claims**").

(d) *Independent Contractor Claims*

15. To supplement their workforce, the Debtors also utilize four independent contractors that provide services related to many aspects of the Debtors' operations (the "**Independent Contractors**") including individuals who provide information technology support and air quality monitoring services to the Debtors. In general, Independent Contractors provide services in accordance with individualized contracts that set forth the terms of retention, including remuneration. The Debtors estimate that their obligations with respect to the Independent Contractors are approximately \$15,000 per month in the aggregate. As of the Petition Date, the Debtors estimate that they owe the Independent Contractors approximately \$3,000 in the aggregate for prepetition services. The Debtors believe that if these amounts go unpaid, the Independent Contractors could suffer significant hardship and may decline to continue to provide services to the Debtors. Furthermore, in certain of the Debtors' markets, there is a limited number of Independent Contractors who possess the requisite information technology or air quality monitoring knowledge to support the Debtors' operations and, unless their prepetition obligations are satisfied, such Independent Contractors may be unwilling to provide their services to the Debtors in the future. Accordingly, the Debtors hereby request the authority to pay prepetition claims related to the Debtors' employment of the Independent Contractors, in their discretion (the "**Independent Contractor Claims**").

B. **Employee Expense Obligations**

16. At any given time, the Debtors may have obligations to certain Employees for the reimbursement of business-related expenses. To streamline payment of Employee Expense Obligations, the Debtors have an American Express corporate account under which credit cards are available for use by certain Employees to pay for business-related travel expenses and other cards used for purchasing goods and services from vendors and suppliers (the "**American Express Corporate Card Accounts**"). Amounts due under the American Express Corporate Card Accounts are invoiced directly to the Debtors monthly, and the Debtors pay all outstanding amounts to American Express on a monthly basis. The Debtors have in place certain corporate control measures to ensure that only legitimate business-related expenses are charged to the American Express Corporate Card Accounts. The Debtors have also issued a letter of credit in an amount of \$1.2 million to American Express, which American Express may draw upon if the Debtors do not pay outstanding amounts on a timely basis, which would act to increase the secured debt against the Debtors under their debtor-in-possession revolving credit facility. The Debtors seek authority to continue making payments in connection with the American Express Corporate Card Accounts in order to avoid the risk of American Express drawing on the letter of credit.

17. In other cases, Employees may also incur Employee Expense Obligations on an out-of-pocket basis ("**Out-of-Pocket Expenses**"). In those instances, the Employees are responsible for submitting an expense report to the Debtors, which is reviewed within several days of submission, and, if proper, reimbursement is approved. The Employee will then receive a direct deposit payment through the Debtors' payroll process. To the extent that Out-of-Pocket Expenses have been incurred but not reported, or reported and are pending approval, the

Debtors may owe prepetition Out-of-Pocket Expenses directly to their Employees. In any given month, the Debtors typically incur an aggregate of \$32,000 in respect of Out-of-Pocket Expenses due to their Employees.

18. In addition, the Debtors reimburse certain Employees who use their personal vehicles for business use in the ordinary course of business (“**Car Allowance**”). These employees are responsible for sales and business development in the various markets the Debtors operate in. As an integral part of their duties, these Employees spend significant time traveling to manage relationships with the Debtors’ customer base. The Car Allowance is an important obligation of the Debtors as it allows Employees to travel to meet with current and potential customers to discuss the Debtors’ products and facilitate necessary customer development that is crucial to the Debtors’ revenue and continued success of the Debtors’ businesses. The Car Allowance is paid on a monthly basis as part of payroll. The monthly average cost to the Debtors is approximately \$44,600.

19. From time to time, the Debtors may request that an Employee permanently relocate to a different work site due to the needs of the business. Upon such a request, the Debtors may reimburse the Employee for expenses incurred as a result of the initial move and any subsequent moves (the “**Relocation Payment**”). On a monthly basis, the Debtors typically incur an aggregate of \$166,000 in respect of Relocation Payments.

20. Furthermore, the Debtors reimburse Employees for educational programs intended to support Employees’ improved performance in their current role or prepare for career advancement (the “**Educational Assistance Program**”). Through the Educational Assistance Program, the Debtors pay for tuition, costs of books, equipment, supplies, registration and other related fees for approved work-related courses. Typically, Employees

seek reimbursement for undergraduate degree courses, graduate degree courses, MBA degree courses, continuing education and professional certifications. Full-time and part-time Employees are eligible to be reimbursed annually up to \$6,000 and \$2,000, respectively. On an annual basis, the Educational Assistance Program costs the Debtors approximately \$322,000.

21. As of the Petition Date, the Debtors estimate that they owe approximately \$54,000 in outstanding Employee Expense Obligations in the aggregate in connection with the American Express Corporate Card Accounts, Out-of-Pocket Expenses, Car Allowance, Relocation Payments, and the Educational Assistance Program. Outstanding Employee Expense Obligations, if any, were incurred in connection with each Employee's employment by the Debtors and in reliance upon the understanding that such expenses would be paid directly or reimbursed. It would be inequitable to require Employees to bear any expenses that they incurred in furtherance of their responsibilities to the Debtors, and may have a significant effect on Employee morale. Accordingly, to avoid harming the individual Employees who have incurred such costs, the Debtors request authority, in their discretion and in the exercise of their business judgment, to continue to honor their Employee Expense Obligations in the ordinary course of business regardless of when such obligations arose, including paying any prepetition amounts with regard to Employee Expense Obligations.

C. **Employee Benefit Programs**

22. In the ordinary course of business, as is customary with most large businesses, the Debtors have established various employee benefit plans, programs and policies, including: medical insurance; prescription drug coverage; dental insurance; vision insurance; employee assistance program; flexible spending account and health savings account programs; basic and supplemental life insurance; accidental death and dismemberment insurance; critical

illness insurance; workers' compensation; short- and long-term disability coverage; a 401(k) plan; and pension plans. The primary Employee Benefit Programs are described below.³

(a) *Medical, Prescription Drug, and Dental Insurance*

23. All of the Debtors' permanent full-time Employees are eligible to receive medical, prescription drug, and dental insurance coverage (the "**Health Benefits**") through either fully insured or self-insured plans that are administered by various providers.⁴

24. The Debtors offer all regular full-time Employees the option to choose one of four self-insured medical benefit plans (the "**Self-Insured Plans**") administered by either Aetna or Capital District Physicians' Health ("**CDPHP**") or a fully-insured medical benefit plan administered by CIGNA International (the "**Fully-Insured Plan**", and combined with the Self-Insured Plans, the "**Medical Plans**"). Under the Self-Insured Plans, Aetna provides stop loss coverage for any expenses in excess of the \$400,000 self-insured limit per Employee (the "**Stop Loss Insurance**"). In addition, all Employees enrolled in the Medical Plans receive prescription drug benefits, which are administered by Express Scripts. All regular full-time Employees are also eligible to enroll in a fully-insured dental plan with Delta Dental (the "**Dental Plan**"). Approximately ninety four percent (94%) of the Debtor's Employees have elected coverage under the Dental Plan.

25. The Medical Plans cost the debtors approximately \$2,177,000 per month, which includes administrative costs, prescription drug coverage, and the Stop Loss Insurance

³ Any descriptions of Employee Benefit Programs in this Motion are intended as summaries only. To the extent there are any inconsistencies between the summary descriptions of Employee Benefit Programs contained herein and the terms and conditions of any documentation governing such programs, the terms of such documentation shall control.

⁴ These plans are issued under a contract between the Debtors' non-debtor affiliate, Momentive Specialty Chemicals Holdings LLC ("**MSC**"), and Aetna, under which the Debtors are listed as an additional beneficiary. The Debtors, however, remit all amounts incurred on behalf of their Employees directly to Aetna.

premium. The Dental Plan costs the Debtors approximately \$166,000 per month including any related administrative costs. The Debtors estimate that approximately \$613,300 is currently outstanding on account of the Health Benefits attributable to the prepetition period, including claims for health and dental services provided to Employees prior to the Petition Date, for which the Debtors have not yet been billed by the medical and dental administrators. The Debtors' failure to pay and provide the Health Benefits would impose a great hardship on the Employees. Accordingly, the Debtors hereby seek authority to maintain their Health Plans, including paying, in their discretion, any amounts owed in the ordinary course of their businesses, regardless of when the costs related to such Health Plans accrued.

(b) *Vision Insurance*

26. The Debtors also provide all regular full-time Employees vision benefits through a plan (the "**Vision Plan**") administered by Aetna EyeMed Network (the "**Vision Administrator**"). The Vision Plan costs the Debtors approximately \$25,800 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$25,800 in connection with the Vision Plan.

27. The Debtors hereby seek authority to maintain the Vision Plan, including paying any amounts owed to the Vision Administrator, regardless of when such amounts accrued.

(c) *Employee Assistance Program*

28. The Debtors also provide a counseling and referral service to help address behavioral health and other personal issues facing Employees and their family members (the "**Employee Assistance Program**"). The Employee Assistance Program provides all permanent Employees with licensed counselors to assist with health fitness issues, elder care, child care, parenting, alcohol and substance abuse, financial counseling and planning and certain crisis

situations. The Employee Assistance Program is provided by Aetna. The Employee Assistance Program costs the Debtors approximately \$4,200 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$4,200 in connection with the Employee Assistance Program. The Debtors hereby seek authority to maintain the Employee Assistance Program.

(d) *Flexible Spending Account and Health Savings Account Programs*

29. The Debtors also offer Employees the ability to contribute a portion of their pre-tax compensation to fund a flex spending account for certain health care expenses, dependent care expenses, and parking and transportation expenses (the “**FSA Programs**”) or a health savings account (the “**HSA Program**”). On a monthly basis, the Debtors estimate that they withhold approximately \$80,400 on account of the FSA Programs and \$21,700 on account of the HSA Program. As of the Petition Date, the Debtors estimate they owe \$3,400 in prepetition amounts on account of administrative costs relating to the FSA Programs and \$2,340 on account of the HSA Program. The amount withheld from Employees’ paychecks on account of the FSA and HSA Programs is included in the calculation of total Withholdings provided in paragraph 13 herein.

(e) *Life Insurance, Supplemental Life Insurance, Accidental Death and Dismemberment Insurance, Critical Illness Insurance, and Short-Term and Long-Term Disability*

30. The Debtors provide their permanent full-time Employees with basic and supplemental life, accidental death & dismemberment (“**AD&D**”), critical illness, and short-term and long-term disability insurance (collectively, the “**Insurance Programs**”). On average, the Debtors pay approximately \$63,000 per month on account of the Insurance Programs, which costs are paid current, on or around the 21st of the month. The Debtors hereby seek authority to maintain their Insurance Programs, including making any payments

necessary with respect thereto in the ordinary course of the Debtors' business, regardless of when such amounts accrued.

(f) *Workers' Compensation*

31. The Debtors are required under the laws of the various states in which they operate to maintain workers' compensation insurance that provides their employees with coverage for injuries arising from or related to their employment with the Debtors. The Debtors (a) maintain workers' compensation liability insurance in each of the states in which they do business, and (b) provide Employees with workers' compensation coverage for medical expenses and some loss of income incurred as a result of a work-related injury or illness ("**Workers' Compensation Program**"). To implement the Workers' Compensation Program, the Debtors maintain three workers' compensation insurance policies with Zurich American Insurance Company ("**Zurich**"), all of which are scheduled to expire on July 1, 2014, which the Debtors expect to renew or replace in the ordinary course of business.

32. First, the Debtors maintain two fully insured workers' compensation policies that covers workers' compensation claims of the Debtors' Employees in 23 out of the 24 states the Debtors operate in (the "**WC Policies**").⁵ The Debtors pay an annual premium of approximately \$800,000 on account of the WC Policies.

33. The Debtors' Employees in Ohio are covered by a self-insured workers' compensation program administered by the Ohio Bureau of Workers' Compensation (the "**Self-Insured Program**"). In connection with the Self-Insured Program, the Debtors maintain an excess workers' compensation policy (the "**Excess Workers' Compensation Policy**") with

⁵ The WC Policies cover Employees in Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Michigan, North Carolina, New Hampshire, New Jersey, Nevada, New York, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, West Virginia, Massachusetts, and Wisconsin.

Zurich, which provides stop-loss coverage to the extent any workers' compensation claims under the Self-Insured Program exceed \$500,000 (i.e., the amount of the self-insured retention under the Excess Workers' Compensation Policy).

34. The Debtors expend, on an aggregate basis, approximately \$67,000 per month on account of the Workers' Compensation Program, which costs are paid in advance from a loss fund that is replenished on or around the 30th of the month. The Debtors hereby seek authority to maintain the Workers' Compensation Program, including making any payments necessary with respect thereto in the ordinary course of the Debtors' businesses, regardless of when such amounts accrued.

(g) *Medical, Life Insurance, and Dental Plans for Eligible Retirees*

35. In addition, certain retired Employees (the "**Eligible Retirees**") are eligible for medical, life insurance, and dental coverage (the "**Eligible Retiree Plans**"). Eligibility under the applicable Eligible Retiree Plan is determined by the age and the years of employment of the Eligible Retiree. The Eligible Retirees can choose to enroll in a consumer driven health care plan administered by Aetna or preferred provider organization health care and indemnity plan administered by Aetna or CDPHP. In the alternative, Eligible Retirees can also choose to enroll in a plan sponsored and administered by the Debtors' former parent company, General Electric ("**GE**"), in which the health care benefits are determined by GE, paid by GE, and reimbursed to GE by the Debtors. As of the Petition Date, the Debtors provide medical and dental coverage to approximately 282 Eligible Retirees pursuant to the Eligible Retiree Plans. The Debtors pay approximately \$288,000 per month on account of the Eligible Retiree Plans. The Debtors estimate that approximately \$222,000 is currently outstanding on account of the Eligible Retiree Plans attributable to the prepetition period for which the Debtors have not yet been billed by the medical and dental administrators. The Debtors' failure to pay

and provide the Eligible Retiree Plans would impose a great hardship on the Eligible Retirees. Accordingly, the Debtors hereby seek authority to maintain their Eligible Retiree Plans, including paying, in their discretion, any amounts owed in the ordinary course of business, regardless of when the costs related to such Eligible Retiree Plans accrued.

(h) *Ancillary Benefits*

36. The Debtors also make available other voluntary ancillary benefits to their Employees, including, but not limited to, discounted pet insurance, automobile and home insurance, and a prepaid legal program (the “**Ancillary Benefits**”), for which Employees pay approximately \$455 per month in the aggregate. The Debtors collect amounts with respect to the Ancillary Benefits from the Employees through payroll deductions and, as applicable, remit such amounts to third parties. As of the Petition Date, the Debtors estimate that they are holding \$455 in accrued but unremitted contributions on account of the Ancillary Benefits. This amount is included in the calculation of total Withholdings provided in paragraph 12 herein.

(i) *401(k) Savings Plan*

37. The Debtors maintain a 401(k) savings plan (the “**401(k) Plan**”) administered by Fidelity Investments (“**Fidelity**”) for eligible Employees. Upon hire, Employees are eligible to enroll in the 401(k) Plan and set their contribution level as a percentage of their compensation per payroll period. Employees may make their contributions to the 401(k) Plan up to the annual statutory limit, and may change their percentage contribution at any time. As a benefit to their Employees, the Debtors contribute matching funds in one of three ways: (a) 50% of each dollar an Employee contributes on the first 7% of eligible compensation deferred to the 401(k) Plan; (b) 50% of each dollar an Employee contributes on the first 8% of eligible compensation deferred to the 401(k) Plan; or (c) 5% of

compensation deferred to the 401(k) Plan. Certain Employees under the 401(k) Plan are also eligible to receive an Annual Employer Retirement Contribution (“**ARC**”) from the Debtors of 3% to 7% of annual eligible compensation based on the Employees’ years of service. In the ordinary course of business, the Debtors make an ARC payment at the end of the first quarter following the fiscal year for which the ARC payment is due. For fiscal year 2013, the Debtors are current on all obligations in connection with ARC payments. On an annual basis, the Debtors contribute approximately \$6,564,000 in matching funds to the 401(k) Plan. In addition, the Debtors, on an annual basis, pay approximately \$175,000 to Fidelity for administration costs.

38. As of the Petition Date, the Debtors estimate that they are holding a maximum of \$631,000 in accrued but unremitted contributions to the 401(k) Plan made prepetition. This is included in the calculation of total Withholdings provided in paragraph 12 herein. The Debtors hereby seek authority to: (a) maintain their 401(k) Plan, including paying any amounts owed to the 401(k) Plan, regardless of when such amounts accrued; (b) continue to honor their matching obligations under the 401(k) Plan; and (c) pay all administration costs related to the 401(k) Plan.

(j) *Pension Plans*

39. The Debtors also contribute to various single employer pension plans (the “**Pension Plans**”). Annually, the Debtors make minimum required contributions on a quarterly basis to the Pension Plans. As of the Petition Date, while the Debtors estimate that they do not owe any prepetition payments in connection with the Pension Plans, they do owe approximately \$17,685 on account of administrative costs relating to the Pension Plans.

D. **Vacation, Holidays, and Other Time Off**

(a) *Vacation, Sick Time and Paid Time Off*

40. The Debtors provide paid vacation time to their permanent full-time Employees that generally accrues on a monthly basis after the Employee completes thirty (30) days of service (the “**Vacation Time**”). The amount of Vacation Time available to a particular Employee generally ranges from eighty (80) to two hundred forty (240) hours and is determined by the Employee’s length of service. Employees are required to use their Vacation Time during the year in which it is earned (*i.e.*, unused Vacation Time may not be carried over into the next year). Employees also accrue sick and personal days (“**Sick Time**,” and combined with Vacation Time, “**ACC Leave**”) in amounts that vary according to length of service. Unused, earned Sick Time may be carried forward from year to year (subject to a 30-day limitation). Unused but accrued ACC Leave is paid to the applicable Employee at separation. As of the Petition Date, the Debtors estimate that Employees have accrued approximately \$5,746,000 in ACC Leave. The Debtors anticipate that they would only be required to settle a fraction of such amount in cash, to the extent any Employee separates from the Debtors following the Petition Date. The Debtors also provide paid time off to Employees to cover, among other things, jury duty, military leave, paid bereavement leave, and holidays (the “**Paid Time Off**”). By this Motion, the Debtors seek the authority to continue their ACC Leave and Paid Time Off policies, including payment to satisfy any departing Employee’s claims for unused ACC Leave.

E. **Severance, SERO, and IEA**

41. In their normal course of operations, the Debtors maintain several severance policies. For exempt Employees, the Debtors maintain a policy which provides eligible Employees with severance benefits upon an Employee’s termination without cause in connection with, among other things, a reduction in staff, position elimination, closure of a

business unit or organization restructuring. The amount of service payable under this policy is based upon an Employee's level and years of service with the Debtors (the "**Severance Plan**"). Under the Severance Plan, the Debtors have traditionally paid eligible Employees one and a half (1.5) or two (2) weeks pay for every year of service capped at fifty-two (52) weeks of pay. To the extent any Employees are terminated during these cases, the Debtors request authority to continue the Severance Plan and to pay, in their discretion, benefits under the Severance Plan to eligible non-insider Employees who are terminated without cause after the Petition Date.⁶

42. In addition, certain of the Debtors' non-exempt, hourly Employees, who are subject to lay-offs or voluntary early retirement, are eligible for benefits under the Debtors' special early retirement option program ("**SERO**") or income extension assistance program ("**IEA**"), depending on whether such Employee's age and years of service qualifies such Employee to retire at the time of separation. Pursuant to SERO, Employees, who are sixty years or older and have worked for the Debtors for at least fifteen years, can receive a \$18,000 lump-sum cash payment on a specified retirement date. Pursuant to IEA, Employees who do not meet the minimum retirement age or years of service requirement under SERO, will instead receive monetary compensation in an amount equal to one week's pay for each year of service plus a quarter of one week's pay for each additional three months of service calculated at the time of separation, subject to a minimum benefit equal to four weeks' pay. This amount is paid over time on a weekly basis, with each weekly payment in an amount of 75% of such former Employee's former pay previously received from the Debtors minus the gross unemployment

⁶ In addition, the Debtors offer outplacement services (the "**Outplacement Services**") to involuntarily terminated Employees through a third-party administrator, which provides consultant coaching and direction, access to job leads, networking opportunities and guidance for career and career-shifting options. To the extent any employees are terminated during these cases, the Debtors expect to continue the Outplacement Services to eligible non-insider Employees who are terminated without cause after the Petition Date.

benefits received by such former Employee. Currently, the Debtors do not owe any prepetition amounts in connection with SERO. The Debtors estimate that they owe eight former Employees, five of whom are members of unions, \$150,000 for payments under IEA. The Debtors believe that the payment of prepetition amounts under IEA is necessary and justified. First, five of the Employees that are owed prepetition amounts are union employees who are covered by collective bargaining agreements which require such payments. Second, even for the three former Employees who are not union members, the failure of the Debtors to provide the promised financial support following the Employees' termination would be patently unfair and give rise to severe financial difficulties for such former Employees. This would also cause current Employees to lose faith in the Debtors and could have a devastating effect on the morale of current Employees.

F. **Banks and Disbursement Accounts**

43. The Debtors also request that the Court: (a) authorize and direct any and all banks with which the Debtors maintain accounts from which the Debtors make payments related to the Prepetition Employee Obligations (the "**Banks**") to receive, process, honor and pay all checks drawn on the Debtors' accounts and fund transfers on account of the Prepetition Employee Obligations, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments and the Debtors identify all checks that have been issued, but not yet processed, attributable to Prepetition Employee Obligations in writing within two (2) business days of the date of the Order in respect of this Motion; and (b) authorize the Debtors to issue new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected. Such relief is integral in order to implement the relief sought by this Motion.

BASIS FOR RELIEF

44. The Debtors request authority to pay the Prepetition Employee Obligations and related expenses in the ordinary course of their businesses. Any delay in paying any of their Employees could severely disrupt the Debtors' relationship with their Employees and irreparably harm their morale at the very time that Employee dedication, confidence, support and cooperation proves most critical. If the Debtors do not obtain immediate authority to pay the Prepetition Employee Obligations, the Debtors' operations may be severely impaired. At this critical stage, the Debtors cannot risk the substantial disruption of their business operations that would attend any decline in workforce morale attributable to the Debtors' failure, or worse, inability to pay the Prepetition Employee Obligations.

45. Accordingly, by this Motion, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and the "necessity of payment" doctrine, the Debtors seek authority to pay their outstanding Prepetition Employee Obligations. Section 363(b)(1) of the Bankruptcy Code provides: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . ." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides in pertinent part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Accordingly, this Court is authorized to grant the relief requested.

46. "The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the Debtors is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); see also, In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (noting that "necessity of payment doctrine . . . permit[s] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-

reorganization claims shall have been paid”) (citations and internal quotations omitted); In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987); 2 Collier on Bankruptcy ¶ 105.01 at 105-3 (L. King 15th ed. 1996) (purpose of section 105(a) of the Bankruptcy Code is to “assure the Bankruptcy Court’s power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction”). This equitable common law principle “was first articulated by the United States Supreme Court in Miltenberger v. Logansport C. & S.W.R. Co., 106 U.S. 286 (1882), and is commonly referred to as either the ‘doctrine of necessity’ or the ‘necessity of payment’ rule.” In re Ionosphere Clubs, Inc., 98 B.R. at 175-76. “This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” Id. at 176; see In re Just For Feet, Inc., 242 B.R. 821, 825-26 (D. Del. 1999) (“[n]ecessity of payment doctrine recognizes that paying certain prepetition claims may be necessary to realize the goal of chapter 11 - a successful reorganization”).

47. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay certain critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. See In re Columbia Gas Sys. Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (citing In re Lehigh & New England Ry. Co., 657 F.2d at 581 (recognizing that “[if] payment of a pre-petition claim ‘is essential to the continued operation of [the debtor], payment may be authorized.’”)). Courts have recognized that the “necessity of payment” rule squarely applies where a debtor’s employees must be paid on time to assure their continued service and loyalty during a chapter 11 case. E.g., Ionosphere Clubs, 98 B.R. at 174 (permitting Eastern Air Lines to pay its employees’ prepetition wages, salaries, medical benefits and business expense claims under the “necessity of payment”

doctrine). In a number of reported cases, debtors have been permitted to pay prepetition wages, salaries and employee benefits, even where those claims are substantial. See Chateaugay Corp., 80 B.R. at 281 (authorizing payment of employee wages and workers' compensation obligations aggregating in excess of \$250 million and rejecting appeal of creditor that argued that the debtor should have been required to pay all similarly situated prepetition claimants); see also In re Gulf Air, Inc., 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (authorizing the debtor to pay certain prepetition employee claims for wages, health and life insurance and workers' compensation premiums). The court in Gulf Air found that such payments were in the best interests of creditors, the debtor and the debtor's employees and were essential to a successful reorganization. See Gulf Air, 112 B.R. at 153-54. The Debtors submit that, as illustrated below, application of the "necessity of payment" doctrine is wholly warranted in these cases.

48. In order to achieve a successful reorganization, the Debtors require their Employees to work with the same or greater degree of commitment and diligence as they did prior to the Petition Date. The requested authority to continue to pay the Debtors' Employees and to maintain the current Employee Benefits Programs is necessary to ensure that the Debtors can retain personnel knowledgeable about the Debtors' businesses, and to provide an incentive for the Debtors' Employees to continue to provide quality services to the Debtors at a time when they are clearly needed.

49. The wage and benefit obligations for which the Debtors request authority to pay herein would constitute prepetition employee wage claims or prepetition claims for contributions to an employee benefits plan entitled to priority under sections 507(a)(4) and (5) of the Bankruptcy Code. Courts have recognized future priority status as a valid basis for allowing the payment of wage claims. See, e.g., In re Braniff, Inc., 218 B.R. 628, 633 (Bankr.

M.D. Fla. 1998) (explaining that prepetition wage and wage-related claims are often allowed to be paid postpetition where such wages are subject to priority because “in all but the direst of circumstances, the debtor will ultimately pay the prepetition wages because of their very high priority [and, therefore, the] court authorizes their payment early in the case rather than requiring that the employees wait for payment at the end of the case.”). Accordingly, the Debtors respectfully submit that granting the relief requested will not adversely affect the Debtors’ other unsecured creditors.

50. Similarly, the remittance of the Employee contributions toward Withholdings also will not prejudice the Debtors’ creditors because such withholdings are held in trust for the benefit of the related payees, and thus, do not constitute property of the Debtors’ estates under section 541 of the Bankruptcy Code. See Begier v. IRS, 496 U.S. 53, 65 (1990) (taxes such as excise taxes, FICA taxes and withholding taxes are property held by debtor in trust for another and as such do not constitute property of estate); In re Am. Int’l Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (funds held in trust for federal excise and withholding taxes are not property of debtor’s estate and, therefore, not available for distribution to creditors); Shipley Co., Inc. v. Darr (In re Tap, Inc.), 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (funds paid by employer to debtor for payment of employer’s federal taxes were returnable to employer and not part of debtor’s estate).

51. The Debtors’ Employees are essential to the success of the Debtors’ business. Consequently, it is critical that the Debtors continue the ordinary course personnel policies, programs and procedures that were in effect prior to the Petition Date. If the checks issued and fund transfers requested in payment of the Prepetition Employee Obligations are dishonored, or if such accrued obligations are not timely paid postpetition, the Debtors’

Employees may suffer extreme personal hardship and certain of them may be unable to pay their daily living expenses. Likewise, it would be inequitable to require the Debtors' Employees to bear personally the business expenses that were incurred on behalf of the Debtors with the expectation that they would be reimbursed.

52. Authorizing, but not directing, the Debtors to pay the Prepetition Employee Obligations in accordance with the Debtors' prepetition business practices is in the best interests of the Debtors, the creditors, and all parties-in-interest, and will enable the Debtors to continue to operate their businesses efficiently without disruption. A significant deterioration in morale among Employees at this critical time would have a devastating impact on the Debtors, their customers, the value of the assets and businesses and the outcome of these cases. The total amount to be paid if the relief sought herein is granted is modest compared with the size of the Debtors' estates and the importance of the Debtors' Employees to the restructuring effort. Further, many of these obligations are not immediate but, rather, will be satisfied over an extended period of time and, in some cases, without any monetary expenditures.

53. Pursuant to section 363 of the Bankruptcy Code, a bankruptcy court is empowered to authorize a chapter 11 debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. Payment of prepetition wage and salary claims in order to preserve and protect a debtor's business and to ultimately reorganize, retain their employees and maintain positive employee morale, even if such payment were deemed to be outside the ordinary course of business, is a sufficient business justification for such an authorization. See Ionosphere Clubs, 98 B.R. at 175.

54. In addition, authorization to continue and honor all obligations under SERO and IEA, including making any prepetition payments to former Employees, is necessary to maintain positive morale for current Employees. Failure to satisfy such obligations may cause significant alarm among current Employees. It would also be patently unjust for these former Employees who have been promised monetary benefits to be denied those benefits at a particularly vulnerable time for them, exposing them to significant financial difficulties. Further, for former Employees subject to a collective bargaining agreement, such payments are required pursuant to section 1113 of the Bankruptcy Code, which requires the Debtors to comply with collective bargaining agreements unless otherwise authorized by the Court.

55. Furthermore, with respect to obligations described herein, including, but not limited to, Employee Wage Claims, Withholdings, and Employer Tax Contributions, failure by the Debtors to fulfill such obligations could potentially result in claims being asserted directly against the Debtors' officers and directors. Not only would such claims against the Debtors' officers and directors distract such individuals at a time when it is critical that their full attention be focused on the reorganization efforts of the Debtors, but such officers and directors would be entitled to indemnification by the estates.

56. This Court has permitted the postpetition payment of prepetition wage and salary obligations on the first day or in the early stages of other chapter 11 bankruptcy cases. See, e.g., In re American Roads LLC, Case No. 13-12412 (BRL) (Bankr. S.D.N.Y. July 26, 2013); In re Broadview Networks Holdings, Inc., Case No. 12-13581 (SCC) (Bankr. S.D.N.Y. Sept. 14, 2012); In re Houghton Mifflin Harcourt Publishing Co., Case No. 12-12171 (REG) (Bankr. S.D.N.Y. May 22, 2012); In re TBS Shipping Services Inc., Case No. 12-22224 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2012); In re Eastman Kodak Company, Case No. 12-10202 (ALG)

(Bankr. S.D.N.Y. Feb. 15, 2012); In re Hostess Brands, Inc., Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012); In re General Maritime Corp., Case No. 11-15285 (Bankr. S.D.N.Y. Dec. 15, 2011) (MG); and In re The Great Atl. & Pac. Tea Co., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 12, 2011).

57. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

58. To successfully implement the foregoing, the Debtors respectfully seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h).

59. Accordingly, for the foregoing reasons, the Debtors respectfully submit that cause exists for granting the relief requested herein.

NOTICE

60. Notice of this Motion will be given to: (a) the United States Trustee for the Southern District of New York; (b) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (c) counsel to JPMorgan Chase Bank, N.A., as the administrative agent under the Debtors' prepetition secured credit agreements; (d) counsel to the administrative agent under the Debtors' postpetition credit agreement; (e) counsel to the indenture trustee for the 8.875% First-Priority Senior Secured Notes; (f) counsel to the indenture trustee for the 10% Senior Secured Notes; (g) counsel to the indenture trustee for the 9.0% / 9.5% Second-Priority Springing Lien Notes; (h) counsel to the indenture trustee for the 11.5% Senior Subordinated Notes; (i) counsel to GE Capital Equity, Inc.; (j) counsel to the Ad Hoc Group of Second Lien Noteholders; (k) counsel to Apollo Global Management, LLC and certain affiliated funds; (l) counsel to Momentive Performance Materials Holdings LLC; and (m) the Debtors' existing banks. The Debtors submit that, under the circumstances, no other or further notice is required.

61. No previous motion for the relief sought herein has been made to this or any other Court.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, substantially in the forms annexed hereto as Exhibit A and Exhibit B, granting the Motion and such other and further relief for the Debtors as may be just and proper.

Dated: April 13, 2014
New York, New York

WILLKIE FARR & GALLAGHER LLP
*Proposed Counsel for the Debtors and
Debtors in Possession*

By: /s/ Jennifer J. Hardy
Matthew A. Feldman
Rachel C. Strickland
Jennifer J. Hardy

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
 :
MPM Silicones, LLC, et al.,¹ : Case No. 14-_____ ()
 :
Debtors. : Jointly Administered
-----X

**INTERIM ORDER: (I) AUTHORIZING
DEBTORS TO PAY (A) PREPETITION EMPLOYEE
WAGES, SALARIES AND OTHER COMPENSATION,
(B) PREPETITION EMPLOYEE BUSINESS EXPENSES AND
(C) OTHER MISCELLANEOUS EMPLOYEE EXPENSES AND
EMPLOYEE BENEFITS; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), requesting entry of an interim order, pursuant to sections 105(a), 363(b) and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (i) authorizing, but not directing, the Debtors to pay (a) prepetition employee wages, salaries and other compensation, (b) prepetition employee business expenses and (c) other miscellaneous employee expenses and employee benefits; and (ii) granting related relief, as set forth therein; and upon the Declaration of William H. Carter, Chief Financial Officer of Momentive Performance Materials Inc., in Support of Chapter 11 Petitions and First Day Pleadings; and it appearing that no other or further notice need be provided; and it appearing

¹ The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Juniper Bond Holdings I LLC (9631); (ii) Juniper Bond Holdings II LLC (9692); (iii) Juniper Bond Holdings III LLC (9765); (iv) Juniper Bond Holdings IV LLC (9836); (v) Momentive Performance Materials China SPV Inc. (8469); (vi) Momentive Performance Materials Holdings Inc. (8246); (vii) Momentive Performance Materials Inc. (8297); (viii) Momentive Performance Materials Quartz, Inc. (9929); (ix) Momentive Performance Materials South America Inc. (4895); (x) Momentive Performance Materials USA Inc. (8388); (xi) Momentive Performance Materials Worldwide Inc. (8357); and (xii) MPM Silicones, LLC (5481). The Debtors’ executive headquarters are located at 260 Hudson River Road, Waterford, NY 12188.

that the relief requested by this Motion is necessary to avoid immediate and irreparable harm to the Debtors, and is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that the relief requested is essential to the continued operation of the Debtors' businesses and the preservation of the value of their assets; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.
3. The Debtors shall be and hereby are authorized to pay, in their discretion, the Prepetition Employee Obligations, including, but not limited to, Employee Wage Claims and prepetition obligations that have accrued under the Employee Benefit Programs and Employee Expense Obligations, to the extent such claims do not exceed \$12,475 per Employee, and to remit all Withholdings and Employer Tax Contributions to the appropriate third parties, as and when such obligations are due, upon entry of this Order; provided, however, that nothing in this Order shall be deemed to authorize any transfers in violation of section 503(c) of the Bankruptcy Code.
4. The Debtors shall be and hereby are authorized, in their discretion, to continue to honor their obligations, including any prepetition obligations, to Employees for Employee Expense Obligations in accordance with the Debtors' stated policies and prepetition practices; provided, however, that nothing in this Interim Order shall permit the Debtors to reimburse any Employees for prepetition Employee Expense Obligations in excess of \$1,000

without the prior consent of the official committee appointed to represent the Debtors' general unsecured creditors.

5. The Debtors shall be and hereby are authorized, in their discretion, to honor and continue their Employee Benefit Programs that were in effect as of the Petition Date.

6. The Debtors shall be and hereby are authorized, but not directed, to remit monthly premiums to the applicable providers under the Employee Benefit Programs and to pay, in their discretion, any obligations, including prepetition obligations, in respect of the Employee Benefit Programs in the ordinary course of business.

7. No obligations or payments in connection with the 401(k) Plan shall cause the Debtors to exceed the priority cap imposed by section 507(a)(5) of the Bankruptcy Code.

8. The Debtors shall be and hereby are authorized, but not required, to pay costs and expenses incidental to the payment of the Prepetition Employee Obligations, including all administration and processing costs and payments to outside professionals, in the ordinary course of business, in order to facilitate the administration and maintenance of the Debtors' programs and policies related to the Prepetition Employee Obligations, in an aggregate amount not to exceed \$176,000.

9. The Debtors shall be and hereby are authorized to maintain, at their discretion, the Severance Policy for non-insider Employees terminated after the Petition Date.

10. The Debtors shall be and hereby are authorized, in their discretion, to honor and continue SERO and IEA, including making any payments to any Employees who separated under IEA prior to the Petition Date in an amount not to exceed \$45,000 on an interim basis. For the avoidance of doubt, none of the Employees covered under SERO and

IEA are “insiders” of the Debtors, as such term is defined in section 101 of the Bankruptcy Code.

11. The Debtors shall be and hereby are authorized, but not directed, to pay the Temporary Employee Claims and Independent Contractor Claims.

12. All Banks shall be and hereby are authorized and directed to receive, process, honor and pay all checks drawn on the Debtors’ accounts with the Banks and fund transfers on account of the Prepetition Employee Obligations, whether presented before or after the Petition Date, provided that (a) sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) within two (2) business days from the date hereof, the Debtors provide the Banks with a list of checks that are outstanding as of the Petition Date, which relate to Prepetition Employee Obligations.

13. The Debtors shall be and hereby are authorized to issue, in their discretion, new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any Bank to the extent provided herein or by another order of this Court.

14. Notwithstanding any other provision of this Order, no Payroll Bank that honors a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors; (b) in a good faith belief that the Court has authorized payment of such prepetition check or item; or (c) as the result of a good faith error made despite implementation of reasonable item handling procedures, shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

15. Neither this Order nor any payment or performance by the Debtors authorized hereunder shall be deemed an assumption of any executory contract, including any Employee Benefit Programs, or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with an Employee.

16. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein, and the Debtors shall retain the business judgment to make or not make such payments, in all instances subject to the condition that funds are available to effect any payment. In no event shall any person (director, creditor, officer, manager, member, Employee or otherwise of the Debtors), solely as a result of this Order, be personally liable for any amounts authorized for payment herein but not paid, and nothing in this Order shall be deemed to increase, reclassify, elevate to administrative expense status or otherwise effect such claims.

17. Within three (3) business days after entry hereof, the Debtors shall serve a copy of this Order upon: (a) the United States Trustee for the Southern District of New York; (b) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (c) counsel to JPMorgan Chase Bank, N.A., as the administrative agent under the Debtors' prepetition secured credit agreements; (d) counsel to the administrative agent under the Debtors' postpetition credit agreement; (e) counsel to the indenture trustee for the 8.875% First-Priority Senior Secured Notes; (f) counsel to the indenture trustee for the 10% Senior Secured Notes; (g) counsel to the indenture trustee for the 9.0% / 9.5% Second-Priority Springing Lien Notes; (h) counsel to the indenture trustee for the 11.5% Senior Subordinated Notes; (i) counsel to GE Capital Equity, Inc.; (j) counsel to the Ad Hoc Group of Second Lien Noteholders; (k) counsel to Apollo Global

Management, LLC and certain affiliated funds; (l) counsel to Momentive Performance Materials Holdings LLC; and (m) the Debtors' existing banks.

18. Any objections to entry of a final order on the Motion must be (a) filed with the Court no later than 4:00 p.m. prevailing Eastern time on [_____], 2014 (the "**Objection Deadline**") and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) Momentive Performance Materials Inc., 260 Hudson River Road, Waterford, NY 12188 (Attn.: Douglas A. Johns, Esq.); (ii) counsel for the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019 (Attn: Matthew A. Feldman, Esq. and Rachel C. Strickland, Esq.); (iii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Brian S. Matsumoto, Esq. and Richard W. Fox, Esq.); (iv) counsel to the administrative agent under the Debtors' postpetition secured credit agreement, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017 (Attn: Steven M. Fuhrman, Esq. and Nicholas Baker, Esq.); (v) counsel to GE Capital Equity, Inc.; (vi) counsel to the Ad Hoc Group of Second Lien Noteholders; (vii) counsel to Apollo Global Management, LLC and certain affiliated funds; and (viii) counsel to Momentive Performance Materials Holdings LLC.

19. Any objections or responses to the Motion shall be filed and served on parties-in-interest as required by the Local Rules.

20. A hearing shall be held to consider the relief granted herein on a final basis on _____, 2014, at __.m., before the Honorable Robert D. Drain, United States Bankruptcy Judge, in Courtroom _____ 300 Quarropas Street, White Plains, New York 10601 (the "**Final Hearing**") and, pending entry of an order following the conclusion of the Final Hearing, the relief granted herein shall remain in effect on an interim basis.

21. This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

22. Notwithstanding anything to the contrary contained herein, any payment to be made, and any authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "**DIP Loan Agreements**") and any order governing the Debtors' use of cash collateral and entry into the DIP Loan Agreements (such order, the "**DIP Financing Order**") and nothing herein shall alter the rights of the secured parties under the DIP Financing Order or DIP Loan Agreements. To the extent of any conflict between the terms of this Order and the terms of the DIP Financing Order, the terms of the DIP Financing Order shall govern.

23. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors. The requirements of Bankruptcy Rules 6004(a) and 6004(h) and Local Rule 9013-1(a) are waived.

24. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2014
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
: :
MPM Silicones, LLC, et al.,¹ : Case No. 14-_____ ()
: :
Debtors. : Jointly Administered
-----X

**FINAL ORDER: (I) AUTHORIZING
DEBTORS TO PAY (A) PREPETITION EMPLOYEE
WAGES, SALARIES AND OTHER COMPENSATION,
(B) PREPETITION EMPLOYEE BUSINESS EXPENSES AND
(C) OTHER MISCELLANEOUS EMPLOYEE EXPENSES AND
EMPLOYEE BENEFITS; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), requesting entry of a final order, pursuant to sections 105(a), 363(b) and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (i) authorizing, but not directing, the Debtors to pay (a) prepetition employee wages, salaries and other compensation, (b) prepetition employee business expenses and (c) other miscellaneous employee expenses and employee benefits; and (ii) granting related relief, as set forth therein; and upon the Declaration of William H. Carter, Chief Financial Officer of Momentive Performance Materials Inc., in Support of Chapter 11 Petitions and First Day Pleadings; and due and sufficient notice of the Motion having been given; and it appearing that

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no other or further notice need be provided; and it appearing that the relief requested by this Motion is necessary to avoid immediate and irreparable harm to the Debtors, and is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that the relief requested is essential to the continued operation of the Debtors' businesses and the preservation of the value of their assets; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is granted on a final basis to the extent set forth herein.
2. Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.
3. The Debtors shall be and hereby are authorized to pay, in their discretion, the Prepetition Employee Obligations, including, but not limited to, Employee Wage Claims and prepetition obligations that have accrued under the Employee Benefit Programs and Employee Expense Obligations, to the extent such claims do not exceed \$12,475 per Employee, and to remit all Withholdings and Employer Tax Contributions to the appropriate third parties, as and when such obligations are due, upon entry of this Order; provided, however, that nothing in this Order shall be deemed to authorize any transfers in violation of section 503(c) of the Bankruptcy Code.
4. The Debtors shall be and hereby are authorized, in their discretion, to continue to honor their obligations, including any prepetition obligations, to Employees for Employee Expense Obligations in accordance with the Debtors' stated policies and prepetition practices.

5. The Debtors shall be and hereby are authorized, in their discretion, to honor and continue their Employee Benefit Programs that were in effect as of the Petition Date.

6. The Debtors shall be and hereby are authorized, but not directed, to remit monthly premiums to the applicable providers under the Employee Benefit Programs and to pay, in their discretion, any obligations, including prepetition obligations, in respect of the Employee Benefit Programs in the ordinary course of business.

7. No obligations or payments in connection with the 401(k) Plan shall cause the Debtors to exceed the priority cap imposed by section 507(a)(5) of the Bankruptcy Code.

8. The Debtors shall be and hereby are authorized, but not required, to pay costs and expenses incidental to the payment of the Prepetition Employee Obligations, including all administration and processing costs and payments to outside professionals, in the ordinary course of business, in order to facilitate the administration and maintenance of the Debtors' programs and policies related to the Prepetition Employee Obligations, in an aggregate amount not to exceed \$176,000.

9. The Debtors shall be and hereby are authorized to maintain, at their discretion, the Severance Policy for non-insider Employees terminated after the Petition Date.

10. The Debtors shall be and hereby are authorized, in their discretion, to honor and continue SERO and IEA, including making any payments to any Employees who separated under IEA prior to the Petition Date. For the avoidance of doubt, none of the Employees covered under SERO and IEA are "insiders" of the Debtors, as such term is defined in section 101 of the Bankruptcy Code.

11. The Debtors shall be and hereby are authorized, but not directed, to pay the Temporary Employee Claims and Independent Contractor Claims.

12. All Banks shall be and hereby are authorized and directed to receive, process, honor and pay all checks drawn on the Debtors' accounts with the Banks and fund transfers on account of the Prepetition Employee Obligations, whether presented before or after the Petition Date, provided that (a) sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) within two (2) business days from the date hereof, the Debtors provide the Banks with a list of checks that are outstanding as of the Petition Date, which relate to Prepetition Employee Obligations.

13. The Debtors shall be and hereby are authorized to issue, in their discretion, new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any Bank to the extent provided herein or by another order of this Court.

14. Notwithstanding any other provision of this Order, no Payroll Bank that honors a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors; (b) in a good faith belief that the Court has authorized payment of such prepetition check or item; or (c) as the result of a good faith error made despite implementation of reasonable item handling procedures, shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

15. Neither this Order nor any payment or performance by the Debtors authorized hereunder shall be deemed an assumption of any executory contract, including any Employee Benefit Programs, or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with an Employee.

16. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein, and the Debtors shall retain the business judgment to make or not make such payments, in all instances subject to the condition that funds are available to effect any payment. In no event shall any person (director, creditor, officer, manager, member, Employee or otherwise of the Debtors), solely as a result of this Order, be personally liable for any amounts authorized for payment herein but not paid, and nothing in this Order shall be deemed to increase, reclassify, elevate to administrative expense status or otherwise effect such claims.

17. Within three (3) business days after entry hereof, the Debtors shall serve a copy of this Order upon: (a) the United States Trustee for the Southern District of New York; (b) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (c) counsel to JPMorgan Chase Bank, N.A., as the administrative agent under the Debtors' prepetition secured credit agreements; (d) counsel to the administrative agent under the Debtors' postpetition credit agreement; (e) counsel to the indenture trustee for the 8.875% First-Priority Senior Secured Notes; (f) counsel to the indenture trustee for the 10% Senior Secured Notes; (g) counsel to the indenture trustee for the 9.0% / 9.5% Second-Priority Springing Lien Notes; (h) counsel to the indenture trustee for the 11.5% Senior Subordinated Notes; (i) counsel to GE Capital Equity Investments, Inc.; (j) counsel to the Ad Hoc Group of Second Lien Noteholders; (k) counsel to Apollo Global Management, LLC and certain affiliated funds; (l) counsel to Momentive Performance Materials Holdings LLC; and (m) the Debtors' existing banks.

18. This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

19. Notwithstanding anything to the contrary contained herein, any payment to be made, and any authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "**DIP Loan Agreements**") and any order governing the Debtors' use of cash collateral and entry into the DIP Loan Agreements (such order, the "**DIP Financing Order**") and nothing herein shall alter the rights of the secured parties under the DIP Financing Order or DIP Loan Agreements. To the extent of any conflict between the terms of this Order and the terms of the DIP Financing Order, the terms of the DIP Financing Order shall govern.

20. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors. The requirements of Bankruptcy Rules 6004(a) and 6004(h) and Local Rule 9013-1(a) are waived.

21. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2014
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE