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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
PURSUANT TO SECTIONS 105(a), 363(b), 503(b) AND 507(a)
OF THE BANKRUPTCY CODE AUTHORIZING DEBTORS TO PAY
PREPETITION CLAIMS OF CRITICAL VENDORS, FOREIGN VENDORS
AND SUPPLIERS OF GOODS ENTITLED TO ADMINISTRATIVE PRIORITY**

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 an interim order (the “**Proposed Interim Order**”) and a final order (the “**Proposed Final Order**” and, together with the Proposed Interim Order, the “**Proposed Orders**”), pursuant to sections 105(a), 363(b), 503(b), 507(a), 1107(a) and 1108 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 Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the Debtors to pay prepetition claims of critical vendors, foreign vendors and suppliers of goods entitled to administrative priority (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 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. 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 this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district 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), 503(b), 507(a), 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

RELIEF REQUESTED

4. In the ordinary course of operations, the Debtors rely on numerous vendors and suppliers for the timely delivery of goods, services and supplies, which are essential to the Debtors' operations. By this Motion, the Debtors seek entry of the Proposed Orders authorizing the Debtors, in their discretion, to pay (a) prepetition amounts (the "**Critical Vendor Claims**") due and owing to certain critical vendors that provide services and materials essential to the Debtors' business operations (the "**Critical Vendors**"); (b) prepetition amounts (the "**Foreign Vendor Claims**") due and owing to certain foreign vendors (the "**Foreign Vendors**");² and (c) the claims of certain critical vendors (the "**Critical 503(b)(9) Vendors**" and together with the Critical Vendors and the Foreign Vendors, the "**Trade Claimants**") entitled to priority treatment pursuant to section 503(b)(9) of the Bankruptcy Code for the value of goods received by the Debtors within the twenty (20) days prior to the Petition Date (the "**Critical 503(b)(9) Claims**" and together with the Critical Vendor Claims and the Foreign Vendor Claims, the "**Trade Claims**"). As of the Petition Date, the Debtors estimate that the Trade Claims total approximately \$31 million. The Proposed Interim Order, if entered, will grant the Debtors the authority to pay only a portion of the Trade Claims up to the maximum amounts designated in the Proposed Interim Order. The Debtors believe that the limited relief requested on an interim basis is the minimum amount necessary to avoid the immediate and irreparable harm that would

² The term "Foreign Vendors" shall not include foreign vendors, service providers or other non-governmental entities if such entities are known to have assets within the United States that would be subject to the jurisdiction of this Court and that would otherwise be available to satisfy a judgment entered by the Court if such entities were to violate the automatic stay provisions of section 362 of the Bankruptcy Code or take any actions contrary to an order of this Court. In addition, "Foreign Vendors" shall not include any of the Debtors' foreign entities.

befall the Debtors' estates if the Debtors were unable to pay any Trade Claims prior to the final hearing on the Motion (the "**Final Hearing**"). While the Debtors are seeking limited relief on an interim basis, they submit that the full relief requested pursuant to the Proposed Final Order is critical to maximizing the value of the Debtors' estates beyond the initial interim period.

A. Critical Vendors

(i) Identification of Critical Vendors

5. To ensure that only those vendors that provide goods and services that are actually essential to the Debtors' businesses are the subject of the relief requested herein, the Debtors, with the advice and input of AlixPartners, LLP, the Debtors' proposed restructuring advisors, conducted an extensive analysis and review of their immediate trade and service needs and supplier base. In doing so, the Debtors evaluated the following criteria: (a) whether the vendor in question is a sole source provider; (b) whether the Debtors receive advantageous pricing or other terms from a vendor such that replacing the vendor postpetition would result in significantly higher costs to the Debtors; (c) whether quality requirements or other specifications prevent the Debtors from obtaining a vendor's products or services from alternative sources within a reasonable time frame; (d) whether, if a vendor is not a sole source provider, the Debtors have sufficient in-house materials to continue operations while a replacement vendor is found and put in place; (e) whether a vendor is otherwise contractually obligated to continue to provide goods or services to the Debtors; and (f) whether a vendor meeting the aforementioned standards is likely to refuse to ship products or provide services to the Debtors postpetition if its prepetition balances are not paid. The Debtors are confident that this process has appropriately

identified only those vendors that are critical to the Debtors' estates and their near-term operational requirements.³

6. Based on the foregoing considerations, the Debtors identified Critical Vendors whose cessation of services or provision of goods could cripple in short order the Debtors' businesses and, therefore, result in irreparable harm. The Debtors believe that the Critical Vendors will refuse to supply the Debtors postpetition unless some or all of these claims are paid, and that immediate replacement of the Critical Vendors would be impracticable or, in some cases, impossible. Without authority to pay the Critical Vendors, the Debtors could be forced to suspend certain operations immediately.

7. The Debtors have bifurcated the relief requested herein into the Proposed Interim Order and the Proposed Final Order to allow sufficient time for a committee to be appointed and to provide parties-in-interest the opportunity to review the requested relief before the Final Hearing.

(ii) Importance of Critical Vendors in the Debtors' Operations

8. Several aspects of the Debtors' business require the Debtors to maintain relationships with a variety of vendors and underscore the importance of the relief requested herein. First, there are very few individual suppliers of the many specialty materials required by

³ As the Debtors believe that keeping the Trade Claimant list confidential may assist them in reducing the number of prepetition claims of Trade Claimants that they must pay now in order to continue receiving the key services described below, a schedule of the Trade Claimants has not been filed with this Motion. Instead, a schedule has been or will be provided on a confidential basis to: (a) the United States Trustee for the Southern District of New York; (b) counsel to the administrative agent under the Debtors' prepetition secured credit agreements; (c) counsel to the administrative agent under the Debtors' postpetition credit agreement; (d) counsel to the Ad Hoc Group of Second Lien Noteholders; (e) counsel to Momentive Performance Materials Holdings LLC; (f) counsel to Apollo Global Management, LLC and certain affiliated funds; and (g) upon request, the chambers of the United States Bankruptcy Judge assigned to these cases. In addition, upon request, a copy of this schedule will be provided to counsel to the official committee of unsecured creditors that may be appointed in these cases (the "Committee"). Due to the sensitivity of the list, the copy provided to counsel for the Committee shall be transmitted for "Professional Eyes Only."

the Debtors' operations. For example, the Debtors' silicones business is highly dependent upon access to, among other things, silicon metal, a key raw material, which is currently available from only one significant supplier in all of North America. Similarly, the Debtors' quartz production relies heavily on naturally occurring quartz sand, which is also available from only a limited number of suppliers. Second, several of the Critical Vendors are the sole source providers of their respective materials, providing goods to the Debtors in multiple jurisdictions. Therefore, losing a single Critical Vendor relationship would disrupt the Debtors' operations in several locations. Third, as operators of a complex chemical business, the Debtors must purchase certain services from vendors that have the specific qualification and expertise (as required by regulations or the Debtors' customers) necessary to operate potentially dangerous facilities, handle hazardous materials and navigate the just-in-time logistics specific to the Debtors' operations. Replacing vendors with this institutional knowledge would be time consuming and detrimental to the Debtors' reorganization efforts.

9. Fourth, and most importantly, the chemical industry is predicated on timeliness, efficiency and synchronization, where one hiccup can derail the entire interdependent manufacturing and distribution process. Raw materials are the lifeblood of the Debtors' business. Even a short delay in their delivery could damage the health of the Debtors' operations. For example, as one of the world's largest producers of silicones and silicone derivatives, the Debtors rely on raw materials such as silicon metal and methanol. The Debtors rely substantially on third-party suppliers to provide the requisite volume of such materials necessary to manufacture the Debtors' products. Any delay in the delivery of these materials would quickly give rise to a "domino effect" on the Debtors' operations as they would be unable

to purchase such materials in the quantities or at the prices necessary to allow the Debtors to remain competitive.

10. For all of the foregoing reasons, the Debtors identified select vendors for which the relief requested herein is justified and essential.

(iii) Categories of Critical Vendors⁴

11. Certain Critical Vendors (the “Raw Materials Critical Vendors”) provide the raw materials that are necessary to the Debtors’ silicones and quartz businesses. Certain of the Raw Materials Critical Vendors are sole source providers of their respective raw materials, including, for example, quartz sand, graphite, zirconia and tungsten—which are four essential elements of the Debtors’ quartz products. Other raw materials, such as tin catalysts used in the Debtors’ urethane additive products, as well as Eugenol, which is used in the production of specialty fluids products, are also sole-sourced or sourced to the specifications of the Debtors’ customers. In some cases, the Raw Materials Critical Vendors are the only source of raw materials capable of shipping the volume of raw materials required for the Debtors’ operations, and cannot be replaced by smaller suppliers, or at competitive prices. In other cases, the use of an alternative vendor would be disruptive to the Debtors’ ultimate customers, who would require extensive product testing before consenting to a new vendor. Logistical concerns also play a part in the Debtors’ choice of raw materials suppliers. The Debtors believe that if they fail to pay the Critical Vendor Claims owed to the Raw Materials Critical Vendors on a timely basis, existing relationships with such vendors would be negatively impacted, and many, if not all, of the Raw Materials Critical Vendors would stop shipping entirely. The cessation of

⁴ To illustrate the critical nature of the services and materials provided by the Critical Vendors, this Motion provides an example of certain categories of Critical Vendors. However, for the avoidance of doubt, the Motion is intended to encompass a wide range of Critical Vendors and not just those described with particularity below.

shipments from the Raw Materials Critical Vendors would have an immediate and devastating impact on the Debtors' businesses.

12. Other Critical Vendors provide specialized supplies and technical equipment that are essential to the Debtors' operations (the "**Equipment Supplies Critical Vendors**"). Such supplies and equipment, including specialized safety equipment worn by the Debtors' employees, are often specifically tailored to meet the Debtors' business needs and to comply with various regulations after undergoing a thorough testing process. Given that the Debtors do not have ample time to immediately replace these vendors, and given that any such replacement would be costly, the loss of the Equipment Supplies Critical Vendors could be devastating to the Debtors' estates, creditors and other parties in interest. Bringing in a new vendor to supply the Debtors' specialized equipment would involve extensive testing at the Debtors' facilities. Even if the Debtors desired to accommodate such an endeavor, the resulting value-eroding costs of implementation would derail the company's restructuring efforts. Simply put, the goods provided by the Equipment Supplies Critical Vendors are necessary to ensure that the Debtors operate at maximum safety and efficiency. Therefore, the continued provision of supplies and equipment by the Equipment Supplies Critical Vendors is essential to the Debtors' efforts to continue uninterrupted operations and to maximize the value of their assets.

13. The Debtors also utilize various vendors and service providers (the "**Environmental Critical Vendors**") in order to comply with certain environmental regulations. The goods and services provided by the Environmental Services Critical Vendors relate to water treatment, chemical treatment, and environmental testing. For example, certain Environmental Critical Vendors provide specialized products, including, for example, specialty acid neutralizing agents, which are used in the treatment of waste water. At any given time, the Debtors only hold

a limited supply of such agents, and require daily deliveries to meet the Debtors' needs. Any disruption to the Debtors' supply stream would jeopardize the Debtors' restructuring efforts, risk a shutdown of the Debtors' facilities and pose severe environmental risks. As another example, there is only one vendor approved by New York State to test the Debtors' water samples in order to comply with certain New York environmental requirements. If such vendor were to refuse to continue to provide services, the Debtors would be unable to comply with certain New York environmental regulations. Another vendor is an integrated part of the Debtors' environmental spill response plan, and could not be replaced in an efficient or timely fashion. Without the goods and services of the Environmental Critical Vendors, the Debtors would be in danger of being in non-compliance with various environmental laws and regulations, which would pose public safety and health hazards to the Debtors' employees and the general public where the Debtors operate. There are few, if any, replacements available for the Environmental Critical Vendors in the Debtors' regions, and any replacement would be costly and disruptive to the Debtors' operations. The Debtors must continue to receive the services of the Environmental Critical Vendors in order to ensure that their production processes are safe for their employees and the surrounding public and compliant with all applicable laws and regulations.

14. Based on the foregoing considerations, and given the paucity of qualified vendors and the deleterious impact upon the Debtors if certain Critical Vendors stop performance, even for a brief period of time, the Debtors have identified certain Critical Vendors who are fundamentally important to the Debtors' business operations and restructuring efforts. Based upon their books and records, the Debtors estimate that they pay their vendors and suppliers, in the ordinary course of business, approximately \$65 million each month. The Critical Vendor Claims account for approximately 24% of that spend. The Debtors believe that

the Critical Vendors will refuse to supply the Debtors postpetition unless their prepetition claims are paid. Without authority to pay the Critical Vendors, the Debtors would be unable to conduct their businesses and fulfill obligations to their customers. Such a result would be detrimental to the Debtors' reputation and businesses. As of the Petition Date, the Debtors estimate that the Critical Vendor Claims total approximately \$15,500,000.

B. Foreign Vendors

15. As discussed in the First Day Declaration, the Debtors operate a complex, highly competitive, international business in the silicone and quartz industries. The Debtors, together with their foreign non-debtor subsidiaries, operate 22 production facilities worldwide, providing services to approximately 4,500 customers throughout 100 countries through a workforce of 4,500 employees. The successful operation of these businesses requires the Debtors to rely on foreign third-party vendors and suppliers, in addition to their domestic vendors, that provide the Debtors with numerous materials and services. Given the size and global nature of their enterprise, the Debtors, in the ordinary course of their business, regularly transact with vendors outside of the United States that are critical to the Debtors' supply chain.

16. The majority of the Foreign Vendor Claims are held by various sole source providers, particularly in China, that supply the Debtors with highly specialized materials, including specialty molecules, which are manufactured to the Debtors' specifications, that are essential to the Debtors' end products.

17. As of the Petition Date, the Debtors estimate that the Foreign Vendor Claims total approximately \$2,300,000.

C. Critical 503(b)(9) Vendors

18. The Debtors have also identified certain claims held by vendors that are critical to the Debtors' businesses, which claims are entitled to priority status under sections

503(b)(9) and 507(a)(2) of the Bankruptcy Code due to the fact that they are undisputed obligations for goods received by the Debtors in the ordinary course of business in the twenty (20) days prior to the Petition Date.

19. As of the Petition Date, the Debtors estimate that the Critical 503(b)(9) Claims total approximately \$13,300,000, which is in addition to the Critical Vendor Claims and the Foreign Vendor Claims.⁵ The Debtors believe this is necessary to avoid the immediate harm that would befall the Debtors' estates if they were unable to pay the Critical 503(b)(9) Claims prior to the Debtors' exit from bankruptcy.

20. The Debtors seek, in their discretion, to pay the Critical 503(b)(9) Claims as they come due in the ordinary course, subject to the caps imposed under the Proposed Orders, instead of satisfying these claims upon confirmation of a chapter 11 plan. The Debtors believe that by altering the timing of payments that certain Critical 503(b)(9) Vendors are entitled to receive as a matter of statute, such payments can induce the individual Critical 503(b)(9)Vendors to adhere to favorable trade terms and do business with the Debtors on a going-forward basis. The Debtors believe that this relief is in the best interests of the Debtors' estates because: (a) favorable trade terms will prevent the contraction of the Debtors' liquidity; and (b) this Court's time and resources will not be burdened with motions from individual Critical 503(b)(9)Vendors requesting payment on account of their Critical 503(b)(9) Claims or seeking reclamation of goods received by the Debtors in the twenty days prior to the Petition Date.

⁵ The Debtors estimate that there are an additional \$18 million in claims entitled to priority status under section 503(b)(9) of the Bankruptcy Code as of the Petition Date. However, the Debtors are not seeking authority at this time to make payments in excess of \$13,300,000 on account of such priority claims.

D. Proposed Terms and Conditions of Payment of Trade Claims

21. The Debtors respectfully request that the Court authorize the Debtors to pay those Trade Claims which the Debtors, in their discretion, determine must be paid in order to continue receiving the goods and services provided by the Trade Claimants. Subject to the terms set forth below, the Debtors propose to condition the payment of Trade Claims on the agreement of individual Trade Claimants to supply goods and services to the Debtors on the most favorable trade terms that such Trade Claimant offered to the Debtors prior to the Petition Date (the "**Customary Trade Terms**"). The Debtors reserve the right to negotiate new trade terms with any Trade Claimant as a condition to payment of any Trade Claim.

22. To ensure that the Trade Claimants continue to deal with the Debtors on the Customary Trade Terms, the Debtors propose that a letter agreement (a "**Trade Agreement**")⁶ substantially in the form attached hereto as Exhibit A be sent to the Trade Claimants for execution, together with a copy of the Proposed Interim Order (or the Proposed Final Order, if such order has been entered) granting this Motion.

23. The Debtors propose that each Trade Agreement include, without limitation:

- (a) the amount of the relevant Trade Claimant's estimated Trade Claim, accounting for any setoffs, other credits and discounts thereto; provided, however, such amount shall be used only for the purposes of determining such Trade Claimant's claim under the Proposed Orders and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of this Court;
- (b) the Customary Trade Terms applicable to such Trade Claimant, or such other terms as the Trade Claimant and the Debtors may agree

⁶ The Debtors' entry into a Trade Agreement shall not change the nature or priority of the underlying Trade Claims, and shall not constitute an assumption or rejection of any executory contract or unexpired lease between a Debtor and a Trade Claimant.

on that are at least as favorable as those that were in effect prior to the Petition Date, and the Trade Claimant's agreement to provide goods and/or services to the Debtors pursuant to such terms during the pendency of the Debtors' bankruptcy cases, unless the Debtors fail to make timely payments under the agreed-upon terms;

- (c) the Trade Claimant's agreement not to file or otherwise assert against any or all of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien (a "**Lien**") or claim for reclamation (a "**Reclamation Claim**") regardless of the statute or other legal authority upon which such Lien or Reclamation Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to the Trade Claimant by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date and, to the extent the Trade Claimant has already obtained or otherwise asserted such a Lien or Reclamation Claim, the Trade Claimant shall take whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim; and
- (d) the Trade Claimant's acknowledgment that it has reviewed the terms and provisions of the Proposed Orders sought hereby and is bound thereby.

24. By this Motion, the Debtors seek only the authority to enter into Trade Agreements when the Debtors determine, in their discretion, that payment of such Trade Claims in the ordinary course is necessary and that such agreements are advisable. The Debtors also hereby seek authority to make payments in the ordinary course on account of Trade Claims, even in the absence of a Trade Agreement, if the Debtors determine, in their business judgment, that failure to pay such Trade Claims in the ordinary course is likely to result in irreparable harm to the Debtors' business operations and that they are not reasonably likely to be able to achieve a Trade Agreement with the relevant Trade Claimant.⁷

25. In the event a Trade Claimant refuses to supply goods and services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following

⁷ Nothing in this Motion should be construed as a waiver by any of the Debtors of their rights to contest any claim of a Trade Claimant under applicable law.

receipt of payment on its Trade Claim, or fails to comply with any Trade Agreement entered into between such Trade Claimant and the Debtors, then the Debtors hereby seek authority, in their discretion and without further order of the Court: (a) to declare that any Trade Agreement between the Debtors and such Trade Claimant is terminated (if applicable); (b) to declare that payments made to such Trade Claimant on account of its Trade Claims be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of such Trade Claimant without further order of this Court or action by any person or entity; and (c) to recover any payment made to such Trade Claimant on account of its Trade Claims to the extent that such payments exceeded the postpetition claims of such Trade Claimant, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense. In sum, if a Trade Agreement is terminated or a Trade Claimant refuses to supply goods or services to the Debtors on Customary Trade Terms (or such other terms as have been agreed by the parties) following receipt of payment on its Trade Claim, the Debtors seek authority to return the parties to the positions they held immediately prior to the entry of the Proposed Interim Order approving this Motion with respect to all prepetition claims of such Trade Claimant. In addition, the Debtors reserve the right to seek damages or other appropriate remedies against any breaching Trade Claimant.

26. The Debtors further propose that any Trade Agreement terminated as a result of a Trade Claimant's refusal to comply with the terms thereof may be reinstated in the Debtors' discretion if:

- (a) the underlying default under the Trade Agreement is fully cured by the Trade Claimant not later than five (5) business days following the Debtors' notification to the Trade Claimant of such a default; or
- (b) the Debtors, in their discretion, reach a favorable alternative agreement with the Trade Claimant.

27. Some of the Trade Claimants also may have obtained mechanic's liens, possessory liens, or other similar state law trade liens ("**Trade Liens**") on the Debtors' (or other parties') assets, based upon Trade Claims held by such vendors. As a further condition of receiving payment on a Trade Claim, a Trade Claimant must agree to take whatever action is necessary to remove any such Trade Lien, at such Trade Claimant's sole cost and expense.

E. Request for Debtors' Banks to Honor and Pay Checks Issued and Fund Transfers with Respect to the Trade Claims

28. The Debtors also request that the Court: (a) authorize and direct the Debtors' banks to receive, process, honor and pay all checks drawn on such accounts and fund transfers for payments with respect to the Trade Claims, provided that sufficient funds are on deposit in the applicable accounts to cover such payments; and (b) authorize the Debtors to issue new postpetition checks or effect new postpetition fund transfers on account of the Trade Claims 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

29. The relief requested in this Motion is supported by several provisions of the Bankruptcy Code that authorize a debtor to honor prepetition obligations in certain circumstances. Courts have recognized each of these statutory provisions as valid authority for such payments.

A. This Court May Authorize Payment of the Trade Claims Pursuant to Sections 105 and 363 of the Bankruptcy Code

30. The relief requested in this Motion is authorized pursuant to sections 105 and 363 of the Bankruptcy Code. See In re MPC Computers, LLC, Case No. 08-12667 (PJW) (Bankr. D. Del. Nov. 10, 2008) (authorizing, pursuant to section 363 of the Bankruptcy Code, the payment of prepetition claims of certain suppliers). Section 363(b)(1) of the Bankruptcy Code

authorizes the trustee to use property of the estate other than in the ordinary course of business after notice and a hearing. Furthermore, the debtor's decision to use property of the estate outside the ordinary course of business must be based upon the Debtors' sound business judgment. See In re Chateaugay Corp., 973 F.2d 141, 143 (2d. Cir. 1992); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d. Cir. 1983). The relief requested herein contemplates payments to be made to Trade Claimants who agree to extend postpetition credit or other valuable consideration in exchange for such payment. As a result, the payment of such Trade Claims is consistent with the Debtors' sound business judgment and appropriate under sections 105 and 363 of the Bankruptcy Code.

31. Pursuant to Bankruptcy Rule 6003(b), authorization to utilize property of the estate, "including a motion to pay all or part of a claim that arose before the filing of the petition . . . [,]" may not be granted in the first twenty (20) days of a bankruptcy case, except "to the extent that relief is necessary to avoid immediate and irreparable harm" Fed. R. Bankr. P. 6003(b). As detailed above, the goods and services that the Trade Claimants provide are integral to the Debtors' uninterrupted operations, and the ability to pay the Trade Claims during the first twenty (20) days of these chapter 11 cases is necessary to avoid immediate and irreparable harm to the Debtors. For the reasons set forth herein, the Debtors submit that the requirements of Bankruptcy Rule 6003 have been satisfied.

32. Courts in this jurisdiction have granted similar critical vendor relief in other bankruptcy cases. See, e.g., In re Excel Maritime Carriers Ltd., Case No. 13-23060 (RDD) (Bankr. S.D.N.Y. July 3, 2013); In re LodgeNet Interactive Corporation, Case No. 13-10238 (SCC) (Bankr. S.D.N.Y. Feb. 27, 2013); In re RDA Holding Co., Case No. 13-22233 (RDD) (Bankr. S.D.N.Y. Feb. 21, 2013); In re Residential Capital, LLC, Case No. 12-12020 (MG)

(Bankr. S.D.N.Y. July 25, 2012); In re Hawker Beechcraft, Inc., Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012); In re Eastman Kodak Company, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 15, 2012); In re The Great Atlantic & Pacific Tea Company, Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 12, 2011); In re Neff Corp., Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 8, 2010); In re EnviroSolutions of New York, LLC, Case No. 10-11236 (SMB) (Bankr. S.D.N.Y. Apr. 13, 2010).

**B. The Court May Rely on the “Necessity of Payment”
Doctrine and Its General Equitable Powers to Grant the Motion**

33. The “doctrine of necessity” or “necessity of payment” rule “is a well-settled doctrine that 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.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); see also In re Financial News Network, Inc., 134 Bankr. 732, 736 (Bankr. S.D.N.Y. 1991) (to invoke the doctrine, a debtor must show that the payment is “critical to the debtor’s reorganization”). This doctrine is consistent with the paramount goal of chapter 11 — “facilitating the continued operation and rehabilitation of the debtor.” In re Ionosphere Clubs, 98 B.R. at 176.

34. The court’s general equitable powers are codified in section 105(a) of the Bankruptcy Code, which empowers the Court to “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). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. at 175. Under section 105(a) of the Bankruptcy Code, a court “can permit pre-plan payment of a prepetition obligation when essential to the continued

operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also In re Chateaugay Corp., 80 B.R. 279, 285-86 (S.D.N.Y. 1987). Maintaining access to the goods and services supplied by the Trade Claimants is absolutely critical to the Debtors’ successful reorganization and is in the best interests of the Debtors’ estates and their creditors. Hence, granting Debtors the authority to pay the Trade Claims is essential to assure that the Debtors continue to receive the goods and services required for operations. This Court should therefore exercise its equitable powers to grant the relief requested in this Motion.

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

C. This Court May Authorize Payment of the Foreign Vendor Claims

36. The relief requested herein with respect to the Foreign Vendor Claims is also appropriate and warranted under each of the above-described standards as the payment of the Foreign Vendor Claims is essential to assure that the Debtors continue to receive goods and services necessary for the uninterrupted operation of their business.

37. In addition, although section 362(a) of the Bankruptcy Code provides that the filing of a chapter 11 petition “operates as a stay, applicable to all entities,” with respect to creditor remedies, the power of a United States court to enforce its jurisdiction against an entity without a presence in the United States is potentially limited.⁸ Indeed, in the circumstances of this case, where Foreign Vendors lack assets within the United States that would be subject to the Court’s jurisdiction and that would otherwise be available to satisfy a judgment entered by

⁸ For the avoidance of doubt, the Debtors intend to enforce the rights afforded them under the automatic stay to the extent feasible.

the Court if such entities were to violate the automatic stay or take any actions contrary to an order of this Court, the Court as a practical matter may be unable to prevent such Foreign Vendors from violating the automatic stay by pursuing remedies against the Debtors' property located outside of the United States if they are not timely paid. See, e.g., In re Aerovias Nacionales de Columbia S.A. Avianca, 303 B.R. 1, 6 (Bankr. S.D.N.Y. 2003) (explaining the rationale for foreign vendor motions is the uncertain extraterritorial reach of the automatic stay). As a result, despite the commencement of these cases and the imposition of the automatic stay, the Foreign Vendors may decline to provide necessary goods and services, thereby disrupting the Debtors' operations both internationally and domestically. Further, even if the automatic stay could be enforced, the automatic stay by itself may not serve to protect assets or trade terms of the Debtors' non-debtor affiliates, which could remain at risk of adverse action.

38. Courts in this district have granted authorization for chapter 11 debtors to pay claims owing to foreign entities against which the automatic stay cannot be readily enforced in the United States and as to which it would be unduly time-consuming and expensive to seek to enforce an order of the bankruptcy court in the creditor's home country. See, e.g., In re RDA Holding Co., Case No. 13-22233 (RDD) (Bankr. S.D.N.Y. Mar. 25, 2013); In re Eastman Kodak Company, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 15, 2012); In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 23, 2011); In re Chemtura Corp., Case No. 09-11233 (REG) (Bankr. S.D.N.Y. Apr. 13, 2009); In re Lyondell Chem. Co., Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 23, 2009); In re Frontier Airlines Holdings, Inc., Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. May 15, 2008).

39. In light of the potential for serious and irreparable consequences if essential Foreign Vendors do not continue to make uninterrupted and timely deliveries of goods

and services, the Debtors have determined, in the exercise of their business judgment, that payment of the Foreign Vendor Claims is critical to the Debtors' business operations and restructuring efforts.

D. Payment of Critical 503(b)(9) Claims Is Justified Pursuant to Section 503(b)(9) of the Bankruptcy Code

40. Under section 503(b)(9) of the Bankruptcy Code, a claim shall be accorded administrative expense priority where such claim is for the value of any goods received by the debtor within twenty (20) days before the Petition Date if such goods were sold to the debtor in the ordinary course. See 11 U.C.S. § 503(b)(9). Furthermore, under section 507(a)(2) of the Bankruptcy Code, administrative expenses allowed under section 503(b)(9) of the Bankruptcy Code are granted priority status. See 11 U.S.C. § 507(a)(2). The Critical 503(b)(9) Claims the Debtors seek to pay by this Motion are entitled to priority status under sections 503(b)(9) and 507(a)(2) of the Bankruptcy Code. Therefore, the Debtors must pay these claims in full to confirm a plan of reorganization. See 11 U.S.C. § 1129(a)(9)(A) (requiring payment in full of claims entitled to priority under section 507(a)(2) of the Bankruptcy Code). Granting the relief sought herein would only affect the timing of undisputed administrative expense payments that the Critical 503(b)(9)Vendors are already entitled to receive as a matter of statute and not the amount or priority of the Critical 503(b)(9) Claims. Thus, the payment of the Critical 503(b)(9) Claims will not prejudice the Debtors' other stakeholders.

41. Courts in this district have approved the payment of similar claims pursuant to section 503(b)(9) of the Bankruptcy Code. See, e.g., In re RDA Holding Co., Case No. 13-22233 (RDD) (Bankr. S.D.N.Y. Mar. 25, 2013); In re Hawker Beechcraft, Inc., Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012); In re Eastman Kodak Company, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 15, 2012); In re The Great Atlantic & Pacific Tea

Company, Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 12, 2011); In re Neff Corp., Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 8, 2010); In re EnviroSolutions of New York, LLC, Case No. 10-11236 (SMB) (Bankr. S.D.N.Y. Apr. 13, 2010); In re Lear Corporation, Case No. 09-14326 (ALG) (Bankr. S.D.N.Y. July 31, 2009); In re Journal Register Co., Case No. 09-10769 (ALG) (Bankr. S.D.N.Y. Mar. 18, 2009).

42. Accordingly, for all of the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

NOTICE

43. 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.

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

CONCLUSION

WHEREFORE, the Debtors respectfully request: (i) entry of an order substantially in the form of the Proposed Interim Order annexed hereto as Exhibit B; (ii) after the Final Hearing, entry of the Proposed Final Order substantially in the form annexed hereto as Exhibit C; and (iii) such other and further relief as may be just or 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

Trade Agreement

_____, 2014

TO: [Trade Claimant]
[Name]
[Address]

Dear Valued Supplier:

As you may be aware, on April 13, 2014 (the "**Petition Date**"), Momentive Performance Materials Inc., together with certain of its affiliates (collectively, the "**Debtors**"), filed voluntary petitions under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Cases**" and the "**Bankruptcy Court**," respectively). On the Petition Date, we requested the Bankruptcy Court's authority to pay certain critical service providers and suppliers (the "**Trade Claimants**") in recognition of the importance of our relationship with them and our desire that the Bankruptcy Cases have as little effect on them as possible. On [], 2014, the Bankruptcy Court entered an interim order (the "**Order**")/On [], 2014, the Bankruptcy Court entered the final order (the "**Order**") authorizing us, under certain conditions, to pay pre-bankruptcy claims of Trade Claimants that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

To receive payment on pre-bankruptcy claims, we require each Trade Claimant to agree to continue supplying goods to the Debtors based on "Customary Trade Terms." In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowance, rebates and availability and other applicable terms and programs) in effect between such Trade Claimant and the Debtors prior to the Petition Date (the "**Prepetition Trade Terms**") or such other trade terms, practices and programs that are at least as favorable to the Debtors as the Prepetition Trade Terms.

For purposes of administration of this trade program as authorized by the Bankruptcy Court, the Debtors and you agree as follows:

1. The estimated balance of the prepetition trade claim (net of any setoffs, credits or discounts) is \$_____ (the "**Trade Claim**"). **Your Trade Claim does not constitute a claim allowed by the Bankruptcy Court in the Bankruptcy Cases. Furthermore, signing this Trade Agreement does not excuse you from any requirement of filing a proof of claim in the Bankruptcy Cases on account of prepetition amounts that may remain unpaid.**
2. The open trade balance or credit line that you will extend to the Debtors for shipment of postpetition goods is \$_____ (which shall not be less than the greater of the open trade balance outstanding: (a) on _____, 2014, or (b) the most favorable trade terms offered to the Debtors prior to the Petition Date).

3. In consideration for the payment described herein, you agree not to file or otherwise assert against any or all of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien (a "**Lien**") or claim for reclamation ("**Reclamation Claim**"), regardless of the statute or other legal authority upon which such Lien or Reclamation Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to you by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date and, to the extent you have already obtained or otherwise asserted such a Lien or Reclamation Claim, you shall (at your own expense) take whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim.
4. You will hereafter extend to the Debtors all Customary Trade Terms, which are:

[ADD INDIVIDUALIZED SET OF CUSTOMARY TRADE TERMS]

Payment of your Trade Claim in the manner set forth in the Order may occur upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Debtors. Your execution of this letter agreement and the return of the same to the Debtors constitutes an agreement between you and the Debtors:

- (a) to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Trade Claim set forth above;
- (b) that, during the pendency of the Bankruptcy Cases, you will continue to supply the Debtors with goods and/or services, pursuant to the terms hereof and that the Debtors will pay for such goods in accordance with the terms hereof;
- (c) that you have reviewed the terms and provisions of the Order and acknowledge that you are bound by such terms;
- (d) that you will not separately seek the reclamation of goods shipped to the Debtors unless your participation in the trade payment program authorized by the Order (the "**Trade Payment Program**") is terminated;
- (e) that if either the Trade Payment Program or your participation therein terminates as provided in the Order, any payments received by you on account of your Trade Claim will be deemed to have been in payment of postpetition obligations owed to you and you will immediately repay to the Debtors any payments made to you on account of your Trade Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations,

without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or other defense; and

- (f) that, subject to the terms and conditions set forth herein, your Trade Claim will be paid in accordance with the following schedule:

Date	Amount of Payment

The Debtors and you also hereby agree that any dispute with respect to this agreement, the Order and/or your participation in the Trade Payment Program shall be determined by the Bankruptcy Court notwithstanding any provision of any other contract between you and the Debtors to the contrary (whether such contract exists now or is entered into in the future).

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call [Name] at (____)_____ or [Name] at (____)_____.

Sincerely,

[Debtor]

By:

Its:

Agreed and Accepted by:
[Name of Trade Claimant]

By:

Its:

Dated:

EXHIBIT B

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 PURSUANT TO SECTIONS 105(a), 363(b), 503(b) AND
507(a) OF THE BANKRUPTCY CODE AUTHORIZING DEBTORS TO PAY
PREPETITION CLAIMS OF CRITICAL VENDORS, FOREIGN VENDORS
AND SUPPLIERS OF GOODS ENTITLED TO ADMINISTRATIVE PRIORITY**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) for an Interim Order² and Final Order, pursuant to sections 105(a), 363(b), 503(b), 507(a), 1107(a) and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing Debtors to pay prepetition claims of critical vendors, foreign vendors and suppliers of goods entitled to administrative priority, and scheduling a final hearing on the Motion; 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 no other or further notice need be provided; and it appearing that the relief requested by this

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.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

Motion is in the best interest of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. Aggregate payments with respect to the Trade Claims under this Interim Order shall not exceed \$21 million (the "**Interim Cap**"), without prejudice to the Debtors' right to seek authority to make additional payments.
3. The Debtors are authorized, but not directed, in their discretion, to pay in the ordinary course of their businesses, the Critical Vendor Claims, Foreign Vendor Claims, and Critical 503(b)(9) Claims; provided, however, that such payments, in the aggregate, shall not exceed the Interim Cap; provided further, that in no event shall the Debtors pay any Trade Claims before such amounts are due and payable and this Interim Order shall not be deemed to allow the Debtors to accelerate payment of any amounts for Trade Claims that may be due and owing by the Debtors.
4. The Debtors are authorized, but not directed, to undertake appropriate efforts to cause Trade Claimants to enter into Trade Agreements with the Debtors substantially similar to that annexed as Exhibit A to the Motion, as a condition of payment of each such Trade Claimant's Trade Claims.
5. The Debtors are authorized, in their discretion, to make payments on account of a Trade Claim, subject to the other limits set forth herein, even in the absence of a Trade Agreement, if the Debtors determine, in their business judgment, that failure to pay such Trade Claim is likely to harm the Debtors' business operations.

6. If a Trade Claimant refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Trade Claim (regardless of whether such Trade Claimant has entered into a Trade Agreement), or fails to comply with any Trade Agreement entered into between such Trade Claimant and the Debtors, then the Debtors may, in their discretion and without further order of the Court: (a) declare that any Trade Agreement between the Debtors and such Trade Claimant is terminated; (b) declare that payments made to such Trade Claimant on account of its Trade Claims shall be deemed to have been in payment of then-outstanding or subsequently accruing postpetition claims of such Trade Claimant; and (c) recover any payment made to such Trade Claimant on account of its Trade Claims to the extent that such payments exceeded the postpetition claims of such Trade Claimant, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims or other defense. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Trade Claimant.

7. Notwithstanding the foregoing, the Debtors may, in their discretion, reinstate a Trade Agreement if:

- (a) the underlying default under the Trade Agreement is fully cured by the Trade Claimant not later than five (5) business days following the Debtors' notification to the Trade Claimant of such default had occurred; or
- (b) the Debtors, in their discretion, reach a favorable alternative agreement with the Trade Claimant.

8. Nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any Trade Claim.

9. Nothing contained in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed: (a) as an

admission as to the validity of any claim or Lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or Lien; (c) as approval or assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code between a Debtor and a Trade Claimant; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; (e) to require the Debtors to make any of the payments authorized herein; or (f) to prejudice the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Trade Claimant.

10. The authorization granted hereby to pay Trade Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay the Trade Claims, none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Trade Claim and nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Trade Claims to the extent they are not paid.

11. The amount of any Trade Claim set forth in a Trade Agreement shall be used only for purposes of determining a Trade Claimant's claim under this Interim Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court. Further, signing a Trade Agreement containing a claim amount for purposes of this Interim Order shall not excuse such Trade Claimant from filing a proof of claim in these cases on account of prepetition amounts that may remain unpaid.

12. No claimant who receives payment on account of a Trade Claim (whether or not such claimant signs a Trade Agreement) is permitted to: (a) file or perfect a Lien on

account of such claim, and any such claimant shall take all necessary action to remove any existing Lien relating to such claim, even if the Lien is against property of a non-Debtor; or
(b) seek to reclaim goods previously shipped to the Debtors.

13. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

14. Nothing in this Interim Order shall prohibit the Debtors from seeking Court approval to increase the prepetition amounts authorized to be paid hereunder.

15. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including avoidance actions, which may be held by the Debtors.

16. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Interim Order presented after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order.

17. Within three (3) business days of the entry of this Interim Order, the Debtors shall serve a copy of the Motion and this Interim Order upon (a) the United States Trustee for the Southern District of New York (the "**U.S. Trustee**"); (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 responses or objections to entry of the Final Order must (a) be made in writing; (b) state with particularity the grounds therefor; (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York; (d) be filed with the United States Bankruptcy Court for the Southern District of New York; and (e) be served upon (i) the U.S. Trustee, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Brian S. Matsumoto, Esq. and Richard W. Fox, Esq.; (ii) Momentive Performance Materials Inc., 260 Hudson River Road, Waterford, NY 12188, Attn: Douglas A. Johns; (iii) proposed counsel to the Debtors: Willkie Farr & Gallagher LLP, 787 Seventh Ave, New York, New York 10019, Attn: Matthew A. Feldman, Esq. and Rachel C. Strickland, Esq.; and (iv) counsel to the administrative agent under the Debtors' postpetition credit agreement, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attn: Steven M. Fuhrman, Esq. and Nicholas Baker, Esq. (collectively, the "**Notice Parties**").

19. The deadline by which objections to the Motion and the Final Order must be filed and received by the Notice Parties is _____, 2014 at 4:00 p.m. (prevailing Eastern Time) (the "**Objection Deadline**"). A final hearing, if required, on the Motion will be held on _____, 2014 at _____ .m. (prevailing Eastern

Time). If no objections are filed to the Motion and entry of the Final Order on or before the Objection Deadline, the Court may enter the Final Order without further notice or a hearing.

20. 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.

21. 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.

22. The notice requirements of Bankruptcy Rule 6004(a) are deemed waived.

23. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

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

Dated: _____, 2014
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

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 PURSUANT TO SECTIONS 105(a), 363(b), 503(b) AND
507(a) OF THE BANKRUPTCY CODE AUTHORIZING DEBTORS TO PAY
PREPETITION CLAIMS OF CRITICAL VENDORS, FOREIGN VENDORS
AND SUPPLIERS OF GOODS ENTITLED TO ADMINISTRATIVE PRIORITY**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) for an Interim Order² and Final Order, pursuant to sections 105(a), 363(b), 503(b), 507(a), 1107(a) and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing Debtors to pay prepetition claims of critical vendors, foreign vendors and suppliers of goods entitled to administrative priority [Docket No. ____]; and the Court having entered the *Interim Order Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code Authorizing Debtors to Pay Prepetition Claims of Critical Vendors, Foreign Vendors and Suppliers of Goods Entitled to Administrative Priority* [Docket No. ____] (the “**Interim Order**”); and upon the Declaration of William H. Carter, Chief

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.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

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 and the Interim Order having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interest of these estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on a final basis to the extent set forth herein.
2. Aggregate payments with respect to the Trade Claims under this Final Order shall not exceed \$31,100,000 (the "**Final Cap**"), without prejudice to the Debtors' right to seek authority to make additional payments.
3. The Debtors are authorized, but not directed, in their discretion, to pay in the ordinary course of their businesses, the Critical Vendor Claims, in amounts not to exceed \$15,500,000 in the aggregate.
4. The Debtors are authorized, but not directed, in their discretion, to pay in the ordinary course of their businesses, the Foreign Vendor Claims, in amounts not to exceed \$2,300,000 in the aggregate.
5. The Debtors are authorized, but not directed, in their discretion, to pay in the ordinary course of their businesses, the Critical 503(b)(9) Claims in amounts not to exceed \$13,300,000 in the aggregate.
6. The Debtors are authorized, but not directed, to undertake appropriate efforts to cause Trade Claimants to enter into Trade Agreements with the Debtors substantially

similar to that annexed as Exhibit A to the Motion, as a condition of payment of each such Trade Claimant's Trade Claims.

7. The Debtors are authorized, in their discretion, to make payments on account of a Trade Claim, subject to the other limits set forth herein, even in the absence of a Trade Agreement, if the Debtors determine, in their business judgment, that failure to pay such Trade Claim is likely to harm the Debtors' business operations.

8. If a Trade Claimant refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Trade Claim (regardless of whether such Trade Claimant has entered into a Trade Agreement), or fails to comply with any Trade Agreement entered into between such Trade Claimant and the Debtors, then the Debtors may, in their discretion and without further order of the Court: (a) declare that any Trade Agreement between the Debtors and such Trade Claimant is terminated; (b) declare that payments made to such Trade Claimant on account of its Trade Claims shall be deemed to have been in payment of then-outstanding or subsequently accruing postpetition claims of such Trade Claimant; and (c) recover any payment made to such Trade Claimant on account of its Trade Claims to the extent that such payments exceeded the postpetition claims of such Trade Claimant, without giving effect to any rights of setoff, claims, provision of payment of reclamation or trust fund claims or other defense. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Trade Claimant.

9. Notwithstanding the foregoing, the Debtors may, in their discretion, reinstate a Trade Agreement if:

- (a) the underlying default under the Trade Agreement is fully cured by the Trade Claimant not later than five (5) business days following

the Debtors' notification to the Trade Claimant of such default had occurred; or

- (b) the Debtors, in their discretion, reach a favorable alternative agreement with the Trade Claimant.

10. Nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any Trade Claim.

11. Nothing contained in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed: (a) as an admission as to the validity of any claim or Lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or Lien; (c) as approval or assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code between a Debtor and a Trade Claimant; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; (e) to require the Debtors to make any of the payments authorized herein; or (f) to prejudice the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Trade Claimant.

12. The authorization granted hereby to pay Trade Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay the Trade Claims, none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Trade Claim, and nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Trade Claims to the extent they are not paid.

13. The amount of any Trade Claim set forth in a Trade Agreement shall be used only for purposes of determining a Trade Claimant's claim under this Final Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to

such claim shall be fully preserved until further order of the Court. Further, signing a Trade Agreement containing a claim amount for purposes of this Final Order shall not excuse such Trade Claimant from filing a proof of claim in these cases on account of prepetition amounts that may remain unpaid.

14. No claimant who receives payment on account of a Trade Claim (whether or not such claimant signs a Trade Agreement) is permitted to: (a) file or perfect a Lien on account of such claim, and any such claimant shall take all necessary action to remove any existing Lien relating to such claim, even if the Lien is against property of a non-Debtor; or (b) seek to reclaim goods previously shipped to the Debtors.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

16. Nothing in this Final Order shall prohibit the Debtors from seeking Court approval to increase the prepetition amounts authorized to be paid hereunder.

17. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including avoidance actions, which may be held by the Debtors.

18. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Final Order presented after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Final Order.

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. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

21. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry hereof.

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: _____, 2014
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE