

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. 14-22503 (RDD)
 :
Debtors. : (Jointly Administered)
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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 except as set forth herein; and upon the record 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.

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



the hearing held by the Court on the interim relief requested in the Motion on April 14, 2014; and it appearing that the relief requested by this Motion and granted herein is in the best interest of the Debtors' estates, their creditors, and other parties in interest, provides a net benefit to the Debtors' estates after taking into account the priority scheme of the Bankruptcy Code, and is necessary to prevent immediate and irreparable harm to the Debtors' estates ; 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. Aggregate payments with respect to the Trade Claims under this Interim Order, applying the criteria set forth in the Motion and at the interim hearing, 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.
4. 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.
5. The Debtors shall provide weekly reports of all payments of Trade Claims to the U.S. Trustee until the appointment of the official committee to represent the Debtors' general unsecured creditors (the "**Committee**"), and upon such appointment, to counsel to the

Committee; provided, however, that the Debtors shall provide twenty four (24) hours' notice to the Committee prior to paying a Trade Claim in excess of \$350,000.

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, after taking into account the priority scheme of the Bankruptcy Code.

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 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.

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 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.

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 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.

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 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.

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 Interim 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 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.

19. Within three (3) business days of the entry of this Interim Order, the Debtors shall serve a copy of this Interim Order on the Master Service List as defined in the *Interim Order: (A) Establishing Certain Notice, Case Management, and Administrative Procedures and Omnibus Hearing Dates; (B) Authorizing the Debtors to Prepare a Consolidated List of Creditors in Lieu of Mailing Matrix; and (C) Authorizing Debtors to Establish Procedures for Notifying Creditors of Commencement of Cases.*

20. 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) 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 (collectively, the “**Notice Parties**”).

21. The deadline by which objections to the Motion and the Final Order must be filed and received by the Notice Parties, with a copy to the Court’s chambers, is May 8, 2014 at 12:00 p.m. (prevailing Eastern Time) (the “**Objection Deadline**”). The Court will hold a final hearing on the Motion, if required, on May 15, 2014 at 9:30 a.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.

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 Interim 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.

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

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

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

Dated: April 15, 2014
White Plains, New York

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE