

David S. Heller  
Paul E. Harner  
Matthew L. Warren (appearing *pro hac vice*)  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, New York 10022-4834  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864

Counsel to GE Capital Equity Investments, Inc.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

MPM Silicones, LLC,  
et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 14-22503 (RDD)

Jointly Administered

**LIMITED OBJECTION OF GE CAPITAL EQUITY INVESTMENTS, INC. TO THE  
DEBTORS' MOTIONS FOR FINAL ORDERS (A) AUTHORIZING THE DEBTORS TO  
OBTAIN POST-PETITION FINANCING AND USE CASH COLLATERAL AND  
(B) AUTHORIZING CONTINUATION OF INTERCOMPANY  
TRANSACTIONS AND ACCORDANCE OF ADMINISTRATIVE  
EXPENSE STATUS TO INTERCOMPANY CLAIMS**

GE Capital Equity Investments, Inc. ("**GECEI**")<sup>2</sup> hereby files this limited objection (the "**Limited Objection**") to the motions of the above-captioned debtors and debtors-in-possession (the "**Debtors**") (a) seeking authorization to obtain postpetition financing, use cash collateral and grant adequate protection relating thereto [Docket No. 13] (the "**DIP Motion**") and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: (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).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the DIP Motion.



(b) seeking authorization to continue use of the Debtors' cash management system and procedures, maintain and continue use of existing bank accounts, waive certain operating guidelines relating to bank accounts and continue intercompany transactions and accord administrative expense status to intercompany claims [Docket No. 11] (the "**Cash Management Motion**"). In support of this Limited Objection, GECEI respectfully states as follows:

**Preliminary Statement**

1. GECEI is the principal holder of that certain pay-in-kind unsecured 11% Senior Discount Note (the "**Holdings PIK Note**"), due June 4, 2017, issued on December 4, 2006 by debtor Momentive Performance Materials Holdings Inc. ("**MPM Holdings**"), the apparently out-of-the-money parent to the operating company debtor. While GECEI is related to General Electric Capital Corporation, the lender under the Cash Flow Facility, GECEI is a separate and distinct legal entity and was not consulted regarding the terms of the DIP Facilities (as defined in the DIP Motion) nor did GECEI consent thereto.

2. The Holdings PIK Note is essentially the only direct liability of Holdings. It is GECEI's understanding that prior to the Petition Date the only debt of MPM Holdings was (a) under the Holdings PIK Note and (b) under MPM Holdings' guaranty of the Prepetition ABL Obligations and the Cash Flow Obligations. As the Debtors have made clear, the Prepetition ABL Obligations and Cash Flow Obligations are substantially oversecured by the assets of the borrowers under such facilities. See DIP Motion, ¶¶ 64–65; Derrough Declaration, ¶¶ 21–22. It is also GECEI's understanding that, as of the Petition Date, MPM Holdings held approximately \$9 million in cash. Given that all other creditors of MPM Holdings are substantially oversecured by the assets of the obligors on such debt, GECEI has a direct interest in such cash.<sup>3</sup>

---

<sup>3</sup> The Restructuring Term Sheet (as defined below) in essence confirms this fact as it provides that the contemplated plan of reorganization shall provide that the holders of the Holdings PIK Note shall receive their pro

3. In light of the foregoing, GECEI's objections are limited specifically to certain requests by the Debtors that are materially detrimental to MPM Holdings even if beneficial to the other Debtors and non-Debtors in the larger corporate family. The assets of MPM Holdings should not be subjected to the adequate protection liens and superpriority claims of various prepetition secured creditors of the other Debtors and non-Debtors when MPM Holdings was never obligated on such debt. Moreover, given the lack of any benefit to MPM Holdings from the DIP Facilities, let alone reasonably equivalent value, to the extent the guaranty of the DIP Facilities by MPM Holdings is approved by this Court, the assets of MPM Holdings should be available to repay the DIP Obligations solely to the extent that the assets of the other Debtors and non-Debtors are ultimately insufficient to repay the DIP Obligations.<sup>4</sup>

4. The Cash Management Motion seeks to transfer the assets of MPM Holdings to other Debtors and non-Debtors, for use in the ordinary course of business, and to provide MPM Holdings an administrative claim for such intercompany loans. GECEI does not object to such intercompany loans themselves, but, rather, simply requests that the administrative priority Intercompany Claims of MPM Holdings resulting from any such intercompany loan not be subordinated to the adequate protection claims of any party, particularly to any party to which MPM Holdings was not obligated pre-petition, and that such claims not be waived, subordinated, or paid in full later than the effective date without notice and a hearing, all as required by applicable law.

---

rata share of the cash at MPM Holdings as of the effective date, after payment of expenses of MPM Holdings, which amount shall not exceed \$9 million in the aggregate. See Carter Declaration, Appendix I, Exhibit A.

<sup>4</sup> On information and belief, it is almost inconceivable that the assets of the other Debtors and non-Debtors would ultimately prove insufficient for the payment in full of the DIP Obligations.

**Limited Objection**

**I. The Final DIP Order Should (a) provide that the Adequate Protection Liens and Claims of Certain Prepetition Secured Parties Do Not Attach To, and Are Not Payable From, the Assets of MPM Holdings, and (b) Limit the Guaranty of the DIP Obligations by MPM Holdings**

A. The Adequate Protection Liens and Superpriority Claims of Certain Prepetition Secured Parties Should Not Attach To, Nor be Payable From, the Assets of MPM Holdings

5. The DIP Motion seeks to grant the First Lien Indenture Trustee and First Lien Noteholders, the 1.5 Lien Indenture Trustee and the 1.5 Lien Noteholders, and Second Lien Indenture Trustee and Second Lien Noteholders (collectively the “**OpCo Secured Parties**”) adequate protection liens on, and superpriority claims payable from, the “DIP Collateral” to the extent of the diminution in value of the OpCo Secured Parties’ prepetition collateral. See DIP Motion, ¶ 69. The term “DIP Collateral” includes all assets of MPM Holdings. See DIP Motion, Exhibit A, ¶ 8. However, as set forth in the DIP Motion, MPM Holdings was not obligated under the terms of the First Lien Indenture, the 1.5 Lien Indenture or the Second Lien Indenture, and has not guaranteed payment of the amounts owed by the other Debtors and non-Debtors to the OpCo Secured Parties. See DIP Motion, Exhibit E.

6. As noted in the DIP Motion, the “purpose of adequate protection ‘is to ensure that the creditor receives the value for which he bargained pre-bankruptcy.’” See DIP Motion, ¶ 63 (quoting Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)). As MPM Holdings was never obligated to the OpCo Secured Parties for the amounts owed by the other Debtors, it simply cannot be the case that the OpCo Secured Parties bargained for a security interest in the assets of MPM Holdings.

7. Moreover, it is not clear that MPM Holdings receives any benefit from the DIP Facilities, let alone reasonably equivalent value in exchange for its guaranty of the DIP

Obligations. Specifically, the Term Sheet (the “**Restructuring Term Sheet**”) attached as Exhibit A to Appendix I of the *Declaration of William H. Carter, Chief Financial Officer of Momentive Performance Materials, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 16] (the “**Carter Declaration**”) contemplates that the equity in MPM Holdings and Momentive Performance Materials, Inc. will be cancelled as of the effective date of the contemplated plan of reorganization. As such, there can be no justification, and none is provided by the Debtors, for subjecting the assets of MPM Holdings to the adequate protection claims and liens of the OpCo Secured Parties. MPM Holdings and the other Debtors remain separate legal entities, each independently responsible for their own administrative expenses. MPM Holdings, by virtue of being a debtor in this jointly administered bankruptcy case does not automatically become responsible for the administrative expenses of the other Debtors, see In re Las Torres Dev., L.L.C., 413 B.R. 687, 698 (Bankr. S.D. Tex. 2009), and should not have its cash directed to other Debtors when it receives no benefit for such transfer.

8. As a result of the foregoing, the Final DIP Order should provide that the adequate protection liens of the OpCo Secured Parties do not attach to the assets of MPM Holdings and the superpriority claims of the OpCo Secured Parties are not payable from the assets of MPM Holdings.

B. The Guaranty of the DIP Obligations by MPM Holdings Should be Limited

9. As noted above, MPM Holdings is not receiving any value, let alone reasonably equivalent value, in exchange for providing a guaranty of the DIP Obligations and pledging its assets to secure such guaranty. As such, it does not appear that the guaranty of the DIP Obligations by MPM Holdings is justified or should be approved by this Court. See Brown Publ’g Co. Liquidating Trust, LLC v. Hudson Printing Co. (In re Brown Publ’g Co.), 2014 Bankr. LEXIS 1275, 18-19 (Bankr. E.D.N.Y. Apr. 3, 2014) (“[M]ost transfers made by parents

to or on behalf of subsidiaries result in at least some benefit to the parent because the subsidiary is an asset of a parent, so preserving the subsidiary generally impacts the parent's net worth. However, in some instances, courts have found a parent's transfer of assets to a subsidiary to be for less than reasonably equivalent value when the subsidiary was insolvent at the time of transfer. In these cases, the parent received no benefit other than an increased equity interest in the subsidiary, and that increased equity interest was worthless under the facts of those cases.”); Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors (In re TOUSA, Inc.), 680 F.3d 1298, 1312 (11th Cir. Fla. 2012).<sup>5</sup>

10. Moreover, as the DIP Motion and Derrough Declaration make clear, the Prepetition ABL Obligations and Cash Flow Obligations were clearly oversecured as of the Petition Date. Indeed, the equity cushion for the next two tranches of secured debt - consisting of the First Lien Noteholders, with an outstanding liability of not less than \$1.1 billion, and the 1.5 Lien Noteholders, with an outstanding balance of not less than \$250 million - was used by the Debtors to justify the priming DIP Facilities. See DIP Motion, ¶¶ 64–65; Derrough Declaration, ¶¶ 21–22.

11. Given the lack of any benefit to MPM Holdings from the DIP Facilities, and thus the questionable merit of the MPM Holdings guaranty of the DIP Obligations, at minimum this guaranty should be limited so as to apply solely to the extent the assets of the other Debtors and non-Debtors – those actually benefitting from the DIP Facilities – ultimately prove insufficient to satisfy the DIP Obligations in full. Any other result constitutes an inappropriate and gratuitous derogation of the claim of MPM Holdings' largest direct creditor.

---

<sup>5</sup> It is beyond dispute that each debtor in bankruptcy owes fiduciary duties to its own creditors. Therefore, it is inappropriate for MPM Holdings to divest its assets to the detriment of its own creditors and to the benefit of other debtor entities.

**II. The Final Cash Management Order Should Provide Protection for Administrative Claims Stemming from Intercompany Transactions Between MPM Holdings and Other Debtors and Non-Debtors**

12. Paragraph 12 of the proposed form of final order attached as Exhibit D to the Cash Management Motion (the “**Cash Management Order**”) provides that Intercompany Claims are “granted administrative expense status pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, junior in all respects to the superpriority claims of the Debtors’ postpetition secured lenders and DIP Agents and the superpriority claims of the prepetition secured lenders and their agents as adequate protection for the use of such lenders’ collateral, in each case as set forth in the DIP Financing Order, and further subject to (a) the liens granted to the Debtors’ prepetition secured lenders as adequate protection for the use of such lenders’ cash collateral, (b) the liens granted to the Debtors’ postpetition secured lenders or the DIP Agents, and (c) the carveout provided in the DIP Financing Order.”

13. As noted above, there is no justification for the adequate protection liens or superpriority claims of the OpCo Secured Parties to attach to, or be payable from, the assets of MPM Holdings, and the Final DIP Order should be modified to provide clarification on this point. Similarly, there is no justification, and the Cash Management Motion does not provide any, for Intercompany Claims of MPM Holdings stemming from postpetition transfers of MPM Holdings’ assets to be subordinate to the claims of the OpCo Secured Parties. As such, the Final Cash Management Order should clearly provide that the administrative priority Intercompany Claims of MPM Holdings relating to postpetition Intercompany Transactions are not subordinate to the superpriority claims of the OpCo Secured Parties. To provide otherwise would improperly permit the assets of MPM Holdings, which was not obligated to the OpCo Secured Parties as of

the Petition Date, to be transferred postpetition to the benefit of the OpCo Secured Parties and the detriment of MPM Holdings' own direct creditors.

14. Finally, although the proposed Cash Management Order provides that Intercompany Claims are granted administrative expense status pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, given that GECEI is likely to be the only remaining creditor of MPM Holdings, the Cash Management Order should confirm that such administrative claims of MPM Holdings may only be waived, subordinated, recover less than payment in full or be paid any later than on the effective date of a plan of reorganization, following notice and a hearing. This condition is appropriate to protect the interests of GECEI in the assets of MPM Holdings and to insure the assets of MPM Holdings are not used by the other Debtors and non-Debtors without fair compensation.

15. As a result of the foregoing, the Cash Management Order should be revised to clarify that the administrative priority Intercompany Claims of MPM Holdings (a) are not subordinate to the claims of the OpCo Secured Parties and (b) will not be waived, subordinated, recover less than payment in full or be paid any later than on the effective date of a plan of reorganization without notice and a hearing.



**CONCLUSION**

WHEREFORE, GECEI respectfully requests that this Court (a) modify the Final DIP Order to (i) provide that the adequate protection liens and superiority claims of the OpCo Secured Parties neither attach to nor are payable from the assets of MPM Holdings and (ii) provide that the guarantee of the DIP Obligations by MPM Holdings is only to the extent that the assets of the Borrowers and other Guarantors are ultimately insufficient to satisfy the DIP Obligations, and (b) modify the Cash Management Order to provide that the administrative priority Intercompany Claims of MPM Holdings (i) are not subordinate to the claims of the OpCo Secured Parties and (ii) will not be waived, subordinated, recover less than payment in full or be paid any later than on the effective date of a plan of reorganization without notice and a hearing.

Dated: May 12, 2014  
New York, New York

Respectfully Submitted,

/s/ David S. Heller

David S. Heller

Paul E. Harner

Matthew L. Warren (appearing *pro hac vice*)

LATHAM & WATKINS LLP

885 Third Avenue

New York, New York 10022-4834

Telephone: (212) 906-1200

Facsimile: (212) 751-4864

Counsel to GE Capital Equity Investments, Inc.