

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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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. 12]; 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. 30] (the “**Interim Order**”); and upon the Declaration of William H. Carter, Chief Financial

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.



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 upon the record at the interim and final hearings before the Court on the Motion on April 14, 2014 and May 15, 2014; and the relief granted herein being unopposed; and it appearing that the relief requested by the Motion and granted herein is in the best interest of these 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 after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on a final basis to the extent set forth herein.
2. Aggregate payments with respect to the Trade Claims under this Final Order, applying the criteria set forth in the Motion and at the interim and final hearings, shall not exceed \$31,100,000 (the "**Final Cap**"), without prejudice to the Debtors' right to seek authority to make additional payments and without prejudice to the rights of parties in interest to oppose any such request for 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 \$16,500,000 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 \$3,300,000 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 \$11,300,000 in the aggregate.

6. In no event shall the Debtors pay any Trade Claims before such amounts are due and payable and this Order shall not be deemed to allow the Debtors to accelerate payment of any amounts that may become due and owing by the Debtors.

7. The Debtors shall, within a commercially reasonable period of time, provide an initial schedule (the "**Schedule**") of all Trade Claims that the Debtors intend to pay pursuant to this Order to the Committee's professionals on a "professionals' eyes only" basis, to the extent the Debtors have not already provided such Schedule to the Committee's professionals as of the date of this Order.

8. The Debtors shall provide weekly reports of all payments of Trade Claims to counsel to the official committee of unsecured creditors (the "**Committee**"), counsel to Apollo Global Management, LLC and certain affiliated funds and counsel to the Ad Hoc Committee of Second Lien Noteholders; provided, however, that (i) the Debtors shall provide twenty four (24) hours' notice to the Committee's professionals prior to paying any Trade Claim in excess of \$350,000; (ii) the Debtors shall provide three (3) days' notice to the Committee's professionals prior to paying any Trade Claim in excess of \$750,000 to a Trade Claimant not identified in the Schedule, and upon receipt of such notice the Committee shall have the option to require that the Debtors not make such payment for a period of four (4) days following the receipt of such notice; and (iii) the Debtors shall provide three (3) days' notice to the Committee's professionals prior to entering into a Trade Agreement that includes a waiver of the Debtors' right to challenge any payments made to the applicable Trade Claimant as a preference under section 547 of the

Bankruptcy Code (a “**Preference Waiver**”), and upon receipt of such notice the Committee shall have the option to require that the Debtors not enter into such Trade Agreement for a period of four (4) days following the receipt of such notice. The weekly reports described herein shall indicate the terms of each payment, including, without limitation, the amount of the payment, the discount, if any, received by the Debtors, and whether the Debtors’ Trade Agreement, if any, with the applicable Trade Claimant includes a Preference Waiver.

9. 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.

10. 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 result in irreparable harm to the Debtors’ business operations and that the Debtors are not reasonably likely to be able to achieve a Trade Agreement with the relevant Trade Claimant, after taking into account the priority scheme of the Bankruptcy Code.

11. 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, recoupment, 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.

12. 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.

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

14. 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. To the extent that any payment made pursuant to this Final Order is ultimately determined to be in excess of the amount of the relevant Trade Claimant's allowed claim against the Debtors or their estates in connection with the transaction giving rise to such payment, the Debtors shall be permitted to recover such excess payment.

15. 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 or priority status or otherwise affect the Trade Claims to the extent they are not paid.

16. 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.

17. 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.

18. 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.

19. Nothing in this Final Order shall prohibit the Debtors from seeking Court approval to increase the prepetition amounts authorized to be paid hereunder, and the rights of all parties with respect to any such requests are reserved.

20. 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.

21. 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.

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

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

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

25. 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: May 16, 2014
White Plains, New York

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