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**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>In re</p> <p>MPM Silicones, LLC, <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 14-22503 (RDD)</p> <p>Jointly Administered</p>
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**LIMITED OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION
 TO THE DEBTORS' DISCLOSURE STATEMENT FOR THE DEBTORS' PLAN OF
REORGANIZATION**

The Pension Benefit Guaranty Corporation ("PBGC"), a United States government agency, hereby makes this limited objection to the Debtors' Disclosure Statement for the

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.

Debtors' Joint Plan of Reorganization ("Plan of Reorganization") under Chapter 11 of the Bankruptcy Code ("Disclosure Statement") filed with this Court on May 12, 2014. The Disclosure Statement fails to provide "adequate information," as that term is defined under 11 U.S.C. § 1125(a). In particular, the Disclosure Statement fails to provide adequate information regarding the Debtors' obligations and liabilities to PBGC and the defined benefit plan sponsored by one of the Debtors. It also fails to provide adequate information to justify the exceptionally broad releases, injunctions, discharges, and exculpation of debtors and non-debtor entities and individuals.

PBGC has provided proposed language to be inserted in the Disclosure Statement to resolve its objections, has communicated to the Debtors its request for certain modifications and additions to the Disclosure Statement, and hopes that its concerns will be resolved by agreement at or before the hearing scheduled for June 19, 2014. Because the parties have not yet reached agreement, PBGC files this objection as a protective measure in order to ensure that the interests and rights of PBGC and the Momentive Performance Materials Pension Plan (the "Pension Plan") are preserved.

BACKGROUND

A. PBGC and the Employee Retirement Income Security Act

1. PBGC is the United States government agency that administers the federal defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) ("ERISA"). When a pension plan covered by Title IV terminates with insufficient assets to pay promised benefits, PBGC generally becomes statutory trustee of the terminated plan and pays to

the retired employees covered under the plan their pension benefits up to statutory limits. *See* 29 U.S.C. §§ 1321- 1322, 1342, 1361.

2. Momentive Performance Materials, Inc. (“MPM”), one of the Debtors in this jointly administered bankruptcy case, sponsors the Pension Plan, which is a defined benefit plan covered by Title IV of ERISA. *See* 29 U.S.C. §§ 1301(a)(13), 1321.

3. Pursuant to ERISA, a sponsor of a pension plan covered by Title IV and the sponsor’s controlled group members are jointly and severally liable for the statutorily-required minimum funding contributions to the pension plan and insurance premiums to PBGC. *See* 29 U.S.C. §§ 1306, 1307; and IRC § 412(c)(11) (2007) (effective for pension plan years beginning on or before Dec. 31, 2007); *see also* 29 U.S.C.A. § 1082(c)(11) (2007) (same); and IRC § 412(b)(1) & (2) (2009) (effective for pension plan years beginning after Dec. 31, 2007); *see also* 29 U.S.C.A. § 1082(b)(1) & (2) (2007) (same).

4. Title IV of ERISA provides the exclusive means for a plan sponsor to terminate a pension plan — a standard termination or a distress termination. *See* 29 U.S.C. § 1341(a)(1); *see also Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 446 (1999). A standard termination requires sufficient assets to pay all of the pension plan’s promised benefits. *See* 29 U.S.C. § 1341(b)(2)(A)(i)(III). A distress termination requires a showing, among other things, that each plan sponsor and controlled group member satisfies certain criteria. Under certain circumstances, PBGC has discretion to initiate termination of a pension plan pursuant to section 4042 of ERISA (“PBGC-initiated termination”). 29 U.S.C. § 1342.

5. If the Pension Plan terminates, the assets of the Pension Plan may be insufficient to cover the liabilities. *See* 29 U.S.C. § 1362(b). This insufficiency is the amount of the Pension Plan’s unfunded benefits liabilities. The Debtors and each of their controlled group members

would be jointly and severally liable to PBGC for the amount of the unfunded benefits liabilities of the Pension Plan. *See* 29 U.S.C. § 1362(a), (b); 29 U.S.C. § 1301(a)(18). The Debtors and controlled group members would also be jointly and severally liable to PBGC for any unpaid flat-rate and variable-rate premiums, and possibly termination premiums as well. *See* 29 U.S.C. § 1306(a)(7). In addition, PBGC would likely become the statutory trustee of the terminated Pension Plan. *See* 29 U.S.C. 1342(d).

B. Debtors' Bankruptcy Proceedings

6. On April 13, 2014, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

7. On April 14, 2014, the Court ordered joint administration of the Debtors' Chapter 11 cases for procedural purposes under Case No. 14-22503 (RDD).

8. On May 12, 2014, the Debtors filed their Disclosure Statement and Joint Plan of Reorganization under Chapter 11. A hearing on the Disclosure Statement has been scheduled for June 19, 2014.

9. Although PBGC has not yet filed proofs of claim in this case, PBGC will file contingent proofs of claim on its behalf and on behalf of the Pension Plan for (a) unfunded benefit liabilities, (b) unpaid premiums, and (c) unpaid minimum funding contributions. The largest contingent claim, for underfunded benefit liabilities, is estimated to be approximately \$113,000,000.00.

OBJECTION

10. PBGC has conveyed to the Debtors its request for certain modifications and additions to the Debtors' Disclosure Statement and Plan of Reorganization and hopes that its concerns will be resolved by agreement before the scheduled June 19, 2014 disclosure statement

hearing. Because PBGC will be unable to review the revised Disclosure Statement, if filed, before the deadline² for filing objections, PBGC files the following objections as a protective measure, in order to preserve its rights pending clarification of these matters in the revised Disclosure Statement.

11. PBGC objects to the Disclosure Statement because it fails to provide adequate information as required by 11 U.S.C. § 1125. “Adequate information” means “information of a kind and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor . . . that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan.” 11 U.S.C. § 1125(a)(1); *see also Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. GMC*, 337 F.3d 314, 321-22 (3d Cir. 2003); *First American Bank v. Century Glove, Inc.*, 81 B.R. 274, 278-79 (Bankr. D. Del. 1988); *In re Quigley Co.*, 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007) (a Disclosure Statement must contain adequate information describing a confirmable plan, and if the plan is patently unconfirmable on its face, the application to approve the Disclosure Statement must be denied).

12. As set forth below, the Disclosure Statement should inform creditors of a number of facts regarding the Debtors’ pension obligations that may affect the value of creditors’ claims and the feasibility of the Plan of Reorganization.

13. The Disclosure Statement should provide a more detailed description of the Pension Plan, including identifying the Pension Plan’s name. The Disclosure Statement also requires further clarification concerning the continuation of the Pension Plan and the funding level of the Pension Plan. In addition, the Disclosure Statement should disclose the amount of the PBGC’s claims that would be non-contingent claims if the Pension Plan should terminate.

² During discussions with Debtors’ counsel regarding PBGC’s proposed language for the Disclosure Statement, Debtors’ counsel agreed to extend the deadline for PBGC until Friday, June 13, 2014, at 5:00 p.m. (ET).

14. The Disclosure Statement fails to give creditors adequate information in that it does not fully inform creditors of the impact of the possibility of termination of the Pension Plan and the anticipated amount of administrative expenses, priority claims, and general unsecured claims. In the event that the Pension Plan is terminated before confirmation of the Debtors' Plan of Reorganization, PBGC asserts that it will have an administrative expense claim, a priority tax claim, and/or, in the alternative, a general unsecured claim against the Debtors.

15. The Debtors seek broad releases of the Released Parties, as defined in Section 6.12(a) of the Disclosure Statement, in the Disclosure Statement and Plan of Reorganization. Specifically, within Article VI (Sections 6.12, 6.13, and 6.14) of its Disclosure Statement and Article XII (Sections 12.5, 12.6, and 12.8) of its Plan of Reorganization, the Debtors seek various releases with respect to the Released Parties. The list of Released Parties is extensive, including “current officers, affiliates, partners, directors, employees, agents, members, advisors and professionals”, as well as the Debtors and their subsidiaries, their parent, Momentive Materials Holdings LLC, and others who may have liability to the Pension Plan. As described in Section 6.12 of the Disclosure Statement, creditors and others “release, waive and discharge all claims, demands, debts, rights, Causes of Action or liabilities (other than the right to enforce the obligations of any party under the Plan and the contracts, instruments, releases, agreements and documents delivered under or in connection with the Plan) against the Released Parties, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Reorganization Cases, or the Plan or the Disclosure Statement.”

16. The Disclosure Statement falls far short in providing adequate information explaining and justifying these broad releases for the Released Parties, and should not be accepted. PBGC's concern is that Released Parties may include entities that are controlled group members of the Pension Plan, such as the Debtors and their subsidiaries and Momentive Performance Materials Holdings LLC, which may have liability to the Pension Plan or PBGC. Similarly, individuals—for example, the directors and officers of the Debtor or other non-debtors—may have been, or continue to be, fiduciaries of the Pension Plan or had fiduciary responsibilities. *See* 29 U.S.C. § 1101-1114.

17. Controlled group members are jointly and severally liable for termination liability, 29 U.S.C. § 1362, and jointly and severally liable for employer contributions and PBGC premiums for an ongoing pension plan. 26 U.S.C. §§ 430 and 412. In addition, pension plan fiduciaries are liable to PBGC, as statutory trustee, for breaches of their fiduciary duties. 29 U.S.C. § 1342(d).

18. Whether an entity or individual is a fiduciary to the Pension Plan requires an intensive analysis based upon facts and circumstances, and certainly PBGC has not made any conclusion about whether any Released Parties are fiduciaries. 29 U.S.C. § 1002(21)(A); *see also Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993) (statute delineates fiduciary conduct “in functional terms of control and authority over the plan”). However, such releases are inappropriate. In the event that the Pension Plan terminates, PBGC's ability to collect termination liability, as well as to investigate and pursue fiduciary breaches might be severely constricted if controlled group members and pension plan fiduciaries are the beneficiaries of this release, and the inability to pursue recoveries may well affect the amount of benefits paid to participants. *See* 29 U.S.C. § 1344.

19. Under the Bankruptcy Code, non-debtor releases are not strictly prohibited, but courts hold that such releases are “proper only in rare cases,” and generally are valid only when they are necessary for the reorganization. *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005); *see also In re Continental Airlines*, 203 F.3d. 203 (3d Cir. 2000). The Disclosure Statement fails to make any showing that these releases are necessary for the reorganization. More important, the releases are contrary to ERISA. A blanket release of fiduciary breach claims is “void against public policy.” 29 U.S.C. § 1110(a). The releases, potentially, would require PBGC to abandon its joint and several claims against controlled group members associated with the Pension Plan. Moreover, the releases potentially would require PBGC to abandon its claims against the Released Parties with respect to the Pension Plan under ERISA. The Disclosure Statement provides no information to justify these releases. Consequently, the Disclosure Statement fails to provide adequate information.

20. PBGC proposed the following language to the Debtors and is willing to withdraw its objection if the following language is included in the Disclosure Statement and Plan of Reorganization:

The Pension Benefit Guaranty Corporation (“PBGC”) is a wholly owned United States government corporation, and an agency of the United States, that administers the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1301-1461, *as amended*, (2012) (“ERISA”). When a pension plan covered by Title IV terminates with insufficient assets to pay promised benefits, PBGC generally becomes trustee of the pension plan, supplements the terminated plan’s assets with its insurance funds, and, subject to certain statutory limitations, pays to the plan’s participants their benefits. *See* 29 U.S.C. §§ 1321-1322, 1342, 1361.

MPM, one of the Debtors in this jointly administered bankruptcy case, is the sponsor of the Momentive Performance Materials Pension Plan (“Pension Plan”). The Pension Plan is a single-employer defined benefit plan insured by PBGC and covered by Title IV of ERISA. The Pension Plan has a total of 2,961 participants.

The Pension Plan shall not be modified (absent consent) or affected by any provision of the Plan and shall be continued after the Effective Date in accordance with their terms. MPM or Reorganized MPM shall satisfy the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083 and be liable for the payment of PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307 subject to any and all applicable rights and defenses of MPM, and administer the Pension Plan in accordance with the provisions of ERISA and the Internal Revenue Code. In the event that the Pension Plan terminates after the Effective Date, Reorganized MPM and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, including but not limited to the releases set forth in Article VI of the Disclosure Statement and Article XII of the Plan, neither the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code will release, discharge or exculpate the Debtor, the Reorganized Debtor, or any Person, in any capacity, from any liability or responsibility with respect to the Pension Plan or any other defined benefit pension plan under any law, governmental policy, or regulatory provision. The Pension Benefit Guaranty Corporation, the Pension Plan, and any other defined benefit pension plan shall not be enjoined or precluded from enforcing such liability or responsibility by any of the provisions of the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code.

CONCLUSION

For the foregoing reasons, PBGC respectfully requests that the Court require the Debtor to amend the Disclosure Statement to provide the adequate information set forth above as required by 11 U.S.C. § 1125.

DATED: June 13, 2014
Washington, D.C.

Respectfully submitted,

/s/ Thea D. Davis
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2014, the Limited Objection of the Pension Benefit Guaranty Corporation to the Debtors' Disclosure Statement for the Debtors' Plan of Reorganization was served on the following:

<p>Douglas A. Johns, Esq. 260 Hudson River Road Waterford, NY 12188</p> <p><i>Counsel for Momentive Performance Materials, Inc.</i> via FedEx</p>	<p>Matthew A. Feldman, Esq. Jennifer J. Hardy, Esq. Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019-6099</p> <p><i>Debtor's Counsel</i> via CM/ECF</p>
<p>Brian S. Masumoto, Esq. Richard W. Fox, Esq. Office of the United States Trustee U.S. Federal Office Building 201 Varick Street, Room 1006 New York, NY 10014</p> <p><i>Counsel for the United States Trustee</i> via FedEx</p>	<p>Stephen M. Miklus, Esq. Julia Frost-Davies, Esq. Bingham McCutchen, LLP One Federal Street Boston, MA 02110</p> <p><i>Counsel to General Electric Capital Corporation</i> via FedEx</p>
<p>Steven M. Fuhrman, Esq. Nicholas Baker, Esq. Simpson Thacher & Bartlett, LLP 425 Lexington Avenue New York, NY 10017</p> <p><i>Counsel to the Administrative Agent under the Debtors' Postpetition Secured Credit Agreement</i> via CM/ECF</p>	<p>Ira S. Dizengoff, Esq. Philip C. Dublin, Esq. Akin Gump Strauss Hauer & Feld, LLP One Bryant Park New York, NY 10036</p> <p><i>Counsel to Apollo Global Management, LLC and Certain Affiliated Funds</i> via CM/ECF</p>
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