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

In re:) Chapter 11
)
MPM Silicones, LLC, et al.,¹) Case No. 14-22503 (RDD)
)
) Jointly Administered
)

**JOINDER OF APOLLO GLOBAL MANAGEMENT LLC AND CERTAIN OF ITS
AFFILIATED FUNDS TO DEBTORS’ MEMORANDUM OF LAW IN OPPOSITION TO:
(A) 1.5 LIEN TRUSTEE’S MOTION FOR MODIFICATION OF THE AUTOMATIC
STAY TO DECELERATE THE NOTES OR, ALTERNATIVELY, FOR ADEQUATE
PROTECTION; AND (B) FIRST LIEN TRUSTEE’S JOINDER TO MOTION**

Apollo Global Management, LLC and certain of its affiliated funds (collectively,
“Apollo”), by and through its undersigned counsel, joins in the Debtors’ *Memorandum of Law in*

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.



Opposition to: (A) 1.5 Lien Trustee's Motion for Modification of the Automatic Stay to Decelerate the Notes or, Alternatively, for Adequate Protection; and (B) First Lien Trustee's Joinder to Motion [ECF No. 772] (the "Debtors' Objection"). In support of this joinder, Apollo respectfully represents as follows:

JOINDER

1. By the Lift Stay Motion, the Trustees allege that the automatic stay is not applicable to the issuance of a rescission notice and, if applicable, should be lifted to permit the Noteholders to rescind the automatic acceleration of the First Lien Notes and the 1.5 Lien Notes that occurred on the Petition Date. The Trustees seek to lift the stay for the sole purpose of attempting to increase the value of their claims against the Debtors' estates at the expense of the Debtors' other creditors.² For all of the reasons set forth in the Debtors' Objection, *Apollo Global Management, LLC and Certain of Its Affiliated Funds' Opening Brief in Support of a Determination that No Optional Redemption Premiums Are Due to the First Lien Noteholders for the 1.5 Lien Noteholders*, at 22-30 [ECF No. 635] (the "Opening Brief")³ and below, the relief requested in the Lift Stay Motion should be denied.

2. Specifically, the Trustees' efforts to rescind acceleration of the Notes are barred by the automatic stay because the Debtors' contractual rights under the Notes are property of their estates, and issuing a rescission notice is an attempt to modify the express terms of the Indentures. *See* Opening Br. at 24-27; *U.S. Bank Trust N.A. v. AMR Corp. (In re AMR Corp.)*,

² The intent behind the Trustees' request to lift the stay is clearly evidenced by, among other things, the allegation in Count 3 of the 1.5 Lien Answer, which asserts that the right "to rescind acceleration and its consequences gives rise to a claim . . . in an amount equal to the [Optional Redemption Premium]. *See Answer, Affirmative Defenses and Counterclaims of Wilmington Trust, National Association as Trustee* [Adv. Pro. No. 14-08228, ECF No. 24] (the "1.5 Lien Answer"), Count 3 (seeking declaratory judgment that the majority holders' right to rescind acceleration of the Notes gives rise to an allowed secured claim "in an amount equal to the redemption premium for the Notes").

³ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Opening Brief.

730 F.3d 88, 102 (2d Cir. 2013) (citing *In re Enron Corp.*, 300 B.R. 201, 212 (Bankr. S.D.N.Y. 2003) (noting that “contract rights are property of the estate . . . protected by the automatic stay”). Further, application of the *Sonnax* factors to this case demonstrates that there is no just cause for the requested stay relief under Bankruptcy Code section 362(d)(1), and the Trustees have yet to demonstrate any legitimate reason for this Court to lift the stay so that they can attempt to augment the value of their claim. *In re Sonnax Industries, Inc.*, 907 F.2d at 1285 (“[Bankruptcy Code Section 362(d)(1) requires an initial showing of cause by the movant If the movant fails to make an initial showing of cause, however, the court should deny relief without requiring any showing from the debtors that it is entitled to continued protection.”).

3. The Second Circuit has expressly addressed the issue at hand under similar circumstances and has determined that where lifting the stay for the purpose of deceleration would serve only to increase the size of a movant’s claim, the requested relief should be denied. *See* Opening Br. at 22; *In re AMR Corp.*, 485 B.R. at 295. Specifically, in *AMR*, the loan trustee moved to lift the automatic stay to decelerate amounts due under certain indentures and argued, *inter alia*, that the debtors could not repay the debt obligations without also paying a premium referred to as the “Make-Whole Amount.” *In re AMR Corp.*, 485 B.R. at 283-84. The applicable indenture provided for automatic acceleration of the underlying debt in the event of a bankruptcy filing. *Id.* at 292. The loan trustee asserted, however, that it could waive the event of default and decelerate the debt pursuant to the terms of the indenture. *Id.* at 293.

4. Notwithstanding the loan trustee’s contentions, the bankruptcy court in *AMR* found that decelerating the notes would have the effect of assessing against the debtors the Make-Whole Amount that was not otherwise due based on the terms of the indenture. *Id.* at 294. Accordingly, the court denied the lift stay motion because deceleration would serve only to

increase the size of the loan trustee's claim, holding that deceleration "would thus affect the Debtors' contractual rights, which are property of the estate, to the detriment of the estate and the Debtors' other creditors and only for the benefit of [the loan trustee]." *Id.* at 295. The noteholders appealed, and the Second Circuit affirmed the bankruptcy court's ruling. *See In re AMR Corp.*, 730 F.3d at 102. The Second Circuit agreed that any attempt by the loan trustee to rescind acceleration after the automatic stay had taken effect was an effort to affect the debtor's contractual rights and, thus, the property of the estate. *Id.* at 102-103.

5. The Trustees have not—and cannot—distinguish *AMR's* binding precedent from the facts of these Chapter 11 Cases. Moreover, the Trustees' efforts to lift the automatic stay and issue a rescission notice is nothing more than a thinly veiled attempt to alter the facts of these Chapter 11 Cases and modify their claim against the Debtors, which is not permitted by applicable law.

6. Alternatively, the Trustees argue that they are entitled to adequate protection in the amount of their alleged claim for the Optional Redemption Premium. The Trustees, however, have failed to explain or cite any precedent to demonstrate why they are entitled to adequate protection beyond that already afforded them under the Final DIP Order. As discussed in detail in the Opening Brief and the Debtors' Objection, the Final DIP Order awarded the Trustees adequate protection equal to the diminution in value of their interests in the Prepetition Collateral (as defined in the Final DIP Order). Accordingly, the Trustees have failed to meet their burden of demonstrating entitlement to additional adequate protection in the form of a claim equal to the Optional Redemption Premium.

7. Therefore, and for all of the reasons set forth in the Debtors' Objection and the Opening Brief, the Trustees' request to lift the automatic stay or, in the alternative, for the grant

of additional adequate protection in the amount of the Optional Redemption Premium, must be denied.

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CONCLUSION

WHEREFORE, Apollo requests that the Court (i) deny the relief requested in the Lift Stay Motion, and (ii) grant Apollo other and further relief as the Court may deem just, proper and equitable.

Dated: August 5, 2014
New York, New York

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