



Momentive's Watershed Ch. 11 Plan Withstands Attack

By Andrew Scurria

Law360, New York (May 05, 2015, 12:37 PM ET) -- A New York federal judge on Monday upheld the confirmation of a bankruptcy plan that slashed \$3 billion in debt from [Momentive Performance Materials Inc.](#)'s balance sheet, a monumental decision that undermines senior creditors' leverage to set restructuring terms.

The long-awaited decision by U.S. District Judge Vincent Briccetti rejected vehement objections to a hotly disputed bankruptcy exit plan that let the industrial silicone and quartz manufacturer emerge from bankruptcy while paying off senior bondholders with new debt at below-market interest rates.

The ruling endorsed the idea that senior creditors should not profit from debt issued in a restructured entity, an increasingly popular course for debtors in the current low-rate environment.

Judge Briccetti likewise refused to award some \$200 million in disputed make-whole premiums for Momentive's early refinancing and separately affirmed that a separate group of subordinated bondholders owed \$382 million should receive nothing under the plan.

Momentive's effort to cram down the plan over its creditors objections has been the talk of the bankruptcy bar for more than a year, and lawyers expect key features of the prenegotiated workout to gain traction among debtors and unsecured creditor looking to force harsh restructuring terms on top-ranking stakeholders.

The plan, which both Judge Briccetti and the Second Circuit [would not halt](#) during appellate process, hands control of the reorganized Momentive to a group of second-lien noteholders owed \$1.3 billion that swapped their debts for equity.

The decision also marks a victory for Momentive's former owner [Apollo Global Management LLC](#), which bought Momentive in a boom-era buyout and salvaged a 45 percent equity stake despite the bankruptcy.

"The court agrees with the debtors and the bankruptcy court," Judge Briccetti said.

Notably, Judge Briccetti did not dismiss the appeals as [moot](#) in light of the plan's consummation, meaning that the confirmation decision, absent a reversal by the Second Circuit, now stands as controlling law in New York, one of the nation's two most popular Chapter 11 jurisdictions.

Senior creditors usually exert the most control over a debtor's restructuring terms by virtue of their collateral rights, but Momentive instead chose to team up with second-lien bondholders and

offer the top-ranking groups a choice.

First-lien and so-called 1.5-lien noteholders could vote in favor of the plan and receive cash repayment of par value plus accrued interest on \$1.35 billion in bonds while waiving the right to collect some \$200 million in [make-whole payments](#). Or they could vote against the plan and gamble that U.S. Bankruptcy Judge Robert Drain would award them the premiums.

Bankruptcy courts have split on whether creditors can collect the lost interest payments from early refinancings, but the strategy backfired when Judge Drain held that the senior groups creditors were owed no such payments and could be paid in full with refinanced debt at lowered interest rates.

The [U.S. Supreme Court](#) has cramdown interest rate arrangements in individual bankruptcies, but Judge Drain was the first to rule that creditors could be forced to accept cramdown interest rates offered in large corporate bankruptcies as well.

Affirming that decision, Judge Briccetti found “no good reason” why interest rates on replacement debt should place Chapter 11 creditors in the same position as before a bankruptcy.

“The senior lien appellants ask the court to require the bankruptcy court to choose a cramdown interest rate that would put them in the same position they would have been in had they arranged a new loan,” Judge Briccetti said. “The court declines to do so.”

A group of senior subordinated noteholders failed to overturn the plan as well, with Judge Briccetti affirming that their debts could be wiped out completely. The so-called senior subs had sued Momentive, claiming that their debt stood on equal footing with the second-lien group.

The first-lien noteholders are represented by Michael J. Sage, Brian E. Greer and Mauricio A. Espana of [Dechert LLP](#); [Jeffrey M. Reisner](#), Alan J. Friedman and Michael H. Strub Jr. of [Irell & Manella LLP](#); [Douglas J. Pick](#) and Eric C. Zabicki of [Pick & Zabicki LLP](#); and Philip D. Anker, William J. Perlstein and Danielle Spinelli of [WilmerHale](#).

The 1.5-lien noteholders are represented by Mark R. Somerstein, Mark. I. Bane and Stephen Moeller-Sally of [Ropes & Gray LLP](#) and Steven J. Reisman, Theresa A. Foudy, Michael J. Moscato and Gabriel Hertzberg of [Curtis Mallet-Prevost Colt & Mosle LLP](#).

The second-lien noteholders are represented by Dennis F. Dunne, Samuel A. Khalil and Michael L. Hirschfeld of [Milbank Tweed Hadley & McCloy LLP](#) and Seth H. Lieberman and Patrick Sibley of [Pryor Cashman LLP](#).

The senior subordinated noteholders are represented by Susheel Kirpalani, Benjamin I. Finestone, David L. Elsberg, Robert S. Loigman, K. John Shaffer and Matthew R. Scheck of [Quinn Emanuel Urquhart & Sullivan LLP](#) and Clark T. Whitmore and Ana Chilingarishvili of [Maslon Edelman Borman & Brand LLP](#).

Apollo is represented by Ira S. Dizengoff, Philip C. Dublin, Abid Qureshi and Brian T. Carney

of [Akin Gump Strauss Hauer & Feld LLP](#).

Momentive is represented by Matthew A. Feldman, Rachel C. Strickland, Mary Eaton, Roger Netzer and Jennifer J. Hardy of [Willkie Farr & Gallagher LLP](#).

The case is In re: MPM Silicones LLC et al., case number [7:14-cv-07492](#), in the U.S. District Court for the Southern District of New York.

--Editing by Sarah Golin.