

874 F.3d 787, \*, 2017 U.S. App. LEXIS 20596, \*\*;  
Bankr. L. Rep. (CCH) P83,176; 64 Bankr. Ct. Dec. 216

reorganization under Chapter 11 of the U.S. Bankruptcy Code.<sup>1</sup> With one exception, we conclude that the reorganization plan (the "Plan") confirmed by the bankruptcy court and affirmed by the district court comports with Chapter 11. We remand so that the bankruptcy court can address the single deficiency we identify in the proceedings below, which is the process for determining the proper interest rate under the cramdown provision of Chapter 11.

<sup>1</sup> Momentive Performance Materials, Inc.'s "MPM," and with affiliated debtors, "Debtors".

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MPM, a leading producer of silicone, faced serious financial problems after it took on significant new debt obligations beginning in the mid-2000s.<sup>2</sup> See 15-1771 JA 286-88; 15-1682 JA 1605-06.<sup>3</sup> Following these debt issuances, MPM was substantially overleveraged, and ultimately filed a **[\*\*4]** petition under Chapter 11. The four relevant classes of notes issued by MPM are as follows:

<sup>2</sup> The facts recounted herein derive principally from the bankruptcy court's decision confirming Debtors' reorganization plan, *In re MPM Silicones, LLC*, 2014 Bankr. LEXIS 3926, 2014 WL 4436335 (Bankr. S.D.N.Y. Sept. 9, 2014), *aff'd* 531 B.R. 321 (S.D.N.Y. 2015), as well as the public disclosures made part of the record. We rely on the facts recounted in the bankruptcy court's ruling in light of our "oblig[ation] to accept the bankruptcy court's undisturbed findings of fact unless they are clearly erroneous." *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).

<sup>3</sup> As discussed, *infra* note 4, we resolve with this opinion three separate appeals. Our citations to the respective records will begin with the relevant docket number on appeal, and references to "JA" are to the respective joint appendices filed with that appeal. For example, our citation to "15-1771 JA 286-88" is to pages 286-88 of the joint appendix filed in the appeal brought by U.S. Bank, docketed No. 15-1771.

**Subordinated Notes.** In 2006, MPM issued \$500 million in subordinated unsecured notes (the "Subordinated Notes") pursuant to an indenture (the "2006 Indenture"). 15-1771 JA 303. Appellant U.S. Bank is the indenture trustee for the Subordinated Notes. In 2009 MPM issued secured second-lien notes and offered the Subordinated Notes holders the option of exchanging their notes for the newly-issued second-lien notes. The second-lien notes were offered at a 60% discount but were secured. 15-1771 JA 2241. Holders of \$118 million of the Subordinated Notes accepted the offer, leaving \$382 million in unsecured Subordinated Notes outstanding. 15-1771 JA 2241.

**Second-Lien Notes.** In 2010, MPM issued approximately \$1 billion in "springing" **[\*792]** second-lien notes (the "Second-Lien Notes"). 15-1682 JA 1616; 15-1771 JA 476. The Second-Lien Notes were to be unsecured until the \$118 million of previously exchanged Subordinated Notes were redeemed, at which point the "spring" in the lien would be triggered. 15-1771 JA 517, 580-81. Once triggered, the Second-Lien Notes would then (but only then) obtain a security interest in the Debtor's collateral. The exchanged Subordinated Notes were redeemed in November 2012, 15-1771 JA 721, at **[\*\*5]** which point the trigger occurred and the Second-Lien Notes became secured with second-priority liens junior to other pre-existing liens on the Debtors' collateral. A primary issue on this appeal is whether the Second-Lien Notes have priority over the Subordinated Notes .

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