

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

GRACEWAY PHARMACEUTICALS, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 11-13036 (PJW)

Jointly Administered

Hearing Date: May 5, 2014 at 9:30 a.m.

Objection Deadline: Apr. 28, 2014 at 4:00 p.m.

**MOTION OF THE LIQUIDATING TRUSTEE FOR APPROVAL OF
STIPULATION FOR REMOVAL OF RELATED PROCEEDING
BETWEEN THE LIQUIDATING TRUSTEE AND LORI KASNER**

Kip Horton, in his capacity as the liquidating trustee (the “**Liquidating Trustee**”) of the Graceway Liquidating Trust (the “**Liquidating Trust**”), by and through his undersigned counsel, hereby moves (the “**Motion**”) this court for entry of an order approving the *Stipulation for Removal of Related Proceeding Between the Liquidating Trustee and Lori Kasner* (the “**Stipulation**”),² a copy of which is attached hereto as Exhibit A. In support of this Motion, the Liquidating Trustee respectfully states the following:

Concise Statement of the Relief Requested Herein:

By this Motion, the Liquidating Trustee seeks entry of an order approving the Stipulation and modifying the automatic stay of section 362 of title 11 of the United States Code (the “**Bankruptcy Code**”) to the extent necessary to permit Lori Kasner (“**Kasner**”) to

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175), Case No. 11-13037 (PJW); Graceway Holdings, LLC, a Delaware limited liability company (2502), Case No. 11-13038 (PJW); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (PJW); Chester Valley Holdings, LLC, a Delaware limited liability company (9457), Case No. 11-13039 (PJW); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713), Case No. 11-13041 (PJW); Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (PJW); and Graceway International, Inc., a Delaware corporation (2399), Case No. 11-13043 (PJW). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy). On October 4, 2011, Graceway Canada Company filed an application in the Ontario Superior Court of Justice (Commercial List) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

² All capitalized terms used, but not otherwise defined, herein shall have the meaning assigned to such terms by the Stipulation.

proceed with the Minnesota Litigation and seek to recover relief on her claims exclusively from the Debtors' insurer(s). The Stipulation further provides that Kasner will waive her Unsecured Claim against the Trust.

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this chapter 11 case in this district is proper under 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested by this motion are 11 U.S.C. § 362(d) and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

Background

2. On September 29, 2011 (the "**Petition Date**"), the above-captioned debtors (the "**Debtors**") filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

3. On December 29, 2011 Kasner filed a general unsecured claim in the amount of \$1,998,500.00, designated Claim No. 184 (the "**Kasner Claim**").

4. On February 28, 2012, the Debtors filed the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (the "**Plan**") [D.I. 551]. The Court confirmed the Plan on April 20, 2012 (the "**Confirmation Order**") [D.I. 722].

5. The Effective Date of the Plan was May 4, 2012 (the "**Effective Date**").

6. Pursuant to the Plan, the Debtors, on their own behalf and on behalf of holders of Allowed Claims (the "**Beneficiaries**") and the Liquidating Trustee executed that certain Liquidating Trust Agreement, dated May 4, 2012, which, among other things, established the Liquidating Trust.

7. Further, under the terms of the Liquidating Trust Agreement, the Liquidating Trustee is authorized to investigate, prosecute, compromise, settle or otherwise deal with objections to Claims filed against the Debtors' estates and Causes of Action. In this capacity, the Liquidating Trustee has worked to investigate, settle and/or otherwise deal with the various Claims against the Trust.

The Stipulation

8. The principal terms of the Stipulation are listed below (to the extent there is any inconsistency, the terms of the Stipulation will govern):

- The Order approving the Stipulation will act to modify the automatic stay pursuant to the extent necessary to allow Kasner to proceed with the Minnesota Litigation to pursue the Debtors' insurers for payment of the damages she sustained during her employment with the Debtors.
- Upon entry of an Order approving the Stipulation, Kasner will be deemed to release and waive any and all other claims, including Kasner's Unsecured Claim, that she may have against the Debtors, their estates, the Liquidating Trust or its successors or assigns.

Relief Requested

9. The Liquidating Trustee and Kasner agree that the automatic stay imposed by section 362 of the Bankruptcy Code should be modified to allow Kasner to pursue the Minnesota Litigation and seek recovery on account of such claims exclusively from the Debtors' insurers. To that end, by this Motion, the Liquidating Trustee seeks entry of an order, substantially in the form attached hereto as Exhibit B, approving the Stipulation.

10. The Bankruptcy Code provides that the Court may grant relief from the stay under section 362(a) of the Bankruptcy Code on request of a party in interest and after notice and hearing, if, among other things, "cause" exists. See 11 U.S.C. § 362(d)(1).

11. Section 362(d) does not define "cause," and courts must consider what constitutes

cause based on the “totality of the circumstance in each particular case.” See Baldino v. Wilson (In re Wilson), 116 F.3d 87, 90 (3d. Cir. 1997).

12. “Cause” is “broadly construed but generally involves consideration of both the balance of harm to the parties if the request to modify the stay is denied and the interest of efficient administration of bankruptcy cases.” In re Baytarian, 2011 WL 87243, *5 (Bankr. D. Mass., Jan. 11, 2011) (internal citations omitted);

13. Rule 4001(d) of the Federal Rules of Bankruptcy Procedure contemplates that agreements to modify the automatic stay of section 362 of the Bankruptcy Code may be entered into and presented to the Court on motion for approval.

14. The Stipulation, and the agreement of the Liquidating Trustee and Kasner to modify the automatic stay contained therein, is sufficient “cause” under section 362(d)(1) of the Bankruptcy Code.

15. Moreover, the Liquidating Trustee has determined, in an exercise of his sound business judgment, that the Stipulation is fair and reasonable and in the best interest of the Beneficiaries of the Liquidating Trust. The Stipulation provides for resolution of all outstanding claims of Kasner, including, without limitation, Kasner’s Unsecured Claim, without the need for costly and time consuming litigation. This will promote the orderly and efficient administration of the Debtors’ estates and eliminate unnecessary expense. Therefore, this Court should approve the Stipulation.

Notice

16. Notice of this Motion will be provided to: (a) all parties entitled to notice pursuant to Bankruptcy Rule 4001(d); (b) the Office of the United States Trustee for the District of Delaware; and (c) all parties that have requested notice pursuant to Bankruptcy

Rule 2002 as of the date of filing of this Motion. Under the circumstances, the Liquidating Trustee submits that this notice is sufficient and reasonable, and that no further notice is requires.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit B, approving the Stipulation.

Dated: April 3, 2014
Wilmington, Delaware

Respectfully Submitted,
DLA PIPER LLP (US)

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