

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (PJW)

Jointly Administered

**DECLARATION OF KIP HORTON IN SUPPORT OF THE MOTION OF THE LIQUIDATING TRUSTEE FOR CLARIFICATION OF CONFIRMATION ORDER AND AUTHORITY GRANTED UNDER LIQUIDATING TRUST AGREEMENT**

I, Kip Horton, being duly sworn, depose and say:

1. I am the liquidating trustee (the “**Liquidating Trustee**”) of the Graceway Liquidating Trust (the “**Liquidating Trust**”).

2. I submit this Declaration (the “**Declaration**”) in support of the *Motion Of The Liquidating Trustee For Clarification Of Confirmation Order And Authority Granted Under Liquidating Trust Agreement* (the “**Motion to Clarify**”), filed contemporaneously herewith.

3. I have personal knowledge of and/or am familiar with the affairs, books and records, and financial condition of the Liquidating Trust, and I am authorized to submit this Declaration on behalf of the Liquidating Trust. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, reliance on RPA Advisors review of the Debtors’ books and records, and my opinion based upon

<sup>1</sup> 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.

my experience and knowledge. If I were called as a witness, I would testify competently and consistently with the facts set forth in this Declaration.

**A. Plan, Confirmation Order and Liquidating Trust Agreement**

4. On February 28, 2012, the Debtors filed the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [D.I. 551] (the “**Plan**”),<sup>2</sup> the Plan was confirmed by Court order dated April 20, 2012 [D.I. 722] (the “**Confirmation Order**”).

5. On May 4, 2012, the Effective Date of the Plan, the Debtors and I executed the Liquidating Trust Agreement for the Graceway Liquidating Trust, establishing the Liquidating Trust.

6. It was the objective intent of the Debtors in formulating the Plan to maximize the value of the remaining Assets vested in the Liquidating Trust, in order to provide for the largest possible distributions to the Beneficiaries of the Liquidating Trust.

**B. Graceway Canada**

7. Graceway Canada is an entity formed under the laws of Canada.

8. Annexed hereto as Exhibit A is a true and correct copy of the Memorandum of Association of Graceway Canada Company.

9. Graceway Canada’s memorandum of association provides, *inter alia*, that shares of Graceway Canada may not be transferred without the consent of the directors or shareholders of Graceway Canada as expressed by a resolution of the directors or shareholders, or by a document in writing signed by the majority of such directors or shareholders. See, Ex. A at §14.

10. Graceway Canada’s articles of association also provide that Graceway Canada may treat the registered holder of any of its shares as the absolute owner thereof and shall not, except as ordered by a court of competent jurisdiction or required by statute, be bound to

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<sup>2</sup> All terms capitalized but not defined herein shall have the meaning assigned in the Plan.

recognize any equitable or other claim to or interest in such shares on the part of any other person. See, Ex. A at §13.

11. The books and records, including the minute book, of Graceway Holdings and Graceway Canada have been examined under my direction and supervision, and there is no written evidence therein, or that I have otherwise been able to locate, which demonstrates that the directors of Graceway Canada, or Graceway Holdings as the sole shareholder of Graceway Canada, authorized the transfer of the shares of Graceway Canada to the Liquidating Trust.

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 21, 2014  
Paramus, NJ



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Kip Horton, Liquidating Trustee