

**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 (KJC)

(Jointly Administered)

Hearing Date: February 9, 2016 at 10:30 a.m.

Obj. Deadline: January 25, 2016 at 4:00 p.m.

**MOTION OF THE LIQUIDATING TRUSTEE FOR A FINAL DECREE AND ORDER
CLOSING CERTAIN ASSOCIATED CASES AND MODIFYING CASE CAPTION**

Kip Horton, in his capacity as the liquidating trustee (the “**Liquidating Trustee**”) of the Graceway Liquidating Trust (the “**Liquidating Trust**”), by and through his counsel, DLA Piper LLP (US), hereby moves (the “**Motion**”) this Court for entry of an order and a final decree, substantially in the form of Exhibit A hereto (the “**Closing Order**”), (i) closing the bankruptcy cases of Graceway Pharma Holding Corp.; Graceway Holdings, LLC; Chester Valley Pharmaceuticals, LLC; and Graceway International, Inc. (collectively, as applicable, the “**Subsidiary Debtors**” and “**Subsidiary Cases**”) as of the date of entry of the Closing Order, leaving open only the bankruptcy cases of Graceway Pharmaceuticals, LLC and Graceway Canada Holdings, LLC (the “**Remaining Debtors**” and “**Remaining Cases**”), and (ii) modifying the case caption to reflect that only the Remaining Cases remain open. In support of this Motion, the Liquidating Trustee respectfully represents as follows:

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 (KJC); Graceway Holdings, LLC, a Delaware limited liability company (2502), Case No. 11-13038 (KJC); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (KJC); Chester Valley Holdings, LLC, a Delaware limited liability company (9457), Case No. 11-13039 (KJC); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713), Case No. 11-13041 (KJC); Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (KJC); and Graceway International, Inc., a Delaware corporation (2399), Case No. 11-13043 (KJC). On October 4, 2011, Graceway Canada Company (“**Graceway Canada**”) 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.

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. § 157 and 1334 and the Confirmation Order. 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 in this Motion are sections 105(a) and 350 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 3022-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”). The Liquidating Trustee Consents to the entry of a final order on this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

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

3. On October 4, 2011, Graceway Canada filed an application in the Ontario Superior Court of Justice (Commercial List) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. 43.

4. On October 4, 2011, RSM Richter Inc. was appointed as receiver of Graceway Canada in order to oversee the sale of the assets of Graceway Canada, coordinate such sale with the Debtors in the Graceway Chapter 11 Cases and protect the creditors of Graceway Canada. Duff & Phelps Canada Restructuring Inc. (the “**Canadian Receiver**,”) was later substituted as the receiver of Graceway Canada.

5. On December 2, 2011, substantially all of the assets of the Debtors and

Graceway Canada were sold to Medicis Pharmaceutical Corporation for an aggregate sale price of US\$455 million. *See* D.I. 335. The order approving the sale included an allocation of sale proceeds as between the Debtors and Graceway Canada. *See* D.I. 306.

6. On February 28, 2012, the Debtors filed the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (“**Plan**”)² [D.I. 551]. The Court confirmed the Plan (the “**Confirmation Order**”) on April 20, 2012 [D.I. 722].

7. The Effective Date of the Plan was May 4, 2012 (the “**Effective Date**”) and on the Effective Date the Liquidating Trust was created and the Debtors’ remaining assets (the “**Debtors’ Assets**”) vested in the Liquidating Trust. Pursuant to the Plan, on the Effective Date the Debtors, on their own behalf and on behalf of the Beneficiaries and the Liquidating Trustee executed the Liquidating Trust Agreement, which established the Liquidating Trust for the purpose of liquidating the Debtors’ Assets and distributing the proceeds thereof to the Beneficiaries, among other things.

8. Since the Plan’s Effective Date, the Liquidating Trustee has been engaged in a variety of efforts to maximize the value of and liquidate the Assets of the Liquidating Trust including, without limitation, the prosecution of various avoidance actions held by the Liquidating Trust, the collection of outstanding accounts receivable, the sale of the Debtors’ real property, winding down of the Debtors’ pension plan and the winding down and transfers of remaining funds from Graceway Canada to the Liquidating Trust.

9. Notably, as authorized by this Court (*see* D.I. 1065), after many months of analysis and planning on January 5, 2015, the Canadian taxing authorities granted the requested determination that Graceway Holdings is eligible for certain benefits under the

² All capitalized terms used, but not otherwise defined, herein shall have the meaning given in the Plan.

Canada—United States Income Tax Convention and on April 30, 2015 the Liquidating Trustee and the Canadian Receiver consummated the transfer of an aggregate amount equal to C\$20,630,943.84 from Graceway Canada to Graceway Holdings to the Liquidating Trust.

10. Additionally, on December 16, 2015, the Court entered the *Order Permitting Distributions under the Plan and Liquidating Trust* [D.I. 1115] (the “**Distribution Order**”) and the *Order Approving Schedule of Allowed Unsecured Claims* [D.I. 1116] (the “**Claims Order**”), by which the Court fixed the amount of and the Liquidating Trust was authorized to make distributions on account of the Allowed Administrative Expense Claims, the First Lien Facility Claim and the Allowed General Unsecured Claims.

11. As of the date of this Motion, and given the substantive consolidation of the Debtors’ estates, the Liquidating Trustee believes that there are no outstanding claims in any of the Subsidiary Cases, and that there are no unresolved contested matters, adversary proceedings or other matters pending in any of the Subsidiary Cases. The Plan is being administered by the Liquidating Trustee and the remaining assets of the Debtors are being managed by the Liquidating Trustee.

Relief Requested

12. By this Motion, the Liquidating Trustee seeks the entry of an order, substantially in the form attached hereto as Exhibit A, closing and entering a final decree in the Subsidiary Cases and modifying the case caption to reflect only the Remaining Cases.

13. The Liquidating Trustee also seeks a waiver of the requirement under Local Rule 3022-1(c) to file a final report with respect to the Subsidiary Case on or before fourteen (14) days prior to the hearing on this Motion and, instead, requests permission to file such report with a motion to close the Remaining Cases, which will remain open pending further order of this

Court.

Basis for Relief

14. As a consequence of the substantive consolidation of the Debtors' estates, as of the date of this Motion, there are no outstanding claims against any of the Subsidiary Debtors. Similarly, there are no deposits to distribute, property to transfer, payments to be made or other matters to be resolved in any of the Subsidiary Cases, such that each of the Subsidiary Case can be said to have been "fully administered."

15. Section 5.17 of the Plan provides that:

"in light of the substantive consolidation of the Debtors' estates for distribution purposes, the Liquidating Trustee may, in the Liquidating Trustee's sole discretion, seek authority from the Bankruptcy Court to close all of the Debtors' Chapter 11 Cases except the Graceway Chapter 11 Case immediately upon satisfaction of all Other Secured Claims."

Plan § 7.10.

16. Section 350(a) of the Bankruptcy Code provides that a case shall be closed "[a]fter an estate is fully administered and the court has discharged the trustee." 11 U.S.C. § 350(a).

17. Likewise, Bankruptcy Rule 3022 provides that "[a]fter an estate is fully administered in a Chapter 11 reorganization, the court . . . shall enter a final decree closing the case." Fed. R. Bankr. P. 3022. Local Rule 3022-1 provides that, "[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required fees due under 28 U.S.C. § 1930 have been paid." Del. Bankr. L.R. 3022-1(a).

18. Although section 350(a) of the Bankruptcy Code provides that an estate must be "fully administered" before being closed, none of the Bankruptcy Code, the Bankruptcy Rules,

and the Local Rules defines “fully administered.” The 1991 Advisory Committee Note to Bankruptcy Rule 3022 is commonly used as a guideline to determine full administration and provides the following factors for consideration:

- (a) Whether the order confirming the plan has become final;
- (b) Whether deposits required by the plan have been distributed;
- (c) Whether the property proposed by the plan to be transferred has been transferred;
- (d) Whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property dealt with by the plan;
- (e) Whether payments under the plan have commenced; and
- (f) Whether all motions, contested matters, and adversary proceedings have been finally resolved.

See Fed. R. Bankr. P. 3022 Advisory Committee Note (1991).

18. This Court has stated that “these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before a case is closed.” *In re SLI Inc., et al.*, 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1990)); *see also In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999) (recognizing that bankruptcy courts weigh the factors contained in the Advisory Committee Note when deciding whether to close a case); *Walnut Assocs. v. Sidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) (“[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree.”).

19. As set forth below, an analysis of the factors enumerated in the Advisory Committee Note to Bankruptcy Rule 3022 demonstrates the appropriateness of the Court entering

a final order closing the Subsidiary Cases and granting the relief requested herein.

20. As to the first factor, the Confirmation Order became final and, on May 2, 2012, the Plan went effective.

21. As to the second and third factors, to the extent any were required by the Plan or Confirmation Order with respect to the Subsidiary Cases, as of the date of entry of an order on this Motion, all deposits will have been distributed, and all property of each Subsidiary Debtor proposed to be transferred will have been so transferred. Also, as to the fifth factor, all payments under the Plan, to the extent any were required in any Subsidiary Cases, will similarly have been completed.

22. As to the fourth factor, the Liquidating Trustee will continue with his management of the property dealt with under the Plan. As further discussed herein, there are no outstanding claims in the Subsidiary Case.

23. As to the last factor, there have been no proceedings since the Petition Date in any Subsidiary Case and none are needed at this time for the issues remaining in the Debtors' cases.

24. The remaining proceedings in the Debtors' cases will likely relate to final distributions with respect to Allowed Claims against the Remaining Debtors, the final winding down of Graceway Canadas and other matters of Plan implementation and enforcement of the Confirmation Order. None of these matters requires separate proceedings in any Subsidiary Case at this time, and the continuation of the Subsidiary Cases serves no useful purpose. Instead, the maintenance of the Subsidiary Cases imposes continuing financial burdens on the Liquidating Trust for fees under 28 U.S.C. § 1930. Closing the Subsidiary Cases will allow the Liquidating Trust to limit its remaining expenses, thereby benefiting all parties in interest.

25. The Liquidating Trustee also proposes that, upon the closing of the Remaining Cases (or the last case to close of the Remaining Cases if they are not closed contemporaneously), a consolidated final report required by Local Rule 3022-1(c) will be filed which will encompass the information to be included in the final report with respect to each of the Debtors. Accordingly, the Liquidating Trustee requests that the requirement to file a final report for the Subsidiary Cases be held in abeyance until such time as the last of the Remaining Debtors' cases is closed.

26. Accordingly, the Liquidating Trustee submits that it is appropriate and necessary for the Court to enter an order closing the Subsidiary Cases in accordance with the Plan and section 350 of the Bankruptcy Code, and to authorize the requested change in case caption as a purely administrative matter.

Notice

19. Notice of this Motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; and (b) all other 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 required.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit A, (i) closing and entering a final decree in each Subsidiary Case; (ii) modifying the case caption; (iii) waiving the requirement under Local Rule 3022-1(c) to file a final report with respect to the Subsidiary Cases and allowing the Liquidating Trustee to file such report with a motion to close the Remaining Cases; and (iv) granting such other and further relief as is just and proper.

Dated: January 11, 2016
Wilmington, Delaware

Respectfully Submitted,
DLA PIPER LLP (US)

/s/ Stuart M. Brown
Stuart M. Brown (DE 4050)
Daniel N. Brogan (DE 5723)
DLA PIPER LLP (US)
1201 N. Market Street, Suite 2100
Wilmington, Delaware 19801
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
Email: stuart.brown@dlapiper.com
daniel.brogan@dlapiper.com

*Counsel for Kip Horton,
Liquidating Trustee of the
Graceway Liquidating Trust*