

**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: March 28, 2017 at 1:45 p.m.

Obj. Deadline: March 13, 2017 at 4:00 p.m.

MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER (I) APPROVING FINAL ACCOUNTING AND GRANTING AUTHORITY TO MAKE FINAL DISTRIBUTIONS CONTEMPLATED BY THE PLAN; (II) EXCUSING THE LIQUIDATING TRUSTEE FROM COMPLIANCE WITH WITHHOLDING TAX LAWS UNDER PLAN OR IN THE ALTERNATIVE DISALLOWING THE CLAIMS OF CLAIMANTS WHO FAILED TO PROVIDE THE LIQUIDATING TRUSTEE WITH I.R.S. FORMS W-9; (III) GRANTING A FINAL DECREE AND CLOSING THESE CASES; (IV) TERMINATING CLAIMS AND NOTICING AGENT SERVICES AND (V) GRANTING RELATED RELIEF

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 an order (i) approving final accounting of the Liquidating Trust and authorizing him to make final distributions contemplated by the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (“**Plan**”)² [D.I. 551], the *Findings of Fact, Conclusions of Law and Order Confirming First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (the “**Confirmation Order**”) [D.I. 722], the Liquidating Trust Agreement for the Graceway Liquidating Trust (the “**Liquidating Trust Agreement**”), and the *Order Permitting Distributions under the Plan and Liquidating Trust* [D.I. 1115] (the “**Distribution**

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (KJC); and Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (KJC).

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

Order”); (ii) permitting final distributions to be made on account of certain claims, notwithstanding (a) the provisions of the Plan and Liquidating Trust Agreement requiring withholdings or receipt of Forms W-9, as excusing the Liquidating Trustee from withholding as the same will add expense and delay to the Liquidating Trustee’s efforts to wind down the Liquidating Trust and close the bankruptcy cases, and (b) the failure of the holders of such claims to provide the Liquidating Trustee with a completed *Request for Taxpayer Identification Number and Certification*, I.R.S. Form W-9 (a “**Form W-9**”); (iii) authorizing the Liquidating Trustee to abandon, dispose of and/or destroy books and records (the “**Records**”) of the Debtors; (iv) granting a final decree closing the above-captioned bankruptcy cases and; (v) terminating the services of BMC Group, Inc. (“**BMC**”) rendered on behalf of the Clerk of the Court under section 156(c) of title 28 of the United States Code (the “**Claims Agent Services**”). In support of this Motion, the Liquidating Trustee respectfully represents as follows:

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 these chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105(a), 350(a), and 544 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 for 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 Plan. The Court confirmed the Plan on April 20, 2012 by entering the Confirmation Order.

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 Trust, 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. Pursuant to the Plan, on the Effective Date all of the Debtors' Assets vested in the Liquidating Trust.

9. 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 filing required tax returns and the winding down and transfers of remaining funds from Graceway Canada to the Liquidating Trust.

10. 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 *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.

11. Following the above transfer to the Liquidating Trust, the Canadian Receiver completed the final administrative tasks necessary to complete the wind-up of Graceway Canada, distributed the remainder of funds held back as a fee reserve from Graceway Canada to the Liquidating Trust and, in July, 2015, filed the necessary papers in the province of Nova Scotia to effect the dissolution of Graceway Canada.

12. On December 16, 2016, the Court entered the Distribution Order by which it authorized the Liquidating Trustee to make an interim distribution to Beneficiaries of the Liquidating Trust and granted related relief. Additionally, on December 16, 2016, the Court entered the *Order Approving Schedule of Allowed Unsecured Claim* [D.I. 1116], by which it fixed the schedule of General Unsecured Claims (the “**GUC Schedule**”)³ against the Liquidating Trust.

13. On February 2, 2016, the Court entered an order closing the bankruptcy cases of Graceway Pharma Holding Corp.; Graceway Holdings, LLC; Chester Valley Pharmaceuticals, LLC; and Graceway International, Inc. (together, the “**Closed Chapter 11 Cases**”), leaving open only the bankruptcy cases of Graceway Pharmaceuticals, LLC and Graceway Canada Holdings, LLC (the “**Remaining Chapter 11 Cases**”).

The Liquidating Trustee’s Efforts to Obtain Completed Forms W-9

14. The Plan provides in connection with any distributions to be made thereunder, “to the extent applicable, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.” Plan, at § 10.10, *accord* Liquidating Trust Agreement, at § 6.2.

15. Therefore, following entry of the Distribution Order, on December 31, 2015, the Liquidating Trustee mailed a letter (the “**First W-9 Letter**”) to all claimants who were to receive a distribution under the Distribution Order, advising such claimants that federal income tax law requires that each claim holder receiving a distribution from the Liquidating

³ The order fixing the GUC Schedule contained one claim listed as “Contingent,” which was the claim asserted by Ropes and Gray LLP (assigned Claim No. 168). The disputes surrounding this claim have been resolved and attached hereto as Exhibit B is a final GUC Schedule.

Trust must submit a completed and signed Form W-9 to the Liquidating Trustee and provided each such claimant with a Form W-9.

16. Despite being sent the First W-9 Letter, many claimants failed to return a completed and signed Form W-9 to the Liquidating Trustee. Consequently, on March 4, 2016, the Liquidating Trustee mailed a second letter (the “**Second W-9 Letter**”) to such claimants reiterating the request of the First W-9 Letter that such claimants provide the Liquidating Trustee with a completed and signed Form W-9.

17. Despite sending the First and Second W-9 Letters, a number of the claimants, who are entitled to receive distributions under the Distribution Order, still have failed to submit completed and signed Forms W-9 to the Liquidating Trustee. A list of the noncompliant claimants and their corresponding claim numbers and amounts (each such claim a “**Noncompliant Claim**”) is attached hereto as Exhibit C.

Relief Requested

18. By this Motion, the Liquidating Trustee seeks (i) approval of his final accounting and authority to make final distributions to certain Beneficiaries of the Liquidating Trust, as approved by the Distribution Order; (ii) authority (a) to make distributions to the holders of Noncompliant Claims without regard to the provisions of the Plan requiring compliance (receipt of completed and signed Forms W-9) or with immunity from the ramifications of making such distributions failing so to comply or (b), in the alternative, an order disallowing the Noncompliant Claims and authorizing a final distribution in accordance with the revised schedule of General Unsecured Claims annexed as Exhibit D; (iii) the termination of BMC’s Claims Agent Services; and (iv) authority to abandon and discard or destroy, as appropriate, the Records, the ongoing storage of which is

burdensome and the records are of inconsequential value to the estate; and (v) entry of an order and final decree, closing the Remaining Chapter 11 Cases.

Basis for Relief

I. The Liquidating Trustee's Final Accounting Should be Approved

19. Under Section 5.6 of the Liquidating Trust Agreement, following: (1) the distributions proved for in the Section 10.8.1 of the Plan, (2) the Liquidating Trustee's liquidation into Cash of all Trust Assets that were not abandoned by the Liquidating Trustee in accordance with the Plan, (3) the collection of sums other sums due or otherwise remitted or returned to the Estates, (4) the resolution of all Disputed Claims and (5) the payment in full of the Liquidating Trustee Fees and Liquidating Trustee First Lien Fees, the Liquidating Trustee must prepare a Final Report, detailing the Final Cash available for distribution.

20. In addition to the Liquidating Trustee Fees and Liquidating Trustee First Lien Fees, in order to fully complete his wind-down of these Estates, the Liquidating Trustee must (1) prepare and file a final tax return on behalf of the Liquidating Trust; and (2) perform a final audit of the Debtors' 401(k) plan and file the appropriate final Form 5500 Retirement Plan Reporting and Disclosure (such tasks together the "**Wind-Down Administrative Tasks**").

21. Prior to the hearing on this Motion, the Liquidating Trustee will file his Final Report, reflecting the cash balance that will remain following the distributions described below, payment of the Liquidating Trustee Fees, the Liquidating Trustee First Lien Fees and the fees incurred by the Liquidating Trustee in connection with completion of the Wind-Down Administrative Tasks.

II. This Court Should Authorize Distribution to All Allowed Claims, Including the Non-Compliant Claims.

22. The Plan and the Liquidating Trust Agreement provide that the Liquidating Trustee must comply with all federal, state and local tax requirements, including obtaining completed and signed Forms W-9 from all holders of Allowed Claims. Accordingly, absent further order of this Court to the contrary, the Liquidating Trustee cannot distribute any funds on account of a Noncompliant Claim without first obtaining a Form W-9.

23. The Liquidating Trustee has taken reasonable steps to protect the rights of Beneficiaries and to obtain the relevant tax information from the holders of Noncompliant Claims by notifying such holders on two separate occasions of the requirement that they provide a completed and signed Form W-9.

24. Pursuant to Bankruptcy Code section 105(a), bankruptcy courts have broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Additionally, the Court is not precluded from “taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules or to prevent an abuse of process.” *Id.* Bankruptcy Rule 3020(d) further provides that the Court may issue “any other order necessary to administer the estate” pursuant to a confirmed plan. Fed. R. Bankr. P. 3020(d).

25. Accordingly, the Liquidating Trustee seeks authority to make distributions on account of the Noncompliant Claims without the requirement to withhold any amounts from such claims on account for tax purposes, in the alternative, the Liquidating Trustee asks this court to disallow Noncompliant Claims.

26. Rather than the harsh remedy of seeking disallowance of the Noncompliant Claims, the Liquidating Trustee seeks authority to make distributions on account of such claims,

without the need for a W-9 Form or the need to withhold any amounts from such claims for tax purposes and without liability to the Liquidating Trustee or the Liquidating Trust for failure to make such withholdings.

27. Accordingly, the Liquidating Trustee requests that the Court enter an order approving the distributions contemplated by the Distribution Order and the Plan, including the authority to make distributions to holders of Noncompliant Claims.

28. If this Court does not grant the Liquidating Trustee the authority to make distributions on account of Noncompliant Claims, it should enter an order disallowing such claims and permitting the Liquidating Trustee to redistribute the amount applicable to such claims to the remaining Beneficiaries, or donate such amounts to charity, in his sole discretion.⁴

29. The Trustee intends to make a final distribution to Beneficiaries of the Liquidating Trust in accordance with the Distribution Order and with respect to the holders of General Unsecured Claims in accordance with the GUC Schedule. Therefore, the Liquidating Trustee believes that making a final distribution at this time is both prudent and contemplated by the Plan.

III. The Liquidating Trustee Should be Authorized to Destroy or Otherwise Dispose of the Records

30. In June, 2014 the Liquidating Trustee closed on a sale of the Debtors' remaining real estate asset (the "**Warehouse**"). Following the sale of the Warehouse, the Liquidating Trustee removed the books and records of the Debtors stored at the Warehouse (the "**Records**") from the Warehouse and placed them in a long-term storage unit.

⁴ Attached hereto as Exhibit D is a revised GUC Schedule showing the redistribution of General Unsecured Claims in the event the Court does not grant the Liquidating Trustee the authority to make distributions on account of Noncompliant Claims.

31. In connection with the closure of these Chapter 11 Cases, the Liquidating Trustee seeks authority to abandon and discard or destroy, as appropriate, the Records, the ongoing storage of which is burdensome and the Records are of inconsequential value to the estate or the Liquidating Trust.

32. Section 554 of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Additionally, under section 105(a) of the Bankruptcy Code, bankruptcy courts have broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code.” 11 U.S.C. § 105(a).

33. Under these sections, the trustee’s power to abandon property is discretionary, and courts apply a business judgement standard in weighing a request to exercise this power. *See, e.g. In re Slack*, 290 B.R. 282, 284 (Bankr. D. N.J. 2003) (In permitting the abandonment of property, “the court only needs to find the trustee made: 1) a business judgment; 2) in good faith; 3) upon some reasonable basis; and 4) within the trustee’s scope of authority.”)

34. Likewise, section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

35. Under this section, courts generally approve a non-ordinary course transaction if the proposed use of the estate assets is within the trustee’s reasonable business judgement. *See, e.g. In re Martin*, 91 F.3d 389, 395 (3d. Cir. 1996) (stating that the court generally defers to the trustee’s judgment so long as there is a legitimate business justification); *In re Montgomery*

Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (noting that courts apply the “sound business purpose” test to evaluation motions brought under 363(b)).

36. The Liquidating Trustee continued to preserve the Records in case they were needed for the resolution of any remaining contested matters, including, without limitation, the adversary proceeding commenced against Ropes and Gray. As discussed below, all contested matters have been resolved.

37. Therefore, there is no longer any need to retain physical copies of the Records and the ongoing costs associated with continued storage of the Records is an unnecessary drain on the Assets of the Liquidating Trust. Therefore, abandonment and destruction of the Records is warranted under sections 544(a) and 363(b).

38. The on-going cost of retaining the Records far exceeds the inconsequential benefit of maintaining the Records and it is well within the Liquidating Trustee’s business judgment to eliminate this unnecessary cost.

39. Accordingly, the Liquidating Trustee requests that the Court enter an order permitting him to cease storing and to abandon and dispose of and/or destroy the Records, as appropriate.

IV. A Final Decree Closing the Chapter 11 Cases is Appropriate

40. 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).

41. 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).

42. Relatedly, the Liquidating Trust Agreement vests in the Liquidating Trustee the power to “at an appropriate” time, seek the closure of one or all of the Chapter 11 Cases. *See* Liquidating Trust Agreement, at § 4.4(r).

43. 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).

44. 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.”).

45. The Court has already entered a final decree and closed the cases of the Closed Chapter 11 Cases.

46. 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 decree and order closing the two Remaining Chapter 11 Cases and granting the relief requested herein.

47. First, as stated above, the Confirmation Order was entered on April 20, 2012, and the Plan became effective on May 4, 2012. All documents and agreements necessary to implement and complete the Plan were executed in accordance with the terms of the Plan and Confirmation Order.

48. Second, following the distributions contemplated to be made under the Distribution Order and the Proposed Order, substantially all distributions will have been made as provided for in the Plan.

49. Finally, all contested matters and other proceedings that were before the Court with respect to these Chapter 11 Cases, including the two Remaining Chapter 11 Cases, have been resolved.

50. Accordingly, following the implementation of the order approving the Motion, including making the final Distribution and completion of the Wind-Down Administrative Tasks,

these Chapter 11 Cases will have been “fully administered” within the meaning of section 350(a) of the Bankruptcy Code.

51. In addition to the reasons explained above, closing these Chapter 11 Cases will also (a) relieve the Court, the U.S. Trustee and the Liquidating Trustee from each of their administrative burdens, and (b) alleviate the ongoing obligation to pay quarterly fees under section 1930 of title 28 of the United States Code. *See In re A.H. Robins Co., Inc.*, 219 B.R. 145, 149 (Bankr. E.D. Va. 1998) (citations omitted) (finding that “the obligation to pay the UST fees terminates upon closure, dismissal, or conclusion of a Chapter 11 case, and will not be paid *ad infinitum*.”).

52. The Liquidating Trustee submits that the foregoing supports closing the two Remaining Chapter 11 Cases, and, therefore, once the Distribution is made and the Wind-Down Administrative Tasks are completed, the Liquidating Trustee will file a notice of completion of such tasks, at which time the Liquidating Trustee requests that this court enter a final decree closing the two Remaining Chapter 11 Cases.

V. Termination of Claims Agent Services is Appropriate

53. In connection with the entry of a final Decree closing the two Remaining Chapter 11 Cases, the Liquidating Trustee requests that the Court relieve BMC of its obligations to continue performing the services described in the order approving its retention [D.I. 43] (the “**BMC Retention Order**”) and the related Services Agreement.

54. After entry of a final decree, BMC will return all proofs of claim, original ballots, other original paper correspondence and the official claims registry to the Court, consistent with the BMC Retention Order. Upon termination and after returning the proofs of claim, original ballots, other original paper correspondence and the official claims registry to the Court, BMC

will have no further obligations (arising out of the BMC Retention Order, the Services Agreement or otherwise) to the Court, the Debtors, the Liquidating Trust or any party in interest with respect to the Claims Agent Services in these Chapter 11 Cases.

55. The Liquidating Trustee further requests that the Court authorize BMC to delete all emails, facsimiles and other electronic transmissions received by BMC in these Chapter 11 Cases and destroy (i) all excess copies of notices, pleadings, plan solicitation documents, customized envelopes or other printed materials and (ii) all undeliverable and/or returned mail not previously destroyed.

Notice

56. Notice of this Motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the First Lien Agent; (c) counsel to the Second Lien Agent; and (d) 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, granting the Liquidating Trustee: (i) approval of his Final Report; (ii) authority to make the distributions to certain Beneficiaries of the Liquidating Trust, as applicable; (iii) authority to make distributions on account of the Noncompliant Claims without withholding taxes on account thereof; (iv) authority to abandon and discard or destroy, as appropriate, the Records; (v) entry at an appropriate time of an order and final decree, and closing the Remaining Chapter 11 Cases; (vi) the

termination of BMC's Claims Agent Services; and (vii) such other and further relief as is just and proper.

Dated: February 27, 2017
Wilmington, Delaware

Respectfully Submitted,
DLA PIPER LLP (US)

/s/ Stuart M. Brown

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