

**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 (KJC)

(Jointly Administered)

**Hearing Date:** T.B.D.

**Obj. Deadline:** April 20, 2017 at 4:00 p.m.

**MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER EXTENDING  
THE TERMINATION DATE OF THE LIQUIDATING TRUST**

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 extending the outside termination date of the Liquidating Trust, as provided in the Liquidating Trust Agreement for the Graceway Liquidating Trust (the “**Liquidating Trust Agreement**”) for an additional twelve-month period. 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, as well as this Court’s 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 basis for the relief requested herein is section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”). 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,

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<sup>1</sup> 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).

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 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.

5. On February 28, 2012, the Debtors filed *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (“**Plan**”)<sup>2</sup> [D.I. 551]. The Court confirmed the Plan on April 20, 2012 by entering 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].

6. 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

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

the purpose of liquidating the Debtors' Assets and distributing the proceeds thereof to the Beneficiaries, among other things.

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

8. Relevant to this Motion, the Liquidating Trust Agreement provides that:

The Liquidating Trust shall terminate on such date when (a) a final decree has been entered Closing All of the Chapter 11 Cases, (b) all Trust Assets have been distributed and (c) all claims have been pursued or abandoned pursuant to, and in accordance with, the plan and [the] Liquidating Trust Agreement (the "Termination Date").

Liquidating Trust Agreement, at § 5.7.

9. The Liquidating Trust Agreement further provides, however, that:

[T]he term of the Liquidating Trust shall not exceed five (5) years from the Effective Date of the Plan; provided that, upon a finding that an extension is necessary to the liquidating purpose of the Liquidating Trust and upon approval by the Bankruptcy Court, the term may be extended for a finite term based on the particular facts and circumstances.

*Id.*

10. Therefore, under the Liquidating Trust Agreement, the permissible outside date for the Termination Date to occur is currently May 4, 2017.

11. 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, the winding down and transfers of remaining funds from Graceway Canada to the Liquidating

Trust and the entry of orders determining the final amount of the First Lien Facility Claims and approving the schedule of General Unsecured Claims against the Debtors' estates.

12. On February 27, 2017, the Liquidating Trustee filed the *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* (the “**Closing Motion**”) [D.I. 1141], which this Court granted by order entered on March 28, 2017 [D.I. 1151].

13. Under the order granting the Closing Motion, the Liquidating Trustee must perform certain “Wind-Down Administrative Tasks” (as defined in the closing motion) and, among other things, make final distributions to Beneficiaries of the Liquidating Trust and subsequently seek orders for final decrees closing those Chapter 11 Cases that remain open.

#### **Relief Requested**

14. By this Motion, the Liquidating Trustee seeks an order extending the outside termination date of the Liquidating Trust, as provided in the Liquidating Trust Agreement for an additional twelve-month period, through and including, May 4, 2018.

#### **Basis for Relief**

15. Under the default provisions of the Liquidating Trust Agreement, the outside date for the Termination Date to occur is May 4, 2017. However, as discussed above, the Liquidating Trust Agreement anticipates that this period may need to be extended for cause and provides an explicit mechanism for such an extension.

16. Namely, the Liquidating Trust Agreement provides that the default period may be extending “upon a finding that an extension is necessary to the liquidating purpose of the Liquidating Trust.” Liquidating Trust Agreement, at § 5.7. Here, such an extension is necessary to the Liquidating Trust’s purpose.

17. Specifically, the brief extension requested by the Liquidating Trustee is necessary to, and will advance, the liquidating purpose of the Liquidating Trust. Following the completion of the Wind-Down Administrative Tasks and final distributions to Beneficiaries, the Liquidating Trustee will file a certification of counsel seeking a final decree closing the two remaining Chapter 11 Cases, as provided in the order granting the Closing Motion.

18. Therefore, the extension requested by this Motion is important to permit the Liquidating Trustee with the breathing room to complete each of these tasks in a complete and value-maximizing fashion.

### **Notice**

19. 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, extending the outside termination date of the Liquidating Trust, as provided in the Liquidating Trust Agreement, for an

additional twelve-month period through and including May 4, 2018 and granting such other and further relief as is just and proper.

Dated: April 6, 2017  
Wilmington, Delaware

Respectfully Submitted,  
**DLA PIPER LLP (US)**

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