

**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: November 7, 2011 at 4:00 p.m. (ET)

Obj. Deadline: October 31, 2011 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER DETERMINING THE VALUE OF
THE ASSETS OF GRACEWAY CANADA COMPANY
PROPOSED TO BE PURCHASED UNDER THE
STALKING HORSE ASSET PURCHASE AGREEMENT**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby move this Court (the “**Motion**”) for entry of an order (the “**Order**”), in substantially the form attached hereto as **Exhibit A**, determining the value of the assets of Graceway Canada Company (“**Graceway Canada**”), a non-debtor affiliate of the Debtors, for purposes of allocating the value to be received in a sale of substantially all of the assets of the Debtors and Graceway Canada (other than cash and accounts receivable) to the Stalking Horse Bidder (as defined below) or any higher bidder. In support of this Motion, the Debtors submit the *Declaration of Daniel Aronson in Support of the Debtors' Motion for Entry of an Order Determining the Value of the Assets of Graceway Canada Company Proposed to be Purchased*

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.

Under the Stalking Horse Asset Purchase Agreement (the “**Aronson Declaration**”), attached hereto as **Exhibit B** and also respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”).

Background

A. The Debtors

3. On September 29, 2011 (the “**Petition Date**”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On September 30, 2011, the Court entered an order consolidating these Chapter 11 Cases for procedural purposes only [Docket No. 42]. On October 11, 2011, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to Section 1102 of the Bankruptcy Code (the “**Committee**”).

4. A description of the Debtors’ business, the reasons for commencing these Chapter 11 Cases, and the relief sought from this Court to allow for a smooth transition into chapter 11 are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions [Docket No. 3] (the “**First Day Declaration**”).

5. Prior to the Petition Date, Graceway Pharmaceuticals, LLC (“**Graceway Pharma**”) entered into (a) that certain First Lien Credit Agreement dated as of May 3, 2007 (as

amended, restated, supplemented or otherwise modified from time to time, the “**First Lien Credit Agreement**”), among, *inter alia*, Graceway Holdings, LLC, Graceway Pharma, the lenders party thereto, and Bank of America, N.A., as administrative agent and collateral agent, and (b) that certain Second Lien Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the “**Second Lien Credit Agreement**” and, together with the First Lien Credit Agreement, the “**Prepetition Credit Agreements**”), among, *inter alia*, Graceway Holdings, LLC, Graceway Pharma, the lenders party thereto, and Deutsche Bank Trust Company Americas, as administrative agent and collateral agent. See First Day Declaration, ¶¶ 29-36.

6. The obligations (the “**Prepetition Obligations**”) of Graceway Holdings, LLC, Graceway Pharma, and the Debtors other than Graceway Pharma Holding Corp. as guarantors under the Prepetition Credit Agreements are secured by, among other things, a first priority continuing security interest in substantially all of the Debtors’ assets and property (other than Graceway Pharma Holding Corp.’s assets and property). See First Day Declaration, ¶¶ 29-36.

7. Additionally, the Prepetition Obligations are secured by 65% of the common stock of Graceway Canada pursuant to that certain First Lien Pledge Agreement, dated as of May 3, 2007, among, *inter alia*, Graceway Holdings, LLC, Graceway Pharma, the other loan parties thereto, and Bank of America, N.A., as collateral agent, and that certain Second Lien Pledge Agreement, dated as of May 3, 2007, among, *inter alia*, Graceway Holdings, LLC, Graceway Pharma, the other loan parties thereto, and Deutsche Bank Trust Company Americas, as collateral agent.

B. Graceway Canada

8. As set forth in the First Day Declaration, Graceway Canada is a non-debtor subsidiary of the Debtors that is located in Toronto, Ontario and operates exclusively in Canada.

See First Day Declaration, ¶ 19. Graceway Canada is a wholly owned subsidiary of debtor Graceway Canada Holdings, Inc. See Aronson Declaration, ¶ 11. Graceway Canada operates largely independently from the Debtors; however, the Debtors provide certain operational and overhead support, as well as intellectual property rights pursuant to the License Agreement (as defined below). Approximately 47 individuals are employed by Graceway Canada. See First Day Declaration, ¶ 19. Aside from asset specific leases of vehicles and the like, the assets of Graceway Canada are not encumbered by any liens or other security interests other than the liens created in connection with the Canadian Proceeding, which relate to the fees and expenses of the Receiver (as defined below) and the Receiver's counsel.

9. Pursuant to that certain Fully Paid and Royalty Free Exclusive License Agreement between Graceway Pharma and Graceway Canada, dated as of December 29, 2006 (as amended, the "License Agreement"), Graceway Pharma licensed to Graceway Canada certain patent rights, trademarks, service marks and know-how in Canada. See Aronson Declaration, ¶ 15. The License Agreement, including the First Amendment to Fully Paid and Royalty Free Exclusive License Agreement, is attached hereto as Exhibit C.

10. Pursuant to the License Agreement, Graceway Canada is not required to make (and never has made) any payments to Graceway Pharma in exchange for the license. See Aronson Declaration, ¶ 16. However, the vast majority of revenue generated by Graceway Canada is directly attributable to the intellectual property rights provided under the License Agreement. See id. ¶ 16. Without the rights provided under the License Agreement, Graceway Canada would have essentially no product to sell and would not be able to continue operating. See id. ¶ 16. Under Section 8(c) of the License Agreement, Graceway Pharma has the option to, in its discretion and without cause, terminate the License Agreement in its entirety provided that

Graceway Pharma provides Graceway Canada with at least three months prior written notice.

See License Agreement, § 8(c); Aronson Declaration, ¶ 17.

11. Graceway Canada is also the Debtors' post-petition lender. On September 30, 2011, the Court entered the *Interim Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364 and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* [Docket No. 52] which authorized senior secured postpetition financing in the aggregate principal amount of \$6,000,000 to be provided by Graceway Canada.

12. On October 3, 2011, Graceway Canada filed an application in the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") seeking the appointment of a receiver to oversee the sale of certain assets of Graceway Canada (the "**Canadian Proceeding**") pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "**CJA**"). On October 4, 2011, the Canadian Court issued an order pursuant to which it, *inter alia*, appointed RSM Richter Inc. as the receiver (the "**Receiver**") in the Canadian Proceeding, imposed a stay of all proceedings against Graceway Canada and its property in Canada, created certain liens,² and set forth certain other limitations and procedures for all parties-in-interest in the Canadian Proceeding. The Honourable Justice Morawetz presides over the Canadian Proceeding.

C. The Sale of Substantially All of the Assets of the Debtors and Graceway Canada

13. As set forth in detail in the *Debtors' Motion for Entry of (I) an Order Approving and Authorizing (a) Bidding Procedures in Connection with the Sale of Certain Assets of the*

² The Canadian Court's order grants to the Receiver and the Receiver's counsel a lien on Graceway Canada's assets in the amount of \$300,000, as security for their fees and expenses related to the Canadian Proceeding.

Debtors, (b) Stalking Horse Bid Protections, (c) the Form and Manner of Notice of the Sale Hearing, and (d) Related Relief; and (II) an Order Authorizing (a) the Sale of Certain Assets of the Debtors Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances; (b) the Debtors to Enter into and Perform Their Obligations Under the Asset Purchase Agreement; (c) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases; and (d) Granting Related Relief (the “**Sale Motion**”) [Docket No. 12], the Debtors are seeking to sell substantially all of their assets (the “**Sale**”). The proposed Sale also contemplates the sale of the Canadian Acquired Assets (as defined below). See Aronson Declaration, ¶ 11. The Debtors believe that they will maximize the value of their assets by selling the Debtors’ assets together with the Canadian Acquired Assets. See id. ¶ 11.

14. Prior to the commencement of these Chapter 11 Cases and the Canadian Proceeding, the Debtors’ investment banker, Lazard Frères & Co. LLC (“**Lazard**”), conducted an extensive marketing and sales process, aggressively canvassing the marketplace to locate potential purchasers for the assets of the Debtors and Graceway Canada. See Declaration of Daniel Aronson in Support of Debtors’ Motion for Entry of an Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain of the Debtors’ Assets, (B) Stalking Horse Bid Protections, (C) the Form and Manner of Notice of the Sale Hearing, and (D) Related Relief, attached as Exhibit C to the Sale Motion (the “**Sale Declaration**”), ¶ 11. Lazard contacted 60 potential investors in the first round of outreach, all of whom reviewed preliminary, non-confidential solicitation materials. See id. Of those initially contacted, 21 executed confidentiality agreements with the Debtors and received access to an electronic data room to review confidential information and to serve as the basis for discussions towards potential bids (the “**Data Room Participants**”). See id. Approximately 11 Data Room

Participants responded with preliminary letters of interest (the “**Potential Purchasers**”). See id. Of the 11 Potential Purchasers, seven (7) responded with preliminary letters of interest in which they expressed an interest in purchasing the entire Company, and the remaining four (4) responded with preliminary letters of interest in which they expressed an interest in purchasing specific assets of the Company. See id.

15. Two (2) of the preliminary non-binding letters of interest proposed a purchase of only the assets of Graceway Canada (the “**Canadian LOIs**”). See Aronson Declaration, ¶ 13. The Canadian LOIs included a proposed value range for the assets of Graceway Canada of between \$60 and \$90 million for the exclusive right to distribute the Debtors product(s) in Canada. See id. ¶ 13. According to the Canadian LOIs, this value range was calculated by applying a multiplier ranging from 2.0 to 3.0x to either the annual net sales or net revenue of Graceway Canada. See id. ¶ 13. The Canadian LOIs were provided prior to any due diligence and do not take into account that the License Agreement may be terminated by the Debtors at any time on three months notice. Accordingly, as discussed below, the Canadian LOIs are not relevant to determining the value of the assets of Graceway Canada because they assume the continued use of the intellectual property covered by the License Agreement and the continued revenue stream generated by the License Agreement beyond three months.

16. After evaluating the preliminary letters of interest, the Debtors, in consultation with Lazard, opted to pursue further discussions with four of the Potential Purchasers. See Sale Declaration, ¶ 12. Each of these four Potential Purchasers received access to additional information in an electronic data room and also received a management presentation beginning on or about June 29, 2011. See id. Following those presentations and initial diligence conducted by the Potential Purchasers, on August 5, 2011, the Debtors received one binding bid to purchase

certain assets of the Company. See id. Subsequently, on September 5, 2011, the Debtors received another binding bid to purchase certain assets of the Company (the “**Second Bid**”). See id.

17. The Debtors ultimately selected the bidder who submitted the Second Bid as the stalking horse bidder (the “**Stalking Horse Bidder**”). See Sale Declaration, ¶ 15. Thereafter, the Debtors and the Stalking Horse Bidder entered into the Asset Purchase Agreement dated September 27, 2011, among the Debtors, as sellers, and the Stalking Horse Bidder, as buyer (the “**APA**”).³ See id. ¶ 16. Pursuant to the APA: (i) the Stalking Horse Bidder agreed to pay \$275,000,000 (the “**Cash Purchase Price**”), and to assume certain assumed liabilities for certain acquired assets, subject to the outcome of the auction, if one is needed, and Court approval; and (ii) the Debtors agreed to provide the Bid Protections (as defined in the Sale Motion). See id.

18. As set forth in greater detail in Section 2 of the APA, the Stalking Horse Bidder proposed to purchase certain assets of Graceway Canada (the “**Canadian Acquired Assets**”), while excluding others, such as cash and accounts receivable. See APA, § 2. However, the APA does not allocate the Cash Purchase Price between the Canadian Acquired Assets and the assets of the Debtors.⁴ See Aronson Declaration, ¶ 14.

D. The Purchase Price Must Be Allocated Between the Debtors and Graceway Canada

19. Because the Sale will involve the assets of both the Debtors and Graceway Canada and the portion of the Cash Purchase Price relating to the Canadian Acquired Assets must be paid directly to Graceway Canada at the closing of the Sale, the purchase price received

³ A copy of the APA is attached to the Sale Motion as Exhibit D.

⁴ Allocation of the purchase price solely for tax purposes shall be in accordance with Section 3.5 of the APA, which establishes certain procedures for the buyer and the Debtors to make such an allocation for tax purposes.

in the Sale must be allocated between the value of the Debtors' assets and the value of the Canadian Acquired Assets.

20. In accordance with that certain Sale Support Agreement, dated as of September 28, 2011, entered into by and among the Debtors, Graceway Canada, and the first lien lenders party thereto (the "**Sale Support Agreement**"),⁵ on the closing date of the Sale, the portion of the Cash Purchase Price that is related to the Canadian Acquired Assets must be paid by the Stalking Horse Bidder or other successful purchaser at the auction directly to the Receiver.⁶ See Sale Support Agreement, § 4(e). The Receiver will then distribute such portion of the Cash Purchase Price to Graceway Canada's creditors in accordance with applicable law. Id. Other than a potential equity distribution from Graceway Canada, the Debtors will not have any interests in or rights to the portion of the Cash Purchase Price allocated to the Canadian Acquired Assets. See Aronson Declaration, ¶ 14. However, after Graceway Canada has paid its creditors in full in accordance with applicable law, any remaining funds will be distributed to the Debtors as an equity distribution on account of the Debtors' equity interests in Graceway Canada. See Sale Support Agreement, § 4(e).

21. As discussed in greater detail below, Lazard valued the Canadian Acquired Assets as the sum of the value of such assets as reflected on Graceway Canada's balance sheet plus three months of Graceway Canada's average EBITDA based on the twelve months prior to the Petition Date, which is the maximum amount of time Graceway Canada could operate following termination of the License Agreement. See Aronson Declaration, ¶ 18. The resulting value is \$4,452,570.95. Id. ¶ 21.

⁵ A copy of the Sale Support Agreement is attached as Annex 1 to each of the Debtors' petitions.

⁶ The postpetition financing provided to the Debtors by Graceway Canada will be repaid separately from the portion of the purchase price allocated to the assets of the Debtors. See Sale Support Agreement, § 4(e).

22. The value of the Canadian Acquired Assets is readily determinable from information currently available and does not require the ultimate conclusion of the sale and auction process. See Aronson Declaration, ¶ 22. As a result, there is no reason to delay a determination of the value of the Canadian Acquired Assets.

Relief Requested

23. By this Motion, the Debtors seek an order, in substantially the form attached hereto as **Exhibit A**, determining the value of the Canadian Acquired Assets for the purpose of allocating the value to be received in a sale of substantially all of the assets of the Debtors and Graceway Canada (other than cash and accounts receivable) to the Stalking Horse Bidder or any higher bidder.⁷

Basis for Relief

24. There are many different approaches to valuation. In re Exide Techs., 303 B.R. 48, 65 (Bankr. D. Del. 2003). Indeed, value “gathers its meaning in a particular situation from the purpose for which a valuation is being made.” Id. (internal quotations omitted). Courts in the Third Circuit therefore “must consider both the purpose of the valuation as well as the property to be valued.” Hechinger Liquidation Trust v. BankBoston Retail Fin. Inc. (In re Hechinger Inv. Co.), 2004 U.S. Dist. LEXIS, at *14 (D. Del. Mar. 28, 2004) (citing Amerada Hess Corp. v. Comm’r, 517 F.2d 75 (3d Cir. 1975)).

25. In certain contexts there is precedent to support the use of a particular valuation methodology. See, e.g., In re PWS Holding Co., 228 F.3d 224 (3d Cir. 2000) (valuation of a business enterprise for purposes of determining solvency under state fraudulent transfer law).

⁷ In the event that a bidder other than the Stalking Horse Bidder is ultimately selected by the Debtors as the successful bidder and that bidder elects to purchase assets of Graceway Canada that differ from the Canadian Acquired Assets, the valuation described herein will be adjusted to reflect the assets actually being acquired. Such adjustment will be made by the Debtors in consultation with the Receiver and the Receiver’s professionals, and will be subject to Court approval with notice and an opportunity for parties in interest to object.

Given that Graceway Canada's business may be terminated by the Debtors at any time upon three months notice, the methodology applied by Lazard is the most appropriate. Lazard valued Graceway Canada as a going concern for three months, but at liquidation value thereafter. See In re Lason, Inc., 300 B.R. 227, 231-36 (Bankr. D. Del. 2003) (concluding that a liquidation valuation is appropriate where the debtors' business could not be sold as a going concern, but noting that a going concern valuation would be appropriate if the debtors' business could have been sold as a going concern).

A. The Value of the Canadian Acquired Assets Should Be Determined by Combining the Value of the Canadian Acquired Assets on Graceway Canada's Balance Sheet with Three Months of Projected EBITDA

26. A balance sheet for Graceway Canada, dated as of September 30, 2011, is attached as Exhibit A to the Aronson Declaration (the "**Canadian Balance Sheet**"). The Canadian Balance Sheet reflects the value of the assets of Graceway Canada. However, the Stalking Horse Bidder is only purchasing certain of the assets reflected on the Canadian Balance Sheet. The Canadian Balance Sheet reflects the following with respect to the Canadian Acquired Assets: (a) Graceway Canada currently has "inventories" totaling approximately \$1,445,824.22; (b) Graceway Canada currently has "prepaid expenses" totaling approximately \$288,682.68; and (c) Graceway Canada currently has "product samples" totaling \$518,064.07. The combined value of these three asset categories is \$2,252,570.95 (the "**Balance Sheet Total**"). These three asset categories are the only categories of assets that are being acquired under the APA. The APA specifically excludes "any Tax refunds" as well as "Equipment" and "Accounts Receivable" from the Canadian Acquired Assets. See APA, § 2.2.⁸

⁸ Additionally, as discussed below, Graceway Canada has no going concern value beyond the three month termination period contained in the License, and, as a result, "Goodwill" is not a Canadian Acquired Asset and was excluded from the calculation of the Balance Sheet Total.

27. The Debtors currently provide Graceway Canada with a license to certain of their intellectual property. This License Agreement is terminable at the discretion of the Debtors upon three months notice to Graceway Canada. The Debtors have the absolute right to terminate the License Agreement – there are no conditions that are required to be satisfied prior to such termination. See License Agreement, § 8(c). The intellectual property provided to Graceway Canada under the License Agreement is property of the Debtors and merely licensed to Graceway Canada. Absent the License Agreement, Graceway Canada would not have rights to any intellectual property and, consequently, would not have any product to sell. Therefore, for purpose of valuing the Canadian Acquired Assets separate and apart from the assets of the Debtors, it is appropriate to use three months of Graceway Canada’s projected EBITDA, as this is a fair and reasonable estimate of EBITDA that Graceway Canada could have if the Debtors’ terminated the License Agreement.

28. As set forth on Exhibit B to the Aronson Declaration, Graceway Canada’s average monthly EBITDA, based on the twelve months prior to the Filing Date, is approximately \$734,000. Thus, three months of projected EBITDA is approximately \$2,200,000.

29. The sum of the Balance Sheet Total plus three months of Graceway Canada’s projected EBITDA equals approximately \$4,452,570.95 (the “**Graceway Canada Value**”). The Graceway Canada Value determined by Lazard reflects the fairest and most reasonable estimate of value attributable to the Canadian Acquired Assets. As a result, this Court should establish the Graceway Canada Value as the value to be used for the purpose of allocating the value to be received in a sale of substantially all of the assets of the Debtors and Graceway Canada to the Stalking Horse Bidder or any higher bidder.

B. The Canadian LOIs Are Not Relevant to Determining the Value of the Canadian Acquired Assets

30. As noted above, the royalty-free License Agreement granting Graceway Canada the right to use the Debtors' intellectual property may be terminated by the Debtors at any time upon three months notice. The non-binding Canadian LOIs proposed a value range for the assets of Graceway Canada of between \$60 and \$90 million that was calculated by applying a multiplier ranging from 2.0 to 3.0x to either annual net sales or net revenue. Because the value ranges contained in the Canadian LOIs are based on annual net sales or net revenue, which assume continued operations and use of the intellectual property rights granted under the License Agreement for longer than three months, the Canadian LOIs are not relevant to the valuation of the Canadian Acquired Assets.

Conclusion

31. The proposed Sale will involve the assets of both the Debtors and Graceway Canada, and the portion of the Cash Purchase Price relating to the Canadian Acquired Assets must be paid directly to Graceway Canada at the closing of the Sale. Consequently, the purchase price received in the Sale must be allocated between the value of the Debtors' assets and the value of the Canadian Acquired Assets. Because the value of the Canadian Acquired Assets is readily determinable from evidence currently available, there is no need to delay the hearing on the value of the Canadian Acquired Assets until the ultimate conclusion of the sale and auction process.

Notice

32. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (c) special restructuring and bankruptcy

counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (d) counsel to the administrative agent for the lenders under the Debtors' prepetition second lien credit facility; (e) the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f) the Committee; (g) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (h) the Food and Drug Administration; (i) the Internal Revenue Service; (j) Graceway Canada; (k) counsel to Graceway Canada; (l) the Receiver; (m) counsel to the Receiver; and (n) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

33. A copy of the Motion is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Motion are available for free on the website of the Debtors' claims, noticing, soliciting and balloting agent, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 (310) 321-5555 if calling from outside the United States.

WHEREFORE, the Debtors respectfully request that this Court enter the Order, substantially in the form attached hereto, (a) determining the value of the Canadian Acquired Assets, and (b) granting such other and further relief as this Court deems appropriate.

Dated: October 17, 2011
Wilmington, Delaware

Respectfully Submitted,



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