

**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: March 1, 2012 at 11:00 a.m.

Objection Deadline: February 23, 2012 at 4:00 p.m.

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (A) APPROVING THE
DISCLOSURE STATEMENT, (B) ESTABLISHING THE VOTING RECORD DATE,
VOTING DEADLINE AND OTHER DATES, (C) APPROVING PROCEDURES FOR
SOLICITING, RECEIVING AND TABULATING VOTES ON THE PLAN AND FOR
FILING OBJECTIONS TO THE PLAN AND (D) APPROVING THE MANNER AND
FORMS OF NOTICE AND OTHER RELATED DOCUMENTS**

The above-captioned debtors and debtors-in-possession (the “**Debtors**”) hereby file this motion (the “**Motion**”)² for entry of an order, in substantially the form attached hereto as Exhibit A (the “**Disclosure Statement Order**”), (a) approving the Disclosure Statement (defined below), (b) establishing the Voting Record Date (defined below), Voting Deadline (defined below) and other related dates, (c) approving procedures for soliciting, receiving and tabulating votes on the Plan (as defined herein) and for filing objections to the Plan, (d) approving the manner and forms of notice and other related documents and (e) granting other relief relating thereto as set forth herein. In support of this Motion, the Debtors respectfully state 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 (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 400, 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.

² Capitalized terms used and not otherwise defined herein shall have the meaning given to them in the Plan (defined below) or Disclosure Statement, as applicable.

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, 1125, 1126, and 1128 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rules 2002-1 and 3017-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

BACKGROUND

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].

4. These Chapter 11 Cases are pending before the Honorable Peter J. Walsh, Judge for the United States Bankruptcy Court for the District of Delaware, located at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801 (the “**Bankruptcy Court**”). 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 “**Creditors’ Committee**”) [Docket No. 90].

5. On the Petition Date, the Debtors filed a number of motions seeking approval of certain so-called “first day orders.” The majority of the first day orders were signed at a hearing held on September 30, 2011. The first day orders facilitated the transition between the Debtors’ prepetition and postpetition business operations by authorizing the Debtors to continue with certain regular business practices that may not be specifically authorized under the Bankruptcy Code, or for which the Bankruptcy Code requires prior court approval.

I. Cash Collateral and Debtor-In-Possession Financing

The Debtors’ prepetition capital structure consisted of a first lien secured credit agreement (the “**First Lien Credit Agreement**”), a second lien secured credit agreement (the “**Second Lien Credit Agreement**”) and an unsecured mezzanine credit agreement (the “**Mezzanine Credit Agreement**”). The Debtors’ obligations to their lenders under the First Lien Credit Agreement (the “**First Lien Facility Lenders**”) and lenders under the Second Lien Credit Agreement (the “**Second Lien Facility Lenders**” and, together with the First Lien Facility Lenders, the “**Prepetition Secured Lenders**”) are secured, respectively, by perfected first and second priority liens upon and security interests in substantially all of the assets of the Debtors (the “**Prepetition Collateral**”). As of the Petition Date, the Prepetition Collateral included substantially all of the Debtors’ cash and cash equivalents. As a result, the Debtors did not have any unencumbered cash with which to operate their businesses. Moreover, the Prepetition Secured Lenders were unwilling to lend additional funds to the Debtors in excess of the amounts outstanding under such agreements.

6. In order to permit the Debtors to fund day-to-day activities pending the sale of the Debtors’ assets, the First Lien Facility Agent (defined below) and certain First Lien Facility Lenders (the “**Majority First Lien Facility Lenders**”) agreed to (a) permit the Debtors to use the cash in which the Prepetition Secured Lenders had a security interest (the “**Cash Collateral**”)

and (b) to obtain senior secured debtor-in-possession financing in a principal amount of up to \$6,000,000 from the Debtors' non-debtor subsidiary Graceway Canada (defined below). This agreement, as well as, among other things, the support of the First Lien Facility Lenders for the sale of substantially all of the Debtors' assets, was set forth in that certain Sale Support Agreement, dated as of September 28, 2011, by and among the Debtors, Graceway Canada and the Majority First Lien Facility Lenders, and attached as an exhibit to each of the Debtors' petitions.

7. On the Petition Date, the Debtors filed the *Debtors' Motion for Interim and Final orders (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. 15] (the "**DIP Motion**"). The DIP Motion was approved on an interim basis on September 30, 2011, pursuant to 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]. On November 7, 2011, the Bankruptcy Court entered the *Final 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 and (III) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364* [Docket No. 219] (the "**Final DIP Order**").

8. The Final DIP Order authorized the Debtors to, on a final basis, (a) enter into certain intercompany term loans (the “**Intercompany Notes**”) and related agreements with the Debtors’ non-Debtor affiliate, Graceway Canada Company (“**Graceway Canada**”) and to perform their obligations thereunder; (b) borrow and use up to \$6,000,000 in principal amount pursuant to the Intercompany Notes; (c) grant Graceway Canada first priority liens on the Debtors’ assets securing the Debtors’ obligations under the Intercompany Notes and super-priority administrative Claims with respect to such amounts; (d) grant certain adequate protection to the Prepetition Secured Lenders; (e) make factual stipulations regarding the First Lien Credit Agreement and the Second Lien Credit Agreement (the “**Debtors’ Stipulations**”); (f) grant certain releases vis-à-vis the agent under the First Lien Credit Agreement (the “**First Lien Facility Agent**”), the First Lien Facility Lenders, the agent under the Second Lien Facility Credit Agreement (the “**Second Lien Facility Agent**”) and the Second Lien Facility Lenders; (g) establish a budget for the use of Cash Collateral, including various covenants relating thereto; (h) establish a “carve-out” for (i) unpaid fees required to be paid to the clerk of the Bankruptcy Court and the office of the United States Trustee and (ii) certain professional fees and expenses allowed by the Bankruptcy Court under Sections 105(a), 330 and 331 of the Bankruptcy Code; (i) establish a period during which the Creditors’ Committee could investigate and challenge the Debtors’ Stipulations, which were otherwise binding on all parties in interest; and (j) agree to certain other terms and conditions typically found in orders granting similar relief.

II. Sale of Assets

7. Also on the Petition Date, the Debtors filed 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 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 [Docket No. 12], seeking to sell substantially all of their assets through a sale pursuant to Section 363 of the Bankruptcy Code (the “**Sale**”).*

8. On November 17, 2011, the Debtors held an auction (the “**Auction**”) pursuant to the *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (D) Related Relief [Docket No. 119].* At the conclusion of the Auction, Medicis Pharmaceutical Corporation (“**Medicis**”) was selected as the bidder submitting the highest and best bid. The Debtors entered into an asset purchase agreement (the “**Asset Purchase Agreement**”) with Medicis pursuant to which Medicis agreed to pay the following consideration for the Acquired Assets of the Debtors: (a) \$455,000,000.00 in cash and (b) assumption of certain Assumed Liabilities, on the terms set forth in the Asset Purchase Agreement. On November 22, 2011, the Bankruptcy Court approved the Sale to Medicis pursuant to the *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 [Docket No. 306] (the “**Sale Order**”).*

9. The Debtors consummated the transactions authorized by the Sale Order on December 2, 2011 (the “**Closing Date**”). *See Notice of Closing of Sale of Substantially all of*

Debtors' Assets to Medicis Pharmaceutical Corporation [Docket No. 335]. On the Closing Date, and pursuant to the Sale Order, the Debtors' obligations under the Intercompany Notes were paid in full in cash.

III. The Claims Bar Date

10. Also on the Petition Date, the Debtors filed the *Motion of the Debtors for an Order Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 19]. Pursuant to the *Order Establishing Bar Dates For Filing Proofs of Claim and Approving The Form And Manner of Notice Thereof* [Docket No. 126], dated October 17, 2011 (the "**Bar Date Order**"), the Bankruptcy Court established that any Person and Entity (excluding any Governmental Unit, as defined in Section 101(27) of the Bankruptcy Code), asserting a prepetition Claim against the Debtors in the Chapter 11 Cases must file a proof of Claim so that it is received by The BMC Group, Inc. on or before 4:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the Debtors filed their schedules of assets and liabilities and statements of financial affairs (the "**Schedules**").

11. The Debtors filed their Schedules on October 31, 2011. Accordingly, December 30, 2011 at 4:00 p.m. (the "**Bar Date**") was the deadline for filing proofs of Claims relating to prepetition Claims against the Debtors, other than Claims of Governmental Units and Administrative Expense Claims. Further, the Bar Date Order established that all Governmental Units asserting prepetition Claims against one or more of the Debtors must file proofs of Claim so that they are received by BMC Group, Inc. on or before March 27, 2012 at 4:00 p.m. (prevailing Eastern Time) (the "**Governmental Claims Bar Date**"). Pursuant to the Plan, all unpaid Administrative Expense Claims must be filed on or before the Administrative Expense Claims Bar Date. The Administrative Expense Claims Bar Date is the first Business Day that is at least thirty-five (35) days following the Effective Date.

IV. The Joint Plan of Liquidation

12. On January 25, 2012, the Debtors filed their Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, *et al.* [Docket No. 483] (as it may be amended, modified or supplemented from time to time, the “**Plan**”) and the Disclosure Statement for the Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, *et al.* [Docket No. 484] (as it may be amended, modified or supplemented from time to time, the “**Disclosure Statement**”).

13. As set forth in detail in the Plan and Disclosure Statement, the Plan is premised on the substantive consolidation of all of the Debtors with respect to the treatment of all Claims and Interests except Other Secured Claims. The Plan serves as a request by the Debtors, in lieu of a separate motion, to the Bankruptcy Court that it grant substantive consolidation with respect to the treatment of all Claims and Interests except Other Secured Claims.

14. In accordance with Sections 1122 and 1123 of the Bankruptcy Code, the Plan contemplates classifying holders of Claims and Interests into various Classes for all purposes, including with respect to voting on the Plan, as follows:

SUMMARY OF STATUS AND VOTING RIGHTS

<u>Class</u>	<u>Claim/Interest</u>	<u>Status</u>	<u>Voting Rights</u>
<u>N/A</u>	<u>Administrative Expense Claims</u>	<u>Unclassified</u>	<u>Not Entitled to Vote</u>
<u>N/A</u>	<u>Professional Claims</u>	<u>Unclassified</u>	<u>Not Entitled to Vote</u>
<u>N/A</u>	<u>Statutory Fees</u>	<u>Unclassified</u>	<u>Not Entitled to Vote</u>
<u>N/A</u>	<u>Priority Tax Claims</u>	<u>Unclassified</u>	<u>Not Entitled to Vote</u>
<u>1</u>	<u>Other Priority Claims</u>	<u>Unimpaired</u>	<u>Deemed to Accept</u>
<u>2</u>	<u>First Lien Facility Claims</u>	<u>Impaired</u>	<u>Entitled to Vote</u>
<u>3</u>	<u>Second Lien Facility Claims</u>	<u>Impaired</u>	<u>Entitled to Vote</u>
<u>4</u>	<u>Other Secured Claims</u>	<u>Unimpaired</u>	<u>Deemed to Accept</u>
<u>5</u>	<u>General Unsecured Claims</u>	<u>Impaired</u>	<u>Entitled to Vote</u>
<u>6</u>	<u>Intercompany Claims</u>	<u>Impaired</u>	<u>Deemed to Reject</u>
<u>7</u>	<u>Old Equity</u>	<u>Impaired</u>	<u>Deemed to Reject</u>
<u>8</u>	<u>Old Equity Rights</u>	<u>Impaired</u>	<u>Deemed to Reject</u>

15. Based on the foregoing and as discussed in greater detail below, (a) the Debtors are proposing to solicit votes to accept or reject the Plan from holders of Claims in Classes 2, 3, and 5 (collectively, the “Voting Classes”) and (b) the Debtors are not proposing to solicit votes from holders of Claims in Classes 1, 4, 6, or 9 and holders of Interests in Class 7 (collectively, the “Non-Voting Classes”).

RELIEF REQUESTED

16. By this Motion, the Debtors request that this Court enter the Disclosure Statement Order, which, among other things, (a) approves the Disclosure Statement, (b) establishes the Voting Record Date, Voting Deadline and other related dates, (c) approves procedures for soliciting, receiving and tabulating votes on the Plan and for filing objections to the Plan,

(d) approves the manner and forms of notice and other related documents and (e) grants other relief relating thereto as set forth herein. A chart listing certain dates and deadlines requested under the Disclosure Statement Order is provided below.

Chart of Proposed Dates and Deadlines³

Event	Date/Deadline
Service of Notice of Disclosure Statement Hearing	January 26, 2012
Objection Deadline for Disclosure Statement Hearing	February 23, 2012 at 4:00 p.m. Eastern Time
Disclosure Statement Hearing	March 1, 2012 at 11:00 a.m. Eastern Time
Voting Record Date	March 1, 2012
Solicitation Mailing Date (defined below)	March 6, 2012
Deadline to Publish Notice of Confirmation Hearing	March 9, 2012
Rule 3018(a) Motion Deadline	March 27, 2012 at 4:00 p.m. Eastern Time
Objection Deadline for Confirmation Hearing	April 3, 2012 at 4:00 p.m. Eastern Time
Voting Deadline	April 3, 2012 at 4:00 p.m. Eastern Time
Confirmation Hearing	April 11, 2012 at 2:00 p.m. Eastern Time

I. Approvals Relating to Disclosure Statement

A. Approval of Notice of Disclosure Statement Hearing

17. Bankruptcy Rule 3017(a) provides, in pertinent part:

After a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any

³ The dates set forth herein are subject to Court approval. To the extent of any conflict between the dates in this Motion and those in the Disclosure Statement Order, the dates in the Disclosure Statement Order shall control.

party in interest who requests in writing a copy of the statement or plan.

Fed. R. Bankr. P. 3017(a).

18. In accordance with Bankruptcy Rule 3017(a), the Debtors have obtained from the Court a date and time for the hearing on the Disclosure Statement which will be held at 11:00 a.m. prevailing Eastern Time on March 1, 2012 (the “**Disclosure Statement Hearing**”).

19. Bankruptcy Rules 2002(b), 2002(d) and 3017(a) require notice by mail to all of a debtor’s creditors and shareholders informing them of the time set for filing objections to, and the hearing to consider the approval of a disclosure statement. Pursuant to Bankruptcy Rules 2002(b), 2002(d) and 3017(a), on or about the date of this Motion, the Debtors mailed or will mail a copy of such disclosure statement hearing notice, substantially in the form of Exhibit 1 attached to the Disclosure Statement Order (the “**Disclosure Statement Hearing Notice**”), by first-class mail to (a) all known Creditors of the Debtors, (b) all known equity security holders of the Debtors and (c) the parties listed in paragraph 20 below.

20. The Debtors also served a copy of this Motion, the Disclosure Statement Hearing Notice, the Disclosure Statement and the Plan (attached as Exhibit A to the Disclosure Statement) on the following parties: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the First Lien Facility Agent; (c) special restructuring and bankruptcy counsel to the First Lien Facility Agent; (d) counsel to the Second Lien Facility Agent; (e) the administrative agent for the lenders under the Mezzanine Credit Agreement; (f) counsel to the Creditors’ 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) the U.S. Public Health Service; (k) the Centers for Medicare and Medicaid Services; (l) counsel to, Receiver for, and counsel to the

Receiver for Graceway Canada; (m) all parties requesting notice pursuant to Bankruptcy Rule 2002 as of the date hereof; and (n) each Entity with an interest in the Prepetition Collateral. Moreover, copies of such documents are available in accordance with paragraph 66 below.

21. In the event that a party timely and properly files a Claim on or before the Governmental Unit Claims Bar Date or such other deadline, as applicable, and has not received the Disclosure Statement Hearing Notice pursuant to the paragraphs 19 and 20 above, the Debtors propose to send such party the Disclosure Statement Hearing Notice via overnight mail on the date the Claim is filed.

22. The Disclosure Statement Hearing Notice also provides that objections or responses to the Disclosure Statement, if any, must: (i) be made in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware; (iii) state with particularity the legal and factual basis for the objection; and (iv) be filed with the Bankruptcy Court (contemporaneously with a proof of service), and be served upon the following parties (the "**Notice Parties**") so as to be **actually received** by each of them on or before **4:00 p.m. prevailing Eastern Time on February 23, 2012** (the "**Disclosure Statement Objection Deadline**):

- a) Counsel to the Debtors, Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, IL 60606 (Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq.) and Young Conaway, Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.);
- b) Counsel to the Creditors' Committee, Elliott Greenleaf, 1105 North Market Street, Suite 1700, P.O. Box 2327, Wilmington, DE 19801 (Attn: Rafael Xavier Zahralddin-Aravena) and Lowenstein Sandler, 919 65 Livingston Avenue, Roseland, NJ 07068 (Attn: S. Jason Teele, Esq.);

- c) Special Bankruptcy and Restructuring Counsel to the Agent for the First Lien Lenders, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019 (Attn: Scott K. Charles, Esq. and Michael S. Benn, Esq.) and DLA Piper LLP, 919 North Market Street, 15th Floor, Suite 1500, Wilmington, DE 19801 (Attn: Stuart M. Brown, Esq.);
- d) Financing Counsel to the Agent for the First Lien Lenders, Morgan Lewis, 225 Franklin Street, 16th Floor, Boston, MA 02110 (Attn: Sula Fiszman, Esq.);
- e) Counsel to the Agent for the Second Lien Lenders, Sidley Austin LLP, One South Dearborn, Chicago, IL 60603 (Attn: Larry Nyhan, Esq.);
- f) Agent for the Mezzanine Lenders, Goldman Sachs Credit Partners L.P., 30 Hudson Street, 5th Floor, Jersey City, NJ 07302 (Attn: Michelle Latzoni);
- g) Receiver for Graceway Canada, RSM Richter Inc., 200 King Street West, Suite 1100, Toronto, ON M5H 3T4 (Attn: Robert Kofman and David Sieradzki);
- h) Counsel to the Receiver for Graceway Canada, Davies Ward Phillips & Vineberg LLP, 1 First Canadian Place, Suite 4400, P.O. Box 63, Toronto, ON M5X 1B1 (Attn: Jay Swartz);
- i) Counsel to Graceway Canada, Goodmans LLP, Bay Adelaide Centre, 333 Bay Street, Suite 3400, Toronto, ON M5H 2S7 (Attn: Fred Myers, Joe Latham, and Caroline Descours);
- j) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2213, Lockbox 35, Wilmington, DE 19801 (Attn: Juliet Sarkessian, Esq.).

23. Requiring that objections to the Disclosure Statement be filed by the Disclosure Statement Objection Deadline will afford the Court and the Debtors sufficient time to consider objections before the Disclosure Statement Hearing. The Debtors submit that the foregoing notice and objection procedures provided adequate notice of the Disclosure Statement Hearing and, accordingly, request that the Court deem such notice as having been adequate pursuant to Bankruptcy Rule 3017.

B. Approval of Disclosure Statement as Containing “Adequate Information”

24. Section 1125(b) of the Bankruptcy Code prohibits postpetition solicitation of a chapter 11 plan unless the plan (or summary thereof) and “a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information” are transmitted to those Persons whose votes are being solicited. The Debtors desire to commence solicitation of acceptances of the Plan and, accordingly, request that this Court approve the Disclosure Statement as providing adequate information within the meaning of Section 1125(a)(1) of the Bankruptcy Code, which defines “adequate information” as:

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1). The Debtors submit that the Disclosure Statement contains adequate information within the meaning of Section 1125 of the Bankruptcy Code.

25. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision whether to vote for the plan. See, e.g., Century Glove, Inc. v. First Am. Bank of New York, 860 F.2d 94, 100 (3rd Cir. 1988) (“§ 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote”); In re Monnier Bros., 755 F.2d 1336, 1341 (8th Cir. 1985); In re Phoenix Petroleum, Co., 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001); In re Unichem Corp., 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987). Congress intended that such informed judgments would be needed both to negotiate the terms of and to vote on a plan of reorganization. Century Glove, 860 F.2d at 100.

26. In evaluating whether a disclosure statement provides “adequate information,” courts adhere to Section 1125 of the Bankruptcy Code’s instruction that making this determination is a flexible exercise based on the facts and circumstances of each case. 11 U.S.C. § 1125(a)(1) (“‘adequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records”); see also Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.3d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case”); First Am. Bank of New York v. Century Glove, Inc., 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95- 989, at 121 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5907 (“the information required will necessarily be governed by the circumstances of the case”).

27. Courts, including those within the Third Circuit, acknowledge that determining what constitutes “adequate information” for the purpose of satisfying Section 1125 of the Bankruptcy Code resides within the broad discretion of the court. See, e.g., Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.), 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court”); In re PC Liquidation Corp., 383 B.R. 856, 865 (E.D.N.Y. 2008) (“The standard for disclosure is, thus, flexible and what constitutes ‘adequate disclosure’ in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court”); In re River Village Associates, 181 B.R. 795, 804 (E.D. Pa. 1995) (same); In re Phoenix

Petroleum Co., 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same); In re Lisanti Foods, Inc., 329 B.R. 491, 507 (Bankr. D. N.J. 2005) (same).

28. The Disclosure Statement is the product of the Debtors' extensive review and analysis of their former business, their assets and liabilities, the circumstances leading to the Chapter 11 Cases, the sale, the settlements with the Prepetition Secured Lenders and other significant events occurring during the Chapter 11 Cases. In addition, the Disclosure Statement reflects the Debtors' thorough analysis of the Plan, including the distributions to holders of Claims contemplated thereunder, the effect of the Plan on holders of Claims and Interests and the resultant liquidation of the Debtors' Estate if the Plan is confirmed and consummated. In performing this analysis, the Debtors sought and received the input of their advisors, executives and key management personnel, their major constituents and such constituents' respective advisors.

29. Specifically, the Disclosure Statement contains the pertinent information necessary for the holders of Claims entitled to vote on the Plan to make informed decisions about whether to vote to accept or reject the Plan, including, among other things, the following key sections and information contained therein:

- I. Introduction: overview of the Plan, overview of the solicitation and voting procedures and confirmation and consummation of the Plan, including important dates with respect to voting on and objecting to the confirmation of the Plan and a summary of certain effects of confirmation of the Plan;
- II. Background of the Debtors: overview of the Debtors and certain events leading to the commencement of the Chapter 11 Cases;
- III. The Chapter 11 Cases: commencement of the Chapter 11 Cases, retained Professionals, first day Orders, appointment of the Creditors' Committee, DIP Order, the sale of the Debtors' Assets, the Debtors' current management, the Claims process and the substantive consolidation of the Debtors;

- IV. Summary of the Plan: Administrative Expense Claims, Statutory Fees, Professional Claims and Priority Tax Claims, the classification and treatment of Claims and Interests under the Plan, the post-confirmation operations of the Debtors, the Liquidating Trust Agreement, objections to Claims, distributions under the Plan, conditions precedent to confirmation and consummation of the Plan, conditions to the Effective Date of the Plan, waiver of the aforementioned conditions, termination of the Plan for failure to become effective, modifications of the Plan, the effect of confirmation, exculpation, injunction, and limitation of liability, retention of jurisdiction by the Court, treatment of executory contracts and unexpired leases under the Plan, admissions, preservation of the rights of setoffs, defenses with respect to Unimpaired Claims (defined below) and the dissolution of the Creditors' Committee;
- V. Confirmation of the Plan: Confirmation Hearing (defined below) and the confirmation standards;
- VI. Funding and Feasibility of the Plan: funding of the Plan, the best interests test, avoidance action analysis, the Nycomed Litigation, the Debtors' remaining property and Excluded Assets, and the feasibility and risk factors associated with the Plan;
- VII. Alternatives to the Plan: liquidation under chapter 7 of the Bankruptcy Code, the filing of alternative plans of reorganization or dismissal of the Chapter 11 Cases; and
- VIII. Certain U.S. Federal Income Tax Considerations: certain U.S. federal income tax law consequences of the Plan with respect to the Debtors, the Liquidating Trust and holders of Claims.

30. The Debtors respectfully submit that the Disclosure Statement contains more than sufficient information for a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of Section 1125 of the Bankruptcy Code. See In re U.S. Brass Corp., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); In re Scioto Valley Mortg. Co., 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (same). To the extent necessary, the Debtors will demonstrate at the Disclosure Statement Hearing that the Disclosure Statement addresses the information set forth above in a manner that provides holders of Impaired Claims entitled to vote to accept or reject the Plan with adequate information within the

meaning of Section 1125 of the Bankruptcy Code. Therefore, the Debtors request that this Court approve the Disclosure Statement as containing “adequate information.”

I. Confirmation Hearing and Objections

31. Pursuant to Bankruptcy Rule 3020(b)(2), a court shall rule on confirmation of a plan after notice and a hearing. In accordance with Bankruptcy Rule 3020(b)(2), therefore, the Debtors request that this Court enter an order setting April 11, 2012 (or as soon thereafter as possible), as the hearing date to consider confirmation of the Plan (the “**Confirmation Hearing**”).

32. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Pursuant to this Bankruptcy Rule, the Debtors request this Court to enter the Disclosure Statement Order setting April 3, 2012 at 4:00 p.m. prevailing Eastern Time (or as soon thereafter as possible), as the deadline (the “**Confirmation Objection Deadline**”) for filing and serving objections to confirmation of the Plan (“**Confirmation Objections**”).

33. The Debtors request that this Court direct that Confirmation Objections, if any, must (a) be in writing, (b) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware, (c) state with particularity the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan that would resolve such objection, and (d) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** no later than the Confirmation Objection Deadline by the Debtors’ co-counsel and the other Notice Parties.

II. Establishment of Voting Record Date and Approving Procedures for Temporary Allowance of Claims that are Subject to an Objection Filed by the Debtors

A. Voting Record Date

34. Bankruptcy Rule 3018(a) provides that the “date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing” is the record date for determining the “holders of stocks, bonds, debentures, notes and other securities” entitled to receive Ballots and materials necessary for voting on the plan as specified in Bankruptcy Rule 3017(d). Unaltered, Bankruptcy Rule 3018(a) requires the record date to be set based on when the court enters the order approving the Disclosure Statement.

35. The Debtors request that this Court fix March 1, 2012 as the record date for all Claims (the “Voting Record Date”). The Debtors will use the Voting Record Date for determining which (a) Creditors are entitled to receive Solicitation Packages (defined below), (b) Creditors are entitled to vote to accept or reject the Plan, and (c) non-voting Creditors and Interest holders are entitled to receive notice of the Confirmation Hearing.

36. With respect to any transferred Claim, the Debtors further propose that the transferee will be entitled to receive Solicitation Packages and cast a Ballot on account of the transferred Claim only if: (a) all actions necessary to effect the transfer of the Claim or Interest pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date; or (b) the transferee files, no later than the Voting Record Date, (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. Each transferee shall be treated as a single Creditor for purposes of the numerosity requirements in Section 1126(c) of the Bankruptcy Code and the other procedures set forth in this Motion.

B. Procedures for Temporary Allowance of Certain Claims for Voting

37. Pursuant to Section 105(a) of the Bankruptcy Code, the Debtors propose that the Court order that any holder of a Claim against the Debtors for which the Debtors have filed an objection, whether such objection related to the entire Claim or a portion thereof, not be entitled to vote on the Plan and not be counted in determining whether the requirements of Section 1126(c) of the Bankruptcy Code have been met with respect to the Plan (except to the extent and in the manner as may be set forth in the objection) unless (a) the Claim has been temporarily allowed for voting purposes pursuant to Bankruptcy Rule 3018(a) and in accordance with the Disclosure Statement Order or (b) on or before the Voting Deadline, the objection to such Claim has been withdrawn or resolved in favor of the Creditor asserting the Claim. Recipients of an objection to expunge or disallow their Claim will receive a notice of non-voting status, substantially in the form of Exhibit 2 attached to the Disclosure Statement Order.

38. Bankruptcy Rule 3018(a) provides, in relevant part, that, “notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” The Debtors request that the Court, pursuant to Section 105(a) of the Bankruptcy Code, (a) fix March 27, 2012 (the “**Rule 3018(a) Motion Deadline**”), as the deadline for the filing and serving of such motions requesting temporary allowance of a movant’s Claim for purposes of voting pursuant to Bankruptcy Rule 3018(a) (the “**Rule 3018(a) Motions**”) and (b) require that such a Rule 3018(a) Motion be filed with the Bankruptcy Court and served on co-counsel to the Debtors and the other Notice Parties so as to be **actually received** not later than 4:00 p.m. (Prevailing Eastern Time) on the Rule 3018(a) Motion Deadline; *provided, however*, that if the Debtors object to a Claim on or after the date that is

seven (7) days before the original Rule 3018(a) Motion Deadline, then the Rule 3018(a) Motion Deadline shall be extended as to such Claim such that the holder thereof shall have at least seven (7) days to file a Rule 3018(a) Motion. The Debtors propose that the Court consider only those Rule 3018(a) Motions that have been timely filed and served in accordance with the provisions of this paragraph and Motion.

39. The Debtors propose that any party timely filing and serving a Rule 3018(a) Motion be provided a Ballot and be permitted to cast a provisional vote to accept or reject the Plan. If, and to the extent that, the Debtors do not agree in writing to temporarily allow the Claim and the Debtors and such party are unable to resolve the issues raised by the Rule 3018(a) Motion prior to the Voting Deadline, then at the Confirmation Hearing the Court shall determine whether the provisional Ballot should be counted as a vote on the Plan. Such a procedure will help ensure an efficient tabulation of Ballots to be completed accurately by the Confirmation Hearing. Moreover, setting the date of the Confirmation Hearing as the date for hearing Rule 3018(a) Motions also permits the Court to avoid holding separate hearings on such motions. Nothing in these procedures is intended to affect the Debtors' right to object to any proof of Claim or Rule 3018(a) Motion.

40. Changing Votes. Notwithstanding Bankruptcy Rule 3018(a), whenever two or more valid Ballots are cast which attempt to vote the same Claim prior to the Voting Deadline, the last valid Ballot received prior to the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots; *provided, however*, that where an ambiguity exists as to which Ballot was the latest mailed, the Voting and Claims Agent (defined below) reserves the right to contact the Creditor and calculate the vote according to such voter's stated intent. This procedure is without prejudice to the Debtors' right to object to the validity of the second

Ballot on any basis permitted by law and, if the objection is sustained, to count the first Ballot for all purposes. This procedure of counting the last Ballot is consistent with the practice under various state and federal corporate and securities laws. Moreover, it will spare the Bankruptcy Court and the Debtors the time and expense of responding to Rule 3018(a) Motions and attempting to show cause for changing votes.

III. Approval of Solicitation Procedures

A. Duties of Voting and Claims Agent

41. Pursuant to an order of the Bankruptcy Court entered on September 30, 2011 [Docket No. 43], the Debtors retained BMC Group, Inc. as its notice, claims and balloting agent (the “**Voting and Claims Agent**”) to assist them with the Balloting and voting process in the Chapter 11 Cases. Accordingly, the Voting and Claims Agent will assist the Debtors in, among other things, (a) mailing Confirmation Hearing Notices (defined below) to holders of Claims in Non-Voting Classes and other non-voting parties entitled to notice, (b) mailing Solicitation Packages, (c) soliciting votes on the Plan, (d) receiving, tabulating, and reporting on Ballots cast for or against the Plan by holders of Claims against the Debtors, (e) responding to inquiries from Creditors and stakeholders relating to the Plan, the Disclosure Statement, the Ballots and matters related thereto, including, without limitation, the procedures and requirements for voting to accept or reject the Plan and objecting to the Plan, and (f) if necessary, contacting Creditors regarding the Plan and their Ballots.

B. Ballots

42. The Debtors request the Court to approve the Ballots for voting on the Plan in substantially the forms attached as Exhibits 3A through 3C to the Disclosure Statement Order. The Debtors request approval of three types of Ballots: one for use in soliciting votes from holders of Class 2 Claims (First Lien Facility Claims), one for use in soliciting votes from

holders of Class 3 Claims (Second Lien Facility Claims) and one for use in soliciting votes from holders of Class 5 Claims (General Unsecured Claims). Bankruptcy Rule 3017(d) requires the Debtors to mail a form of Ballot, which substantially conforms to Official Form No. 14, only to “creditors and equity security holders entitled to vote on the plan.” Fed R. Bankr. P. 3017(d). The Debtors propose to distribute to Creditors in the Voting Classes the applicable Ballot that is attached to the Disclosure Statement Order as Exhibits 3A through 3C, respectively. The forms for the Ballots are based on Official Form No. 14, but have been modified to address the particular aspects of these Chapter 11 Cases and include certain additional information that the Debtors believe to be relevant and appropriate for each such Class of Claims. The appropriate Ballot forms, as applicable, will be distributed to holders of Claims in the following Voting Classes:

- | | |
|----------|---|
| Ballot A | Ballot for Holders of Class 2 (First Lien Facility Claims) |
| Ballot B | Ballot for Holders of Class 3 (Second Lien Facility Claims) |
| Ballot C | Ballot for Holders of Class 5 (General Unsecured Claims) |

43. All Creditor Ballots will be accompanied by pre-addressed, postage prepaid return envelopes addressed to the Voting and Claims Agent.

44. Unimpaired Claims Notice. Under the Plan, certain Claims cannot be classified and other Classes of Claims are Unimpaired as defined in Section 1124 of the Bankruptcy Code (collectively, the “**Unimpaired Claims**”). Under Section 1126(f) of the Bankruptcy Code, the holders of Unimpaired Claims are conclusively presumed to have accepted the Plan, and therefore solicitation of votes with respect to such Unimpaired Claims is not required. Classes 1 (Other Priority Claims) and 4 (Other Secured Claims) are deemed Unimpaired Claims, and thus are conclusively presumed to accept the Plan; hence, solicitation of votes with respect to such Classes of Claims is not required. See 11 U.S.C. § 1126(f). Accordingly, such Classes of

Claims will not receive Solicitation Packages or Ballots. Rather, in lieu thereof and in accordance with Bankruptcy Rule 3017(d), the Debtors will mail to the holders of such Unimpaired Claims a notice, substantially in the form of Exhibit 4 attached to the Disclosure Statement Order, that gives (a) notice of the filing of the Plan, (b) notice that such party has been identified as the holder of an Unimpaired Claim, (c) instructions regarding the Confirmation Hearing and how to obtain a copy of the Solicitation Package (other than a Ballot) free of charge, and (d) detailed directions for filing objections to confirmation of the Plan. Non-Voting Status Notice. Classes 6 (Intercompany Claims), 7 (Old Equity), and 8 (Old Equity Rights) do not retain or receive any property under the Plan, and are, therefore, deemed to reject the Plan. See 11 U.S.C. § 1126(g). Therefore, the Debtors will not send Ballots or Solicitation Packages to holders of such Claims or Interests. Rather, in lieu thereof, and in accordance with Bankruptcy Rule 3017(d), the Debtors will mail to the holders of such Claims and Interests a notice of non-voting status, substantially in the form of Exhibit 5 attached to the Disclosure Statement Order that gives (a) notice of the filing of the Plan, (b) notice that such party has been identified as the holder of a non-voting Claim or Interest, (c) instructions regarding the Confirmation Hearing and how to obtain a copy of the Solicitation Package (other than a Ballot) free of charge, and (d) detailed directions for filing objections to confirmation of the Plan (together with the notice of non-voting status in substantially the form of Exhibit 2 attached to the Disclosure Statement Order, the “Non-Voting Status Notices”). The Debtors believe that mailing the Non-Voting Status Notices satisfies the requirements of Bankruptcy Rule 3017(d) with respect to the holders of such Claims and Interests.

46. Contract/Lease Notice. Parties to certain of the Debtors’ executory contracts and unexpired leases may not have scheduled Claims or Claims based upon filed proofs of Claim

pending the disposition of their contracts or leases by assumption or rejection. To ensure that such parties nevertheless receive notice of the Confirmation Hearing, counterparties to the Debtors' executory contracts and unexpired leases will receive a notice, substantially in the form of Exhibit 6 attached to the Disclosure Statement Order, that gives (a) notice of the filing of the Plan, (b) notice that such party has been identified as a party to an executory contract or unexpired lease, (c) instructions regarding the Confirmation Hearing and how to obtain a copy of the Solicitation Package (other than a Ballot) free of charge, and (d) detailed directions for filing objections to confirmation of the Plan.

C. Content and General Transmittal of Solicitation Packages; Notice of Confirmation Hearing

47. Bankruptcy Rule 3017(d) specifies the materials to be distributed to all impaired creditors following approval of a disclosure statement. Pursuant to this Bankruptcy Rule, the Debtors propose to transmit or cause to be transmitted on or before March 6, 2012 (the "**Solicitation Mailing Date**"), to the Persons listed below, subject to the limitations contained therein and elsewhere in this Motion, by United States mail, first-class postage prepaid, personal service, or overnight delivery, a solicitation package (the "**Solicitation Package**") on a compact disk or containing a copy or conformed printed version of the following:

- (a) the Notice of (A) Confirmation Hearing, (B) Objection and Voting Deadlines and (C) Solicitation and Voting Procedures; in substantially the form of the notice attached as Exhibit 7 to the Disclosure Statement Order (the "**Confirmation Hearing Notice**"), which the Debtors hereby request the Court to approve;
- (b) the Disclosure Statement;

- (c) the Plan (which may be furnished in the Solicitation Package as Exhibit A to the Disclosure Statement);
- (d) the Disclosure Statement Order (without exhibits attached);
- (e) a cover letter attached to the Disclosure Statement Order as Exhibit 9 from the Debtors describing the contents of the Solicitation Package and instructions on how paper copies of any materials that may be provided in CD-ROM format can be obtained at no charge; and
- (f) to the extent applicable, a Ballot and/or notice, appropriate for the specific Creditor, in substantially the forms attached to the Disclosure Statement Order (as may be modified for particular Classes and with instruction attached thereto).

48. The Debtors will provide copies of the Solicitation Package (other than a Ballot) to (a) the United States Trustee for the District of Delaware; (b) financing counsel to the First Lien Facility Agent; (c) special restructuring and bankruptcy counsel to the First Lien Facility Agent; (d) counsel to the Second Lien Facility Agent; (e) the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f) counsel to the Creditors' 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) the U.S. Public Health Service; (k) the Centers for Medicare and Medicaid Services; (l) counsel to, Receiver for, and counsel to the Receiver for Graceway Canada; (m) all parties requesting notice pursuant to Bankruptcy Rule 2002 as of the date of mailing the Solicitation Package; and (n) each Entity with an interest in the Prepetition Collateral.

49. The Debtors propose that the following Creditors receive the Solicitation Package (with exclusions as noted herein): Creditors who are holding Claims designated as Impaired Claims (Classes 2, 3, and 5) and are entitled to vote on the Plan because such Creditors (i) have timely filed proofs of Claim (or filed untimely proofs of Claim which have been allowed as timely by the Court under applicable law on or before the Voting Record Date) that have not been disallowed by an order of the Court entered on or before the Voting Record Date or (ii) hold Claims which are scheduled in the Schedules, other than those scheduled, in whole or part, as (x) unliquidated, contingent, or disputed or (y) zero or unknown in amount. So as to avoid duplication and reduce expenses, the Debtors propose that creditors who have filed duplicate Claims in any given Class be entitled to receive only one Solicitation Package and allowed one Ballot for voting their Claims with respect to that Class.

50. Supplemental Notice of Confirmation Hearing. Additionally, to ensure proper notice of the Confirmation Hearing, the Debtors propose to send the Confirmation Hearing Notice to all parties that received the Disclosure Statement Hearing Notice, and to parties to executory contracts and unexpired leases, which parties are not currently “creditors” as defined in Section 101(10) of the Bankruptcy Code. Moreover, Bankruptcy Rule 2002(l) permits the Court to “order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement notice.” Fed. R. Bankr. P. 2002(l). Due to the potential large number of parties in interest in these Chapter 11 Cases, the Debtors propose to publish the Confirmation Hearing Notice on or prior to March 9, 2012, which will provide at least thirty (30) days notice of the Confirmation Hearing, in the national edition of The Wall Street Journal. The Debtors believe that publication of this notice will give sufficient notice of the Confirmation Hearing to

Persons who do not otherwise receive notice by mail as provided for in the Disclosure Statement Order, as part of the Solicitation Package or otherwise.

D. Transmittal of Solicitation Packages to Holders of Contingent, Unliquidated, and Disputed Claims that are Not Subject to an Objection Filed by the Debtors

51. Bankruptcy Rule 3003(c)(2) provides, in relevant part, that “any creditor...whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated...who fails to [timely file a proof of claim] shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.” Therefore, such claimants or interest holders will not be mailed any documents or Notices (defined below).

52. For claimants who have filed timely proofs of Claim (or untimely proofs of Claim which have been allowed as timely by the Court under applicable law on or before the Voting Record Date), which, in whole or in part, reflect a disputed, unliquidated, or contingent Claim, and which are not subject to an objection filed by the Debtors, the Debtors propose to distribute (a) a Solicitation Package which contains a Ballot, (b) the Confirmation Hearing Notice, which notice informs such Person or Entity that its entire Claim has been allowed temporarily for voting purposes only and not for purposes of allowance or distribution, at \$1.00, and (c) a notice of disputed, unliquidated, or contingent status, substantially in the form of Exhibit 8 attached to the Disclosure Statement Order.⁴

E. When No Notice or Transmittal Necessary

53. The Debtors propose that Solicitation Packages, individual solicitation materials or other Notices not be sent to Creditors whose Claims are based solely on amounts scheduled by the Debtors but whose Claims already have been paid or satisfied in the full scheduled amount;

⁴ As noted in paragraph 37 above, the holder of any Claim that is the subject of an objection filed by the Debtors will not be entitled to vote and will receive a notice of non-voting status, substantially in the form of Exhibit 2 attached to the Disclosure Statement Order.

provided, however, if, and to the extent that, any such Creditor would be entitled to receive a Solicitation Package for any reason other than by virtue of the fact that its Claim had been scheduled by the Debtors, then such Creditor will be sent a Solicitation Package in accordance with the procedures set forth above. The Debtors request that they not be required to send Solicitation Packages, individual solicitation materials or other Notices to (i) any Creditor who filed a proof of Claim if the amount asserted in such proof of Claim is less than or equal to the amount that has already been paid or (ii) the holder of a Claim that has been disallowed in full by order of the Court.

54. Because sending Solicitation Packages and other Notices to outdated or otherwise improper addresses results in needless expense, the Debtors request authority not to give notice or service of any kind upon any Person or Entity to whom the Debtors mailed the Disclosure Statement Hearing Notice and received any of such Notices returned by the United States Postal Service marked “undeliverable as addressed,” “moved - left no forwarding address,” “forwarding order expired,” or any similar reason, unless the Debtors have been informed in writing by such Person of that Person’s new address.

IV. Voting Deadline and Procedures for Vote Tabulation

55. Voting Deadline. Bankruptcy Rule 3017(c) requires the Court to fix a time within which holders of Claims may vote to accept or reject the Plan. Pursuant to this Bankruptcy Rule, the Debtors request this Court to enter an order setting 4:00 p.m. Prevailing Eastern Time on April 3, 2012 (the “**Voting Deadline**”) as the last date and time by which Ballots accepting or rejecting the Plan must be received by the Voting and Claims Agent in order to be counted. Accordingly, since the Debtors intend on distributing Solicitation Packages on or before March 6, 2012, creditors will have approximately twenty-eight (28) days to have their Ballots returned to the Voting and Claims Agent.

56. To avoid uncertainty, provide guidance to the Debtors and the Voting and Claims Agent, and avoid the potential for inconsistent results, the Debtors request that the Court, pursuant to Section 105(a) of the Bankruptcy Code, establish the guidelines set forth below for tabulating the vote to accept or reject the Plan.

57. If a party that is entitled to vote has more than one Claim against one or more of the Debtors based upon different transactions, the Debtors request that said party shall be entitled to one vote for numerosity purposes in the aggregate dollar amount of all of said Claims. If a party that is entitled to vote has Claims (either scheduled or filed or both) against more than one of the Debtors based on the same transaction (e.g.; a Claim against one Debtor that was guaranteed by another Debtor), the Debtors request that said party shall be entitled to one vote for numerosity purposes in a dollar amount based upon its Claim or Interest against one of the Debtors.

58. Votes Counted. The Debtors propose that any timely received Ballot that contains sufficient information to permit the identification of the claimant and is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan. The foregoing general procedures will be subject to the following exceptions:

- (a) If a Claim is deemed an Allowed Claim in accordance with the Plan, such Claim is an Allowed Claim for voting purposes in the deemed allowed amount set forth in the Plan;
- (b) If a Claim for which a proof of Claim has been timely filed is marked, in whole or in part, as contingent, unliquidated, or disputed, and that is not subject to an objection filed by the Debtors, the Debtors propose that such

Claim be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00;

- (c) If a Claim has been estimated or otherwise allowed for voting purposes by order of the Court, such Claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- (d) If a Claim is not listed on the Schedules, or is scheduled at zero, in an unknown amount, or, in whole or in part, as unliquidated, contingent, or disputed, and a proof of Claim was not (a) timely filed by the Bar Date (or the Governmental Claims Bar Date for Governmental Units) or (b) deemed timely filed by an order of the Bankruptcy Court prior to the Voting Deadline, the Debtors propose that such Claim be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c);
- (e) If the Debtors have served and filed an objection to a Claim or any portion thereof, then the Debtors propose that such Claim be temporarily disallowed for voting purposes only and not for the purposes of the allowance or distribution, except to the extent and in the manner as may be set forth in the objection; and
- (f) Ballots cast in amounts in excess of their allowed amount will only be counted to the extent of the Creditors' allowed Claim.

59. The Debtors propose that none of the Debtors, the Voting and Claims Agent or any other Person or Entity will be under any duty to provide notification of defects or

irregularities with respect to delivered Ballots, nor will any of them incur any liability for failure to provide such notification. The Voting and Claims Agent may either disregard, with no further notice, defective Ballots, or it may attempt to have defective Ballots cured.

60. Votes Not Counted. The Debtors further propose that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

- (a) Any Ballot received after the Voting Deadline unless the Debtors grant an extension of the Voting Deadline in writing with respect to such Ballot;
- (b) Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- (c) Any Ballot cast by a Person or Entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan;
- (d) Any Ballot cast for a Claim not listed on the Schedules, or scheduled at zero, in an unknown amount, or, in whole or in part, as unliquidated, contingent, or disputed, and for which no proof of Claim was timely filed;
- (e) Any Ballot that is properly completed, executed and timely filed, but (a) indicates both an acceptance and rejection of the Plan or (b) partially accepts and partially rejects the Plan;
- (f) Any Ballot submitted by facsimile, telecopy or electronic mail;
- (g) Any unsigned Ballot;
- (h) Any Ballot sent to this Court, the Debtors, the Debtors' agents/representatives (other than the Voting and Claims Agent),

administrative agent under any credit facility, or the Debtors' financial or legal advisors; or

- (i) Any Ballot not cast in accordance with the procedures approved in the Disclosure Statement Order.

Additionally, the Debtors propose that any duplicate Ballot will only be counted once. Further, the Debtors propose that any properly completed and executed Ballot that does not indicate acceptance or rejection of the Plan shall be counted as a vote to accept the Plan.

61. The Debtors believe that the foregoing proposed procedures provide for a fair and equitable voting process. As mentioned above, if any Creditor seeks to challenge the allowance of its Claim for voting purposes, the Debtors request that the Court direct such Creditor to serve on the Debtors' co-counsel and file with the Court a Rule 3018(a) Motion temporarily allowing such Claim for purposes of voting to accept or reject the Plan by the Rule 3018(a) Motion Deadline. The Debtors further propose in accordance with Bankruptcy Rule 3018 that, as to any creditor filing a Rule 3018(a) Motion, such Creditor's Ballot not be counted for voting purposes, unless temporarily allowed by the Court after notice and a hearing or agreed to in writing by the Debtors.

62. No Vote Splitting; Effect. The Debtors propose that the Bankruptcy Court clarify that claim splitting is not permitted and order that Creditors who vote must vote all of their Claims within a particular Class to either accept or reject the Plan.

63. Absence of Votes in a Class. The Debtors request that if no votes to accept or reject the Plan are received with respect to a particular Class, such Class be deemed to have voted to accept the Plan. See In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988)

(holding non-voting, non-objecting judgment lien creditor who was only member of Class was deemed to have accepted plan of reorganization).

64. Nonsubstantive Changes. The Debtors request authority to make nonsubstantive changes to the Disclosure Statement, the Plan, the Ballots, the notices attached to the Disclosure Statement Order as Exhibits 1, 2, 4, 5, 6, 7, 8, and 9 (collectively, the “Notices”) and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, insert dates and to make conforming changes among the Disclosure Statement, the Plan, the Ballots, the Notices and any other materials in the Solicitation Package prior to mailing.

65. Copies and Review of Documents. Copies of the Plan and Disclosure Statement and all pleadings and orders of the Bankruptcy Court are publicly available on the Court’s website: www.deb.uscourts.gov. Additional copies are available for free on the website of the Voting and Claims Agent 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.

NOTICE

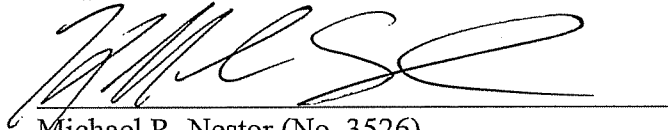
66. No prior motion for the relief requested herein has been made to this or any other court. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of this Motion and a copy of this Motion, the Disclosure Statement Hearing Notice, the Disclosure Statement, and the Plan (attached as Exhibit A to the Disclosure Statement) on the following parties: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the First Lien Facility Agent; (c) special restructuring and bankruptcy counsel to the First Lien Facility Agent; (d) counsel to the Second Lien Facility Agent; (e) the

administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f) counsel to the Creditors' 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) the U.S. Public Health Service; (k) the Centers for Medicare and Medicaid Services; (l) counsel to, Receiver for, and counsel to the Receiver for Graceway Canada; (m) all parties requesting notice pursuant to Bankruptcy Rule 2002 as of the date hereof; and (n) each Entity with an interest in the Prepetition Collateral. Moreover, copies of such documents are available in accordance with paragraph 66 above. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

WHEREFORE, the Debtors respectfully request that this Court (i) grant the relief requested herein; (ii) enter the Disclosure Statement Order in the form attached hereto; and (iii) grant such other and further relief as is just and proper.

Dated: January 25, 2012
Wilmington, Delaware

Respectfully Submitted,



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ATTORNEYS FOR DEBTORS
AND DEBTORS-IN-POSSESSION