

**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: June 12, 2012 at 9:30 a.m. (ET)

Objection Deadline: May 10, 2012 at 4:00 p.m. (ET)

**DEBTORS' SECOND MOTION FOR AN ORDER PURSUANT TO SECTION 105(a) OF
THE BANKRUPTCY CODE AND BANKRUPTCY RULES 9006(b) AND 9027
EXTENDING TIME TO FILE NOTICES OF REMOVAL
OF RELATED PROCEEDINGS**

The above-captioned debtors and debtors in possession (the “**Debtors**”), by and through their undersigned counsel, hereby submit this motion (the “**Motion**”) for the entry of an order pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 9006(b) and 9027 Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for a second extension of the Debtors’ time to file notices or motions of removal of related proceedings by approximately one hundred and twenty (120) days through and including August 24, 2012. In support of this Motion, the Debtors respectfully represent 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 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.

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are section 1452 of title 28 of the United States Code (“Section 1452”), section 105(a) of the Bankruptcy Code and Bankruptcy Rules 9006(b) and 9027.

BACKGROUND

2. 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”) [Docket No. 90].

3. A description of the Debtors’ business and the reasons for commencing these Chapter 11 Cases are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions [Docket No. 3], filed on the Petition Date.

4. On November 22, 2011, the Court entered 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], which authorized the

sale of substantially all of the Debtors' assets to Medicis Pharmaceutical Corporation pursuant to Section 363 of the Bankruptcy Code (the "**Sale**"). The Sale was consummated on December 2, 2011.

5. On December 28, 2011, the Debtors filed the *Debtors' Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 9006(b) and 9027 Extending Time to File Notices of Removal of Related Proceedings* (the "**First Removal Motion**") [Docket No. 413] requesting that the deadline to remove certain civil actions be extended through April 26, 2012. The Court entered an order granting the relief requested in the First Removal Motion on January 24, 2012 (the "**First Removal Order**") [Docket No. 477].

6. On February 28, 2012, the Debtors filed the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* (the "**Plan**") [Docket No. 551]. The Court confirmed the Plan on April 20, 2012 (the "**Confirmation Order**") [Docket No. 722].

BASIS FOR RELIEF

7. Section 1452 provides for the removal of actions related to bankruptcy cases. Specifically, Section 1452 provides in pertinent part:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise

28 U.S.C. § 1452.

8. Bankruptcy Rule 9027 sets forth the time periods for the filing of notices to remove claims or causes of action. Specifically, Bankruptcy Rule 9027 provides in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

9. By this Motion, the Debtors respectfully request issuance of an order, pursuant to Bankruptcy Rule 9006(b), further extending the Debtors' time under Bankruptcy Rule 9027(a) to file notices of removal of civil actions and proceedings to which the Debtors is or may become party (the "**Civil Actions**") by approximately one hundred and twenty (120) additional days, through and including August 24, 2012.

10. Bankruptcy Rule 9006 permits the court to extend the period to remove actions provided by Bankruptcy Rule 9027. Specifically, Bankruptcy Rule 9006 provides in pertinent part:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1).

11. It is well-settled that this Court is authorized to enlarge the removal period provided under 28 U.S.C. § 1452 and Bankruptcy Rule 9027. See Pacor, Inc. v. Higgins, 743 F.2d 984, 996, n.17 (3d Cir. 1984), *overruled on other grounds* by Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 134-35 (1995) (holding the bankruptcy court's power to grant an extension of the removal period pursuant to Bankruptcy Rule 9006(b) is "clear"); Caperton v. A.T. Massey Coal Co., Inc., 251 B.R. 322, 325 (S.D. W.Va. 2000); (Bankruptcy Rule 9006 provides authority to enlarge time periods for removing actions under Bankruptcy Rule 9027); In re Jandous Elec. Constr. Corp., 106 B.R. 48 (Bankr. S.D.N.Y. 1989) (period in which to file motion to remove may be expanded pursuant to Bankruptcy Rule 9006); In re World Fin. Servs. Ctr., Inc., 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (United States Supreme Court intended to give bankruptcy judges the power to enlarge the filing periods under Bankruptcy Rule 9027(a) pursuant to Bankruptcy Rule 9006(b)); Raff v. Gordon, 58 B.R. 988, 990 (E.D. Pa. 1986) (an expansion of time to file notices of removal is authorized under the Bankruptcy Rules).

Cause Exists to Extend Removal Period

12. In approximately six months since the Petition Date, the Debtors have been working diligently to: (i) resolve issues with respect to post-petition financing, (ii) stabilize their businesses and address the concerns of their customers, vendors and employees, (iii) conduct a Sale of substantially all of the Debtors' assets with input from key constituents and (iv) negotiate and confirm the Plan. Given the substantial effort that the Debtors and their professionals have invested in these processes, the Debtors have been unable to complete the review of their files and records to determine whether they should remove any claims or civil causes of action that may be pending in state or federal court to which they might be party.

13. The Debtors believe that they are party to one or more lawsuits, and are still in the process of evaluating the relevant information to make informed decisions about any such lawsuits to determine whether removal is warranted. Since the First Removal Order, the Debtors' personnel and professionals have been focused on negotiating and drafting the Plan. As the Plan was recently confirmed on April 20, 2012, the Debtors have yet to be able to focus completely on the process of evaluating the Civil Actions. As such, the Debtors have been unable to complete their analysis as to whether or not any pending suits should be removed. As a result, the Debtors require additional time to consider filing notices of removal in the Civil Actions.

14. The time within the Debtors must file motions to remove the Civil Actions currently is set to expire on approximately April 26, 2012.² Further extending the date through and including August 24, 2012 will permit the Debtors to review adequately any pending litigation matters and properly evaluate them within the larger context of these Chapter 11 Cases and, the Debtors submit, will not unduly prejudice any counter-party to the Civil Actions.

15. The Debtors respectfully request that the relief requested herein shall not: (a) be construed as modifying or terminating any stay applicable to any act, action, or proceeding pursuant section 362 of the Bankruptcy Code, or any order entered by this Court pursuant to section 105 of the Bankruptcy Code; (b) prejudice the Debtors' right to seek further extensions of time to remove the Civil Actions upon application to this Court; or (c) prejudice the Debtors' right to remove or seek extensions of the time to remove any cause of action or claim asserted in another court after the Petition Date.

² By operation of Local Rule 9006-2, the Debtors' deadline to remove claims or causes of action is automatically extended until such time as the Court has had an opportunity to consider and act upon the relief requested in this Motion.

16. Courts in this District have granted similar relief in other large chapter 11 cases for similar reasons. See, e.g., In re Tropicana Entertainment, LLC, Case No. 08-10856 (KJC) (Bankr. D. Del. Mar. 17, 2009) (granting third extension of time for removal of up to 105 days); In re HomeBanc Mortgage Corp., Case No. 07-11079 (KJC) (Bankr. D. Del. Apr. 8, 2008) (granting second request for extension of time for removal of approximately 90 days); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. Jan. 8, 2008) (granting second request for extension of time for removal of 120 days; followed by subsequent extension of 140 days); In re FLYi, Inc., Case No. 05-20011 (MFW) (Bankr. D. Del. June 16, 2006) (granting second request for extension of time for removal of 120 days, followed by subsequent extensions of 125 days and to effective date of plan).

17. In sum, the Debtors believe the proposed time extension should provide sufficient additional time to allow the Debtors and their professionals to consider, and make decisions concerning, the removal of the Civil Actions. Unless such enlargement is granted, the Debtors believe they will not have sufficient time to fully consider the removal of the Civil Actions. Accordingly, the Debtors submit that cause exists for the relief requested herein.

NOTICE

18. 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) the non-debtor parties to the Civil Actions; and (k) 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.

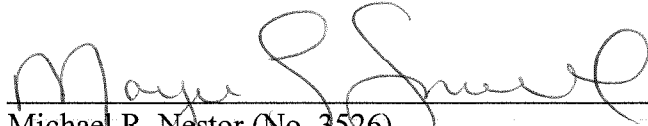
19. A copy of the Motion is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Motion are available for free on the website of the Debtors' claims, noticing, soliciting and balloting agent, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888)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

CONCLUSION

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other further relief the Court deems just and proper.

Dated: April 26, 2012
Wilmington, Delaware

Respectfully Submitted,



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