

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

Related Docket Numbers: 773 and 827

Hearing Date: March 27, 2013 at 9:30 a.m. (ET)

Objection Deadline: March 20, 2013 at 4:30 p.m. (ET)

**MOTION OF THE LIQUIDATING TRUSTEE FOR AUTHORITY TO
PAY FTI CONSULTING INC. FOR FEES INCURRED IN CONNECTION WITH
PREPARATION OF FINAL FEE APPLICATION**

Kip Horton, in his capacity as the liquidating trustee (the "Liquidating Trustee") of the Graceway Liquidating Trust (the "Liquidating Trust"), by and through his undersigned counsel, hereby moves (the "Motion") this court for entry of an order granting the Liquidating Trustee authority to pay FTI Consulting, Inc. ("FTI") for fees incurred in connection with preparation of its *Seventh Monthly and Final Application of FTI Consulting, Inc. for Allowance of Compensation for Services Rendered and Reimbursement of Expenses* (the "Final Fee Application") as *Financial Advisor for the Official Committee of Unsecured Creditors* (the "Committee"). [Docket No. 773].

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. § 157 and 1334.

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.

This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of this chapter 11 case in this district is proper under 28 U.S.C. §§ 1408 and 1409.

Background

2. On September 29, 2011 (the "Petition Date"), the above-captioned debtors (the "Debtors") filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

3. On October 11, 2011, the Office of the United States Trustee held a meeting to appoint the Committee pursuant to section 1102 of the Bankruptcy Code (the "Formation Meeting"). After the Formation Meeting, on October 13, 2011, the Committee selected FTI as its financial advisor.

4. On October 13, 2011, this Court entered an order approving FTI as financial advisor to the Committee. [Docket No. 224].

5. On October 17, 2011, this Court entered the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the "Interim Compensation Order"). [Docket No. 127]. Pursuant to the Interim Compensation Order, the Committee filed several monthly applications for approval to pay fees to FTI, including the Final Fee Application. See Docket Nos. 322, 391, 449, 528, 702, and 773.

6. The First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, *et al.* (the "Plan") [Docket No. 551] became effective on May 4, 2012 (the "Effective Date").

7. On June 7, 2012, the Committee filed its Final Fee Application requesting that this Court enter an order approving payment to FTI for: (i) fees and expenses of \$2,229.00 for the seventh monthly period; (ii) fees and expenses for a total final compensation of \$417,146.33;

(iii) an “additional, maximum amount of \$5,000.00 for time spent in preparation and prosecution of its final application subsequent to May 4, 2012.” See Final Fee Application at pg. 5.

8. On August 21, 2012, counsel for the Liquidating Trustee filed its Certification of No Objection To Final Fee Applications And Submission of Proposed Omnibus Fee Order (the “CNO”). [Docket No. 826].

9. A proposed form of order approving payment of the fees and expenses for all professionals, including FTI, was submitted with the CNO. This form of order, however, included a total of \$416,456.50 in fees and \$689.83 in expenses for FTI and mistakenly did not include the \$4,986.50 in fees incurred by FTI for time spent in preparation and prosecution of the Final Application.

10. On August 21, 2012, this Court entered the proposed form of order attached to the CNO (the “Final Order”). [Docket No 827].

Relief Requested

11. By this Motion, the Liquidating Trustee requests authority to pay FTI \$4,986.50 for fees incurred in connection with FTI’s preparation and prosecution of the Final Fee Application.

12. By submitting the proposed form of order, the Liquidating Trustee intended to pay each of the professionals, including FTI, all outstanding amounts due pursuant to section 2.3 of the Plan. It was only through error that the fees FTI incurred for preparation of its Final Fee Application were not included in the proposed form of order submitted with the CNO.

13. The Liquidating Trustee believes that the amount sought by FTI for preparation of its Final Fee Application is reasonable and necessary and, therefore, requests that the Court enter the attached order authorizing the Liquidating Trustee such amount.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order granting him authority to make a payment to FTI in the amount of \$4,986.50 on account of the time spent preparing and prosecuting the Final Fee Application; and granting such other and further relief as this court deems just and equitable.

Dated: February 27, 2013
Wilmington, Delaware

Respectfully Submitted,
DLA PIPER LLP (US)

/s/ Stuart M. Brown
Stuart M. Brown (DE 4050)
Cynthia Moh (DE 5041)
Daniel N. Brogan (DE 5723)
DLA PIPER LLP (US)
919 North Market Street, Suite 1500
Wilmington, Delaware 19801
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
Email: stuart.brown@dlapiper.com
cynthia.moh@dlapiper.com
daniel.brogan@dlapiper.com

*Counsel for Kip Horton,
Liquidating Trustee of the
Graceway Liquidating Trust*