

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: :
Graceway Pharmaceuticals, LLC, *et al.*,¹ : Chapter 11
: Case No. 11-13036 (PJW)
Debtors. : (Jointly Administered)
: Hearing Date: May 23, 2013 @ 9:30 A.M. (ET)
: Objection Deadline: May 16, 2013 @ 4:00 P.M. (ET)
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THIRD MOTION OF LIQUIDATING TRUSTEE FOR AN ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 9006(b) AND 9027 FURTHER EXTENDING TIME TO FILE NOTICES OF REMOVAL OF RELATED PROCEEDINGS

Kip Horton, the Liquidating Trustee in the above-captioned cases (the "Liquidating Trustee"), by and through his undersigned counsel, hereby submits 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 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking a further extension of the deadline to file notices or motions of removal of related proceedings by approximately one hundred and twenty (120) days through and including August 19, 2013. In support of this Motion, the Liquidating Trustee respectfully represents 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.
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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).

2. 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

3. On September 29, 2011 (the "Petition Date"), each of the Debtors (the "Debtors") filed a petition with this Court under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases").

4. On September 30, 2011, the Court entered an order consolidating these Chapter 11 Cases for procedural purposes only [Docket No. 42].

5. 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].

6. 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.

7. 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* [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 [Docket No. 477].

8. On April 26, 2012 the Debtors filed the *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* [Docket No. 730] requesting that the deadline to remove certain civil actions be extended through August 24, 2012. The Court entered an order granting the relief requested in the Second Removal Motion on July 9, 2012 [Docket No. 797].

9. 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].

10. The Effective Date of the Plan was May 4, 2012 (the "Effective Date").

11. Pursuant to the Plan, the Debtors, on their own behalf and on behalf of holders of Allowed Claims (the "Beneficiaries") and the Liquidating Trustee executed that certain Liquidating Trust Agreement, dated May 4, 2012, which among other things, established a Liquidating Trust for the purpose of liquidating the Debtors' Assets and distributing the proceeds thereof to the Beneficiaries.

12. Also pursuant to the Plan, Kip Horton of RPA Advisors, LLC was appointed as Liquidating Trustee of the Liquidating Trust (the "Liquidating Trustee").

13. On August 23, 2012 the Liquidating Trustee filed the *Motion of Liquidating*

Trustee 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 [Docket No. 832] requesting that the deadline to remove certain civil actions be extended through December 22, 2012. The Court entered an order granting the relief requested in the Liquidating Trustee's First Removal Motion on September 17, 2012 [Docket No. 839].

14. On December 18, 2012 the Liquidating Trustee filed the *Second Motion of Liquidating Trustee 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* [Docket No. 862] requesting that the deadline to remove certain civil actions be extended through April 21, 2013. The Court entered an order granting the relief requested in the Liquidating Trustee's Second Removal Motion on January 11, 2013 [Docket No. 867].

RELIEF REQUESTED AND BASIS FOR RELIEF

15. 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.

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16. 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).

17. By this Motion, the Liquidating Trustee respectfully requests entry of an order, pursuant to Bankruptcy Rule 9006(b), further extending the Liquidating Trustee's time under Bankruptcy Rule 9027(a) to file notices of removal of civil actions and proceedings to which the Debtors and/or the Liquidating Trustee are or may become party (the "Civil Actions") by approximately one hundred and twenty (120) additional days, through and including August 19, 2013.

18. 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).

19. 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

20. Since the Effective Date, the Liquidating Trustee have been working diligently to: (i) value the Assets of the Liquidating Trust (ii) reviewing and objecting to claims filed against the Debtors' estate (iii) negotiating and documenting settlements of such claims, and (iv) other administrative duties the Liquidating Trustee is obligated to perform under the Liquidating Trust Agreement, including but not limited to, preparing budgets, addressing tax issues and preparing certain financial reports. Since filing of the Second Removal Motion, the Liquidating Trustee has made substantial progress in completing these tasks, however, he has been unable to complete the

review of the 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.

21. The Liquidating Trustee believes that the Debtors 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 Effective Date, the Liquidating Trustee has been focused on claims and other administrative issues and has not yet to be able to focus completely on the process of evaluating the Civil Actions. As such, the Liquidating Trustee has been unable to complete his analysis as to whether or not any pending suits should be removed. As a result, the Liquidating Trustee requires additional time to consider filing notices of removal in the Civil Actions.

22. The time within which the Liquidating Trustee must file motions to remove the Civil Actions currently is set to expire on approximately April 21, 2012, which date falls on a Sunday, so April 22, 2012 is the first business thereafter.² Further extending the date through and including August 19, 2012 will permit the Liquidating Trustee to review adequately any pending litigation matters and the Liquidating Trustee submits that it will not unduly prejudice any counterparty to the Civil Actions.

23. The Liquidating Trustee respectfully requests 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, the Confirmation Order, or any order entered by this Court pursuant to section 105 of the Bankruptcy Code; (b) prejudice the Liquidating Trustee's right to seek further extensions of time to remove the Civil Actions upon application to this Court; or (c) prejudice the Liquidating Trustee's right to remove or seek extensions of the time to remove any cause of action or claim asserted in another court.

² By operation of Local Rule 9006-2, the Liquidating Trustee's deadline to remove claims or cause 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.

24. In sum, the Liquidating Trustee believes the proposed time extension should provide sufficient additional time to allow the Liquidating Trustee to consider, and make decisions concerning, the removal of the Civil Actions. Unless such enlargement is granted, the Liquidating Trustee believes he will not have sufficient time to fully consider the removal of the Civil Actions. Accordingly, the Liquidating Trustee submits that cause exists for the relief requested herein.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests 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 22, 2013
Wilmington, Delaware

Respectfully submitted,

/s/ Stuart M. Brown
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