

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 Number: 674

Hearing Date: June 20, 2013 at 9:30 a.m. (ET)

Objection Deadline: June 13, 2013 at 4:00 p.m. (ET)

**MOTION OF THE LIQUIDATING TRUSTEE
SEEKING APPROVAL OF STIPULATION**

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, pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the stipulation (the "Stipulation") entered into between the Liquidating Trustee and The State of Tennessee Department of Revenue ("TDOR," together with the Liquidating Trustee, the "Parties"). In support of this Motion, the Liquidating Trustee avers as follows:

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this chapter 11 case in this district is proper under 28 U.S.C. §§ 1408 and 1409.

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.

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 April 20, 2012, the Court entered the Findings of Fact, Conclusions of Law And Order Confirming the Debtors' First Amended Joint Plan of Liquidation (the "Plan") [D.I. 722].

4. The Effective Date of the Plan was May 4, 2012 and pursuant to the Plan, the Debtors and the Liquidating Trustee executed that certain Liquidating Trust Agreement, dated May 4, 2012 (the "Liquidating Trust Agreement"), which established the Liquidating Trust for the purpose of liquidating the Debtors' assets and distributing the proceeds thereof.

5. On or about December 19, 2011, TDOR filed three claims for unpaid taxes and related fines and penalties pursuant to Bankruptcy Code § 507(a)(8) against various Debtors in various amounts which were designated proof of claim nos. 115, 116 and 117 (the "Initial Claims"), and on or about March 26, 2012, TDOR filed eight proofs of claim amending certain of the Initial Claims and asserting new claims for unpaid taxes and related fines and penalties pursuant to Bankruptcy Code § 507(a)(8) against various Debtors in various amounts, which were designated proof of claim nos. 238 through and including 245 (the "Amended Claims," together with the Initial Claims, the "TDOR Claims").

6. Taken together, the TDOR claims asserted a total claim against the Debtors' estate in excess of \$6 million, most of which was asserted as priority claims.

7. On April 6, 2012, the Debtors filed the Objection to Claim by Claimant(s) Tennessee Department of Revenue (the "Objection") [D.I. 674] objecting to the TDOR Claims on the grounds that: (i) certain claims were claims that had been superseded or amended; (ii)

that the claims were overstated, because they failed to reflect subsequent payments by the Debtors; and (iii) that the claims were incorrectly classified; and the Liquidating Trustee succeeds to the rights and interests of the Debtors with respect to the Objection.

8. The Liquidating Trustee and TDOR have engaged in good faith negotiations to settle and resolve the TDOR Claims and the Objection, and as a result of such good faith negotiation have entered into the Stipulation.

Relief Requested

9. By this Motion the Liquidating Trustee seeks entry of an order (the “Order”) substantially in the form attached hereto as Exhibit A, approving the terms of the Stipulation pursuant to Bankruptcy Rule 9019(a).

10. Rule 9019 of the Bankruptcy Rules, which governs the approval of compromises and settlements, provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The decision to approve a particular settlement lies “within the sound discretion of the bankruptcy court.” In re Key3Media Group, Inc., 336 B.R. 87, 92 (Bankr. D. Del. 2005); In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006).

11. When analyzing any proposed settlement the Court looks to the general policy of encouraging settlements and favoring compromises. See Myers v. Martin (In re Martin), 91 F.3d 389, 394 (3d Cir. 1996). To approve a settlement, a bankruptcy court must determine that such settlement is in the best interest of a debtor’s estate. Law Debenture Trust Co. of N.Y. v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.), 339 B.R. 91, 95-96 (D. Del. 2006). In addition, a court must:

assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal” in light of four factors: (1) the probability of success in the litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interests of the creditors.

Id. at 96 (quoting Martin, 91 F.3d at 393). The United States District Court for the District of Delaware has explained that a court’s ultimate inquiry is whether a settlement is fair, reasonable, and in the best interest of a debtor’s estate. In re Marvel Entm’t Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting In re Louise’s, Inc., 211 B.R. 798, 801 (D. Del. 1997)).

12. The Stipulation is attached hereto as Exhibit B, and the material terms of the Stipulation are summarized as follows:

- Upon entry of the Order, TDOR shall hold an allowed priority claim in the aggregate amount of \$296,244.19 on account of the claims asserted by Proofs of Claim 115 (amended by proof of claim 244), 116, 117 (amended by proof of claim 243), 238 in part, 239, 240, 241, 242 and 244 (“Allowed Priority Claim”).
- Upon entry the Order, TDOR shall hold an allowed unsecured claim in the amount of \$59,284.17 on account of the claims asserted by Proof of Claim 238 in part (“Allowed Unsecured Claim”).
- The allowance of the Allowed Priority Claim and the Allowed Unsecured Claim fully administer all of the TDOR Claims, except the priority claims asserted by Proofs of Claim 243 and 245 (collectively, the “Not Administered Claims”). With respect to the Not Administered Claims, the Liquidating Trustee shall promptly file tax returns with TDOR. TDOR and the

Liquidating Trustee reserve all rights with respect to the Not Administered Claims and tax returns to be filed with respect thereto.

- The Liquidating Trustee shall pay in full the Allowed Priority Claim (less any claim for a refund evidenced by the tax returns on the Not Administered Claims) within 10 business days of the Order becoming a final order not subject to appeal. The Liquidating Trustee shall pay the amounts reflected on the tax returns to be filed with respect to the Not Administered Claims together with the submission of the tax returns to TDOR.

- TDOR shall be entitled to receive distributions from the Liquidating Trust on account of the Allowed Unsecured Claim in accordance with the Plan.

- Proof of Claim Nos. 115, 116, 117, 238, 239, 240, 241, 242 and 244 shall be superseded in their entirety by this Stipulation.

- Upon entry of the Order and receipt of payment on account of the Allowed Priority Claim, TDOR agrees not to assert any additional claims against the Liquidating Trust or its successors or assigns.

13. The Stipulation is fair, reasonable and in the best interest of the Liquidating Trust and Beneficiaries², it represents a compromise that is within the reasonable range of potential litigation outcomes and obviates the expense, delay, inconvenience and uncertainty that would attend any litigation regarding the TDOR Claims. The Parties negotiated the terms of the Stipulation in good faith and at arm's length. Accordingly, because the Stipulation is in the best

² Capitalized terms used but not defined herein shall have the meaning set forth in the Plan.

interest of the Liquidating Trust and Beneficiaries, it should be approved pursuant to Bankruptcy Rule 9019(a).

14. Specifically, the Stipulation realizes a reduction in the claims asserted by, and potentially allowed to TDOR from over \$6 million, to under \$400,000, with only approximately \$300,000 to be allowed as a priority claim. This represents a substantial benefit to the Liquidating Trust, and to its Beneficiaries.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order approving the Stipulation and granting such other and further relief as it deems just and equitable.

Dated: May 14, 2013
Wilmington, Delaware

Respectfully Submitted,
DLA PIPER LLP (US)

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