

**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

Ref. Doc. Nos. 10 & 48

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 366 (A) PROHIBITING
UTILITY PROVIDERS FROM DISCONTINUING, ALTERING, OR REFUSING
UTILITY SERVICES, (B) DEEMING UTILITY PROVIDERS ADEQUATELY ASSURED
OF FUTURE PERFORMANCE, AND (C) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

("Final Utilities Order")

Upon consideration of the motion (the "**Motion**")² of the Debtors for entry of interim and final orders (a) prohibiting Utility Providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (b) deeming the Utility Providers adequately assured of future performance, and (c) establishing procedures for determining adequate assurance of payment; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for

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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

objection having been given, with no objections or requests for hearing having been filed, or all objections having been overruled, as the case may be; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. All objections, if any, to the entry of this Final Order that have not been withdrawn are hereby overruled.
3. To the extent any provisions in this Final Order conflict with any provisions of the Motion or the Interim Order, the provisions of this Final Order shall control and govern to the extent of such conflict.
4. Except in accordance with the procedures set forth in any other order of this Court, the Utility Providers are (a) forbidden and prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or the Debtors' bankruptcy filings, and (b) except as expressly set forth herein, deemed to have received adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code and, as such, are forbidden from requiring the Debtors to furnish any additional deposit or other security for the continued provision of Utility Services.
5. The Debtors shall, on or before twenty (20) days after the Petition Date, deposit a sum of \$35,154, which is approximately equal to 50% of the Debtors' average monthly utility consumption over the course of twelve (12) months prior to the Petition Date (the "**Adequate Assurance Deposit**"), into an interest-bearing, newly created segregated account (the "**Adequate Assurance Deposit Account**") with such Adequate Assurance Deposit to be held in

escrow, pending further order of this Court, for the purpose of providing each Utility Provider adequate assurance of payment for its postpetition Utility Services to the Debtors.

6. The balance of the Adequate Assurance Deposit Account may be adjusted by the Debtors to account for the termination of Utility Services by the Debtors, provided that the Debtors give fourteen days a written notice to the Utility Provider to be terminated. Upon the expiration of the fourteen days, the Debtors shall be permitted to reduce the Adequate Assurance Deposit for such Utility Provider, unless the Utility Provider has asserted a claim against the Adequate Assurance Deposit, in which case such claim, if not consensually resolved, will be resolved by the Court. Any such claim must set forth a specific dollar amount for which the claim is asserted.

7. If a Utility Provider is not satisfied with the assurance of future payment provided by the Debtors, the Utility Provider must comply with the following Adequate Assurance Procedures, which are approved in full and in all respects:

- a. A Utility Provider desiring additional assurances of payment in the form of deposits, security or otherwise must serve a written request (an "**Additional Assurance Request**") upon the Debtors at the following addresses: (i) Graceway Pharmaceuticals, LLC, 40 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620, Attn: John Bellamy, Esq.; and (ii) co-counsel to the Debtors, Latham & Watkins LLP, Suite 5800, 233 South Wacker Drive, Chicago, IL 60606, Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq. and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19801, Attn: Kara Hammond Coyle, Esq. (collectively, the "**Service Parties**"). The Additional Assurance Request must be sent to all Service Parties to be deemed valid.
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided and the account number(s) for such location(s); (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits, and the outstanding balance for each account, and (iv) include a proposal for what would constitute adequate assurance from the Debtors, as well as set forth why the Utility Provider believes the

Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- c. Upon the Debtors' and other Service Parties' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with the Utility Provider to endeavor to resolve that Utility Provider's Additional Assurance Request (the "**Resolution Period**"). During the Resolution Period, Utility Providers may not discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges or the commencement of these Chapter 11 Cases.
- d. The Debtors may resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, increase the Adequate Assurance Deposit, without further order of this Court, if the Debtors believe such additional assurance is reasonable (provided, however, that the balance of the Adequate Assurance Deposit Account, together with the amount of any other deposit provided as adequate assurance, shall at no time exceed an amount equal to 50% of the Debtors' average monthly utility consumption over the course of twelve (12) months prior to the Petition Date plus \$25,000, without the consent of the administrative agent for the lenders under the Debtors' prepetition first lien credit facility).
- e. If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to promptly reach an alternative resolution with the Utility Provider, the Debtors will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "**Determination Hearing**") pursuant to Section 366(c)(3) of the Bankruptcy Code.
- f. Pending resolution of any such Determination Hearing, such particular Utility Provider shall be restrained from discontinuing, altering or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or the commencement of these Chapter 11 Cases.
- g. Unless and until a future order of this Court is entered requiring further assistance of payment, based on the establishment of the Proposed Adequate Assurance, a Utility Provider shall be deemed to have adequate assurance of payment.

8. Any amounts in the Adequate Assurance Deposit Account shall be returned to the Debtors' estates at the earlier of (a) the closing of the Chapter 11 Cases and (b) the closing of the

sale of substantially all of the Debtors' assets, unless one or more Utility Providers have asserted a claim against the Adequate Assurance Deposit, in which case such claim or claims, if not consensually resolved, will be resolved by the Court.

9. Unless and until any Utility Provider makes an Additional Assurance Request, such Utility Provider is hereby deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Provider.

10. The Debtors are authorized, in their discretion, to amend the Utility Service List attached to the Motion as Exhibit C in order to add any Utility Provider, and this Final Order shall apply as of the Petition Date to any such Utility Provider that is subsequently added to the Utility Service List; provided that, with respect to any Additional Utility Provider, the Debtors shall have twenty (20) days from the date the Debtors serve this Interim Order on such Additional Utility Provider to increase the Adequate Assurance Deposit by an amount equal to half a month of Utility Services provided by the Additional Utility Provider calculated as the average over the course of twelve (12) months prior to the Petition Date. The Debtors are authorized, in their discretion, to amend the Utility Service List attached to the Motion as Exhibit C in order to delete any Utility Provider, only if the Debtors have provided fourteen days advance notice to such Utility Provider, and have not received any objection from such Utility Provider. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree.

11. Nothing herein, nor in the Utility Service List, constitutes a finding that any entity is or is not a Utility Provider hereunder or under Section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

12. The Debtors shall serve a copy of this Final Order on each Utility Provider listed on Exhibit C to the Motion within five (5) business days of the date this Final Order is entered, and shall promptly serve this Final Order on each Utility Provider subsequently added by the Debtors to Exhibit C to the Motion.

13. Any payment or transfer made or service rendered by the Debtors pursuant to this Final Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation, a waiver of any rights the Debtors may have to dispute such obligation or waiver of any other rights or remedies of the Debtors, or an approval or assumption of any agreement, contract, or lease under Section 365 of the Bankruptcy Code.

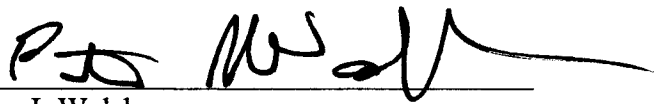
14. The terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

15. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or any order regarding the use of cash collateral.

16. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order

17. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Dated: Oct 17, 2011
Wilmington, Delaware


Peter J. Walsh
United States Bankruptcy Judge