

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (MFW)

Joint Administration Pending

**MOTION OF THE DEBTORS FOR AUTHORITY TO RETAIN AND COMPENSATE  
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

("Ordinary Course Professional Motion")

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"), hereby move this Court (the "**Motion**") for entry of an order (the "**Order**"), in substantially the form attached hereto as Exhibit A, pursuant to Sections 105(a), 327, 328, and 330 of title 11 of the United States Code, authorizing the Debtors to retain and compensate professionals used in the ordinary course of business (collectively, the "**Ordinary Course Professionals**"), effective as of the Petition Date, subject to certain monthly expenditure limitations. In support of this Motion, the Debtors respectfully state:

---

<sup>1</sup> 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); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

### **Jurisdiction**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105(a), 327, 328, and 330 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

### **Background**

3. On the date hereof (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. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these Chapter 11 Cases.

4. A description of the Debtors' businesses, the reasons for commencing these Chapter 11 Cases, and the relief sought from this Court to allow for a smooth transition into chapter 11 are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions, filed on the Petition Date.

### **Relief Requested**

5. By this Motion, the Debtors seek authorization to retain and compensate professionals used in the ordinary course of business, effective as of the Petition Date, as may be necessary, pursuant to Sections 327, 328 and 330 of the Bankruptcy Code. A non-exhaustive list of (a) each of the Debtors' Ordinary Course Professionals as of the Petition Date and (b) a description of the services provided to the Debtors by each of the Ordinary Course Professionals is attached hereto as Exhibit B.

6. Prior to the Petition Date, the Debtors employed various Ordinary Course Professionals, including accountants and attorneys, in the ordinary course of business to provide services relating to, among other things, audits, tax returns, intellectual property counseling, various other legal services, and other matters requiring the advice and assistance of professionals. The Debtors believe that the postpetition services of such Ordinary Course Professionals are necessary for the continued operation of the Debtors' businesses.

7. The Debtors request that the Court suspend its requirement for the submission of individual employment applications with respect to each Ordinary Course Professional. The Debtors submit that, in light of the costs associated with the preparation of employment applications for professionals who will receive relatively small fees, it is impractical and costly for the Debtors to prepare individual applications for each such professional. However, the Debtors further request that within twenty-one (21) days of the later of (a) the Petition Date or (b) the date on which any Ordinary Course Professional begins work for the Debtors, such Ordinary Course Professional be required to file an affidavit setting forth the information required under Bankruptcy Rule 2014, substantially in the form attached hereto as Exhibit C

8. While the Debtors have attempted to include a list of all Ordinary Course Professionals currently utilized in the Debtors' businesses, the Debtors reserve the right to amend or supplement the list of Ordinary Course Professionals, from time to time, as necessary. In the event that amendments to the list of Ordinary Course Professionals are deemed necessary, the Debtors shall file a supplemental list with this Court and serve it in accordance with any Case Management Order entered by this Court. The Debtors request that to the extent no objections are filed to any supplemental lists within twenty-one (21) days after service thereof, such lists be deemed approved without the necessity of a hearing or entry of a further order by this Court.

9. The Debtors propose that they be permitted to pay each Ordinary Course Professional, without prior application to the Court by such professional, all of the fees and expenses incurred postpetition, upon submission to, and approval by, the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses actually incurred, up to \$50,000 per month per Ordinary Course Professional, and not to exceed \$300,000 per Ordinary Course Professional for the entire case (the "**Ordinary Course Professional Cap**"). Except as otherwise provided herein, if any Ordinary Course Professional's combined fees and expenses exceed the Ordinary Course Professional Cap, such excess payments shall be subject to the prior approval of the Court.

#### **Basis for Relief**

10. The Debtors submit that the continued employment and compensation of the Ordinary Course Professionals is in the best interests of their estates, creditors and other parties in interest. While some Ordinary Course Professionals may wish to continue to represent the Debtors on an ongoing basis, others may be unwilling to do so if the Debtors cannot pay them on a regular basis, or, given the relatively small fees that may be involved, if they are required to

comply with the requirements for retention under Section 327(a) of the Bankruptcy Code. If the background knowledge, expertise and familiarity that the Ordinary Course Professionals have with the Debtors and their operations are lost, the Debtors will undoubtedly incur additional and unnecessary expenses in getting replacement professionals “up to speed.” The Debtors rely on the assistance of the Ordinary Course Professionals for essential business functions and would be unable to operate without their services. The Debtors’ estates and their creditors are best served by avoiding any disruption in the professional services required in the day-to-day operation of their businesses.

11. In determining whether an entity is a “professional” whose retention must be approved by a court as required by Section 327 of the Bankruptcy Code, courts generally consider the following factors:

- a. whether the entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtor’s reorganization;
- b. whether the entity is involved in negotiating the terms of a plan of reorganization;
- c. whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations;
- d. whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor’s estate;
- e. the extent of the entity’s involvement in the administration of the debtor’s estate; and
- f. whether the entity’s services involve some degree of special knowledge or skill, such that it can be considered a “professional” within the ordinary meaning of the term.

See, e.g., In re Am. Tissue, Inc., 331 B.R. 169, 173 (Bankr. D. Del. 2005); In re First Merchants Acceptance Corp., 1997 WL 873551, at \*2 (D. Del. Dec. 15, 1997) (defining “professionals”

within the meaning of Section 327 of the Bankruptcy Code as those whose “occupations . . . play

a central role in the administration of the debtor proceeding, and not involved in the day-to-day mechanics of the debtor's business . . . [or those who are] given discretion or autonomy in some part of administration of the debtor's estate").<sup>2</sup>

12. These factors must be considered in the totality – none of the factors alone is dispositive. See First Merchants Acceptance Corp., 1997 WL 873551, at \*3. Considering all of the factors, the Debtors believe the Ordinary Course Professionals are not “professionals” within the meaning of Section 327 of the Bankruptcy Code whose retention must be approved by the Court. In particular, the Ordinary Course Professionals will not be involved in the administration of these Chapter 11 Cases, but rather will provide services, which were commenced prior to these Chapter 11 Cases, in connection with the Debtors' ongoing business operations and services ordinarily provided by in-house counsel or other non-bankruptcy professionals. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested in this Motion to avoid any subsequent controversy as to the Debtors' employment and payment of the Ordinary Course Professionals during these Chapter 11 Cases. The Debtors will seek specific Court authority under Section 327 of the Bankruptcy Code to retain any professionals involved in the actual administration of these Chapter 11 Cases.

13. This Court and others have routinely granted the same or similar relief to chapter 11 debtors in other large chapter 11 cases. See, e.g., In re NEC Holdings Corp., Case No. 10-11890 (PJW) (Bankr. D. Del. July 13, 2010); In re Accuride Corp., Case No. 09-13449 (Bankr. D. Del. Nov. 2, 2009) (BLS); In re Pierre Foods, Inc., Case No. 08-11480 (KG) (Bankr. D. Del.

---

<sup>2</sup> See also Elstead v. Nolden, 168 B.R. 226, 230 Bankr (N.D. Cal. 1994) (only the retention of professionals whose duties are central to the administration of the estate require prior court approval under Section 327); In re Madison Mgmt. Group, Inc., 137 B.R. 275, 283 (Bankr. N.D. Ill. 1992) (same); In re Sieling Assocs. L.P., 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (same); In re Riker Indus., Inc., 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (no need for Section 327 approval of the fees of a management and consulting firm that performed only “routine administrative functions” and whose “services were not central to [the] bankruptcy case”).

Aug. 14, 2008); In re W. Nonwovens, Inc., Case No. 08-11435 (PJW) (Bankr. D. Del. Aug. 4, 2008); In re Global Motorsport Group, Inc., Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 29, 2008).

14. The Debtors and their estates would be well served by the continued retention of the Ordinary Course Professionals because of their prior relationships with the Debtors and their understanding of the Debtors and their operations. It is in the best interest of all creditors and parties in interest to avoid any disruption in the Ordinary Course Professionals' services.

#### Notice

15. 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 creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (g) the Food and Drug Administration; (h) the Internal Revenue Service; (i) the Ordinary Course Professionals listed on Exhibit B hereto; and (j) 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.


16. A copy of the Motion is available on the Court's website: [www.deb.uscourts.gov](http://www.deb.uscourts.gov). Additional copies of the Motion are available for free on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., at

[www.bmcgroup.com/graceway](http://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.

WHEREFORE, the Debtors respectfully request that this Court enter the Order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors to retain and compensate professionals used by the Debtors in the ordinary course of business, effective as of the Petition Date, subject to certain monthly expenditure limitations, and (b) granting such other and further relief as this Court deems appropriate.

Dated: September 29, 2011  
Wilmington, Delaware

Respectfully Submitted,



---

Michael R. Nestor (No. 3526)  
Kara Hammond Coyle (No. 4410)  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
1000 West Street, 17th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

-and-

David S. Heller  
Josef S. Athanas  
Matthew L. Warren  
LATHAM & WATKINS LLP  
Suite 5800  
233 South Wacker Drive  
Chicago, IL 60606  
Telephone: (312) 876 -7700  
Facsimile: (312) 993-9767

PROPOSED ATTORNEYS FOR DEBTORS AND  
DEBTORS-IN-POSSESSION



**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (MFW)

Joint Administration Pending

**ORDER AUTHORIZING DEBTORS TO RETAIN AND COMPENSATE  
PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

(“Ordinary Course Professional Order”)

Upon consideration of the motion (the **“Motion”**)<sup>2</sup> of the Debtors for entry of an order granting authority to retain and compensate professionals used in the ordinary course of business; 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 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.

---

<sup>1</sup> 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); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

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

2. The Debtors are authorized pursuant to Section 327 of the Bankruptcy Code to employ the Ordinary Course Professionals, including, but not limited to, those listed on Exhibit A to the Motion, in the ordinary course of their business, effective as of the Petition Date.

3. The Debtors are authorized, but not required, to pay compensation and reimburse expenses to each of the Ordinary Course Professionals in the customary manner in the full amount billed by each such professional upon receipt of reasonably detailed invoices indicating the nature of the services rendered and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' right to dispute any such invoices) up to \$50,000 per month per Ordinary Course Professional, and not to exceed \$300,000 per Ordinary Course Professional for the entire case (the "**Ordinary Course Professional Cap**").

4. Any payments made in excess of the Ordinary Course Professional Cap shall be subject to the prior approval of the Court in accordance with Sections 330 and 331 of the Bankruptcy Code.

5. The rights of the Debtors to seek further order of this Court increasing or decreasing the Ordinary Course Professional Cap prospectively are hereby reserved.

6. The Debtors shall maintain a summary list of all payments made pursuant to this Order and provide an updated copy of such list to the United States Trustee and any official committees appointed in these Chapter 11 Cases on November 30, 2011, and on the last day of every other month thereafter.

7. The Ordinary Course Professionals listed in Exhibit A to the Motion are not required to submit individual employment applications to this Court; provided, however, that within twenty-one (21) days of the later of (a) the Petition Date or (b) the date on which any Ordinary Course Professional begins work for the Debtors, such Ordinary Course Professional

shall file an affidavit setting forth the information required under Bankruptcy Rule 2014, substantially in the form attached to the Motion as Exhibit B.

8. Any party may, within twenty-one (21) days after the filing and service of such affidavit, file an objection to the retention of such Ordinary Course Professional under this order. Failing to object within the specified time period shall otherwise constitute a waiver of any objection to such professional serving as an Ordinary Course Professional for the Debtors.

9. The Debtors may supplement the list of Ordinary Course Professionals contained on Exhibit A to the Motion, from time to time, as necessary, by filing supplemental lists with this Court.

10. To the extent no objections are filed to any such supplemental lists within twenty-one (21) days after service thereof, such lists will be deemed approved without the necessity of a hearing or entry of a further order of this Court.

11. This Order shall not apply to any professional retained pursuant to a separate order of this Court.

12. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder, shall, in each case, 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.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

Dated: \_\_\_\_\_, 2011  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit B**

**Debtors' Ordinary Course Professionals as of the Petition Date**

<b>PROFESSIONAL</b>	<b>SERVICES PROVIDED</b>	<b>AVERAGE MONTHLY FEES AND EXPENSES</b>
Ropes & Gray LLP	Litigation Counsel	\$330,000
McDermott Will & Emery LLP	Intellectual Property Counsel	\$13,000
CT Corporation	Regulatory Reporting	\$2,000
Jackson Lewis LLP	Employment Counsel	\$1,000
Curcio & Stout PC	Employment Counsel	\$1,000
Hunter, Smith & Davis, LLP	Employment Counsel	\$1,000
Brown, Edwards & Company, L.L.P.	Accounting	\$1,000
Evoluciona	Accounting	\$2,000

**Exhibit C**

**Form of Affidavit of Disinterestedness**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (MFW)

Joint Administration Pending

**AFFIDAVIT OF DISINTERESTEDNESS**

STATE OF \_\_\_\_\_ )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

[Affiant], being duly sworn, upon his/her oath, deposes and says:

2. I am a [position] of [Firm], located at [Street, City, State Zip Code] (the “**Firm**”).

3. The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) have requested that the Firm provide [\_\_\_\_\_] services to the Debtors, and the Firm has consented to provide such services.

4. The Firm may have performed services in the past, may currently perform services, and may perform services in the future, in matters unrelated to the above-captioned cases (the “**Chapter 11 Cases**”), for persons that are parties in interest in the Debtors’ Chapter 11 Cases. The Firm does not perform services for any such person in connection with these Chapter 11 Cases or have any relationship with any such person or their attorneys or accountants that would be adverse to the Debtors or their estates.

\_\_\_\_\_

<sup>1</sup> 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); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).



5. As part of its customary practice, the Firm is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants and parties in interest in these Chapter 11 Cases.

6. Neither I nor any principal, partner, director or officer of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. Neither I nor any principal, partner, director or officer of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds, or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed.

8. The Debtors owe the Firm \$[ ] for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532.

9. As of the date the Chapter 11 Cases were commenced (the "**Petition Date**"), the Firm [**was/was not**] party to an agreement for indemnification with certain of the Debtors. [**If there is such an agreement: A copy of such agreement is attached as Exhibit A to this Affidavit**].

10. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Affidavit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on [\_\_\_\_\_], 2011

By: \_\_\_\_\_  
[AFFIANT]

State of [\_\_\_\_\_]   
County of [\_\_\_\_\_]

Subscribed and sworn to before me on this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Commission # \_\_\_\_\_

My Comm. Expires \_\_\_\_\_