

**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 (____)

Joint Administration Pending

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
ENFORCING AND RESTATING AUTOMATIC STAY AND IPSO FACTO
PROVISIONS OF THE BANKRUPTCY CODE**

("Stay and Ipso Facto 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, under Sections 105(a), 362 and 365 of title 11 of the United States Code enforcing and restating the automatic stay and ipso facto provisions of the Bankruptcy Code. In support of this Motion, the Debtors respectfully state:

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), 362 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**").

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); 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).

Background

3. On the date hereof (the "**Petition Date**"), each of the Debtors filed a petition with the 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 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' business, the reasons for commencing these Chapter 11 Cases, and the relief sought from the 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 contemporaneously with this Motion.

Relief Requested

5. By this Motion, the Debtors seek entry of an order, under Sections 105(a), 362 and 365 of the Bankruptcy Code, enforcing and restating the automatic stay and *ipso facto* provisions of the Bankruptcy Code as they relate to foreign creditors and contract counterparties who may not be well-versed in the restrictions of the Bankruptcy Code. The Debtors' (including the Debtors and the Debtors' non-Debtor foreign affiliates) operations are international. Many of the Debtors' foreign creditors and contract counterparties do not transact business on a regular basis with companies that have filed for chapter 11, and are therefore unfamiliar with the scope of the debtor-in-possession's authority to conduct its business. As a result, these parties are unaware of the protections of the automatic stay and other provisions that assist debtors-in-possession in their reorganization.

6. Thus, various interested parties may attempt to seize assets, or take other actions in contravention of the automatic stay of Section 362 of the Bankruptcy Code. In addition, upon learning of the Debtors' bankruptcy, counterparties to executory contracts may attempt to terminate those contracts pursuant to ipso facto provisions in contravention of Section 365 of the Bankruptcy Code. The Debtors seek a specific order from this Court that the Debtors may share with parties in foreign jurisdictions who are not familiar with the Bankruptcy Code or its protections and who might otherwise violate those sections.

Basis for Relief

7. As a result of the commencement of these cases, and by operation of law pursuant to Section 362 of the Bankruptcy Code, the automatic stay enjoins all persons from, among other things, taking any action to obtain possession of property of the estate or to exercise control over property of the estate. The injunction contained in Section 362 of the Bankruptcy Code constitutes a fundamental protection for debtors, which, in combination with other provisions of the Bankruptcy Code, provides these Debtors with a "breathing spell from [their] creditors" that is essential to the Debtors' ability to administer successfully these Chapter 11 Cases. See, e.g., Shugrue v. Air Line Pilots Ass'n, Int'l (In re Ionosphere Clubs, Inc.), 922 F.2d 984, 989 (2d Cir. 1990) (citations omitted).

8. Given its fundamental importance to a debtor's reorganization, courts broadly construe the stay provisions of Section 362 of the Bankruptcy Code. As such, the stay has been held to preclude unilateral actions by non-debtor parties to terminate contracts without court order. See, e.g., Fed. Ins. Co. v. Sheldon, 150 B.R. 314, 319-20 (S.D.N.Y. 1993) (termination of insurance contract void because it violated automatic stay); Wegner Farms Co. v. Merchs. Bonding Co. (In re Wegner Farms Co.), 49 B.R. 440, 441-45 (Bankr. N.D. Iowa 1985)

(unilateral termination of bond violated automatic stay). Section 362 of the Bankruptcy Code applies extraterritorially. See Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon), 153 F.3d 991, 996 (9th Cir. 1998) (“Given this clear expression of intent by Congress in the express language of the Bankruptcy Code, we conclude that Congress intended extraterritorial application of the Bankruptcy Code as it applies to property of the estate.”); Nakash v. Zur (In re Nakash), 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996) (“[B]ased upon the applicable Code sections, other indicia of congressional intent and case law in this district, the automatic stay applies extraterritorially.”); In re McLean Indus., 74 B.R. 589, 601 (Bankr. S.D.N.Y. 1987) (“The automatic stay applies extraterritorially”).

9. In addition, Section 365(e)(1)(B) of the Bankruptcy Code prohibits counterparties to contracts with a debtor from terminating contracts because of a debtor’s bankruptcy filing. Section 365(e)(1)(B) provides, subject to certain limited exceptions, that:

[n]otwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on . . . the commencement of a case under this title.

11 U.S.C. § 365(e)(1)(B). Thus, Section 365(e) of the Bankruptcy Code invalidates so-called “ipso facto” provisions, which provide for the termination of a contract upon a bankruptcy filing.²

10. The application of the protections afforded a debtor by Sections 362 and 365 of the Bankruptcy Code is automatic with the filing of a chapter 11 petition. See 11 U.S.C. § 362

(“a petition filed under section 301 . . . of this title . . . operates as a stay applicable to all entities, of [among other things] any act to obtain possession over property of the estate or property of the estate or to exercise control over property of the estate”); 11 U.S.C. § 365 (“any right or obligation under [an executory contract or unexpired lease of the debtor] may not be terminated or modified, at any time after the commencement of the case solely because of” an ipso facto provision).

Applicable Authority

11. Section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of Section 105(a) is to ensure a bankruptcy court’s power to take whatever action “is appropriate or necessary in aid of the exercise of [its] jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.).

12. Notwithstanding the fundamental nature of the automatic stay and ipso facto protections, and the fact that they arise as a matter of law upon the commencement of a chapter 11 case, not all parties affected or potentially affected by the commencement of a chapter 11 case are aware of the aforementioned Bankruptcy Code provisions. Nor are all parties cognizant of the significance and impact of these provisions. Experience has shown that it is often necessary to advise third parties of the existence and effect of the automatic stay and the invalidation of ipso facto provisions, particularly in cases in which the debtor conducts significant business in foreign jurisdictions. Occasionally, it is necessary to commence proceedings in the bankruptcy court to enforce these provisions. Accordingly, it is not uncommon for a bankruptcy court to

² Indeed, under Section 541(c) of the Bankruptcy Code, these contracts become property of a debtor’s estate wherever located notwithstanding any ipso facto provision. 11 U.S.C. § 541(c); *see, e.g., In re Alert Holdings, Inc.*,

issue an order embodying and restating the provisions of Sections 362 and 365 of the Bankruptcy Code.

13. Thus, even though an order of the sort sought by this Motion is not necessary to trigger the protections afforded the Debtors by Sections 362 and 365 of the Bankruptcy Code, the entry of such an order will be helpful for the Debtors in persuading their creditors, particularly their foreign creditors, of the existence and broad scope of these protections. The granting of the relief requested will help ensure that (a) the non-debtor parties to unexpired leases and executory contracts with the Debtors will continue to perform and will not unilaterally terminate their contracts, and (b) creditors do not seize the Debtors' assets or take any other action in violation of the automatic stay. Accordingly, the Debtors respectfully request that this Court issue an order that substantially restates the applicable provisions of Sections 362 and 365 of the Bankruptcy Code. Granting the relief requested herein will facilitate a smooth and orderly transition into chapter 11 and minimize the disruption of the Debtors' business affairs.

14. Similar relief has been granted in other large chapter 11 cases in this District and elsewhere. See, e.g., In re Accuride Corp., Case No. 09-13449 (BLS) (Bankr. D. Del. Oct. 9, 2009); In re Hayes Lemmerz Int'l, Inc., Case No. 09-11655 (MFW) (Bankr. D. Del. June 8, 2009); In re Sportsman's Warehouse, Inc., Case No. 09-10990 (CSS) (Bankr. D. Del. March 23, 2009); In re Fruit of the Loom, Inc., No. 99-4497 (PJW) (Bankr. D. Del. Dec. 30, 1999); In re ICO Global Commc'ns Servs., Inc., No. 99-029033 (MFW) (Bankr. D. Del. Aug. 27, 1999); In re Lyondell Chem. Co., Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 7, 2009); and In re Satelites Mexicanos S.A. de C.V., Case No. 06-11868 (RDD) (Bankr. S.D.N.Y. Aug. 14, 2006).

148 B.R. 194, 203 (Bankr. S.D.N.Y. 1992) ("an executory contract is property of the estate protected by the automatic stay").

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; and (i) 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. 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, 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) enforcing and restating the automatic stay and ipso facto provisions of the Bankruptcy Code; and (b) granting such other and further relief as this Court deems appropriate.

Dated: September 29, 2011
Wilmington, Delaware

Respectfully Submitted,



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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.,¹

Debtors.

Chapter 11

Case No. 11-13036 (____)

Joint Administration Pending

**ORDER ENFORCING AND RESTATING AUTOMATIC STAY
AND IPSO FACTO PROVISIONS OF THE BANKRUPTCY CODE**

("Stay and Ipso Facto Order")

Upon consideration of the motion (the "**Motion**")² of the Debtors for entry of an order enforcing and restating the automatic stay and ipso facto provisions of the Bankruptcy Code; 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 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).

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

1. The Motion is GRANTED as set forth herein.

2. Subject to the exceptions to the automatic stay contained in Section 362(b) of the Bankruptcy Code and the right of any party in interest to seek relief from the automatic stay in accordance with Section 362(d) of the Bankruptcy Code and except as otherwise ordered by this Court, all persons (including individuals, partnerships, corporations, and other entities and all those acting on their behalf) and governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, or any foreign country (including any division, department, agency, instrumentality or service thereof and all those acting on their behalf), are hereby stayed, restrained and enjoined from:

- (a) commencing or continuing (including the issuance or employment of process) any judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors' chapter 11 cases or recovering a claim against the Debtors that arose before the commencement of the Debtors' Chapter 11 Cases;
- (b) enforcing, against the Debtors or against property of their estates, a judgment or order obtained before the commencement of the Debtors' Chapter 11 Cases;
- (c) taking any action to obtain possession of property of the Debtors' estates or to exercise control over property of the estates;
- (d) taking any action to create, perfect, or enforce any lien against property of the Debtors' estates;
- (e) taking any action to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose prior to the commencement of the Debtors' Chapter 11 Cases;
- (f) taking any action to collect, assess, or recover a claim against the Debtors that arose prior to the commencement of the Debtors' Chapter 11 Cases;
- (g) offsetting any debt owing to the Debtors that arose before the commencement of the Debtors' Chapter 11 Cases against any claim against the Debtors subject to the provisions of Section 553 of the Bankruptcy Code; and

- (h) commencing or continuing any proceeding before the United States Tax Court concerning a tax liability of a Debtor that is a corporation for a taxable period the Court may determine.

3. Pursuant to Sections 362 and 365 of the Bankruptcy Code, and subject to any relevant provisions of the Bankruptcy Code, notwithstanding any provision in a contract ("Contract") or lease ("Lease") or any applicable law, all persons are hereby stayed, restrained and enjoined from terminating or modifying any and all Contracts and Leases to which the Debtors are party or signatory, at any time after the commencement of these cases, solely because of a provision in such Contract or Lease that is conditioned on the (i) insolvency or financial condition of the Debtors at any time before the closing of these cases; or (ii) commencement of these cases under the Bankruptcy Code.

4. Nothing in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors-in-possession, of any executory contract or unexpired lease.

5. In accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and applicable law, upon request of a party in interest, and after notice and a hearing, this Court may grant relief from the restraints imposed herein in the event that it is necessary, appropriate and warranted to terminate, annul, modify or condition the injunctive relief herein.

6. Nothing in this Order shall be construed to expand or modify applicable law.

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

8. 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