

**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 UNDER 11 U.S.C.
§§ 105(a), 361 AND 363(b) AUTHORIZING THE DEBTORS TO (I) MAINTAIN
EXISTING INSURANCE POLICIES AND PAY ALL POLICY PREMIUMS AND
BROKERS' FEES ARISING IN CONNECTION THEREWITH; (II) CONTINUE
HONORING SURETY BOND OBLIGATIONS; (III) CONTINUE HONORING
WORKERS' COMPENSATION OBLIGATIONS AND INSURANCE PREMIUM
FINANCE AGREEMENT; (IV) CONTINUE GRANT OF SECURITY INTEREST
TO AN INSURANCE PREMIUM FINANCE COMPANY; AND
(V) ENTER INTO NEW INSURANCE POLICIES**

("Insurance Financing 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, authorizing, but not directing, the Debtors to (i) maintain their existing Insurance Policies (as defined below) and pay all policy premiums and brokers' fees arising thereunder or in connection therewith; (ii) continue honoring their surety bond obligations under applicable law; (iii) continue honoring their obligations pursuant to their workers' compensation policies and programs as required by applicable law; (iv) continue honoring their obligations under a prepetition insurance premium finance agreement entered into

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).

with the Insurance Premium Finance Company (as defined below) for the purpose of financing the purchase of certain insurance coverage; (v) continue to grant a security interest to the Insurance Premium Finance Company in certain of the Debtors' assets as security for the Debtors' performance of their obligations under such insurance premium finance agreement; and (vi) as and only if necessary, renew their current Insurance Policies and workers' compensation policies and programs, or obtain replacement coverage, in the ordinary course of business and consistent with prepetition practice. In support of this Motion, the Debtors respectfully state:²

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), 361 and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

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

² The facts and circumstances supporting this Motion are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions (the "**First Day Declaration**"), filed on the Petition Date (defined below).

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 (including the facts and circumstances supporting this Motion) are set forth in the First Day Declaration filed contemporaneously with this Motion.

Relief Requested

5. By this Motion, the Debtors seek entry of the Order authorizing, but not directing, the Debtors to (i) maintain, and to pay, all policy premiums and brokers' fees arising under, or in connection with, their various existing insurance policies (collectively, the "**Insurance Policies**") which the Debtors have obtained through several third-party insurance carriers (collectively, the "**Insurance Carriers**"); (ii) continue honoring surety bond obligations under applicable law, whether through the prepetition letter of credit, entering into new letters of credit, or cash deposits provided to the state boards of pharmacy; (iii) continue honoring any obligations related to the Debtors' workers' compensation programs as required by applicable law; (iv) continue honoring obligations pursuant to the Finance Agreement (as defined below) entered into with the Insurance Premium Finance Company for the purpose of financing the purchase of certain forms of insurance coverage; (v) continue the grant of a security interest to the Insurance Premium Finance Company in certain of the Debtors' assets as security for the Debtors' performance of their obligations under the Finance Agreement; and (vi) as and only if necessary, renew their current Insurance Policies and workers' compensation policies and programs, or obtain replacement coverage, in the ordinary course of business and consistent with prepetition practice. Additionally, the Debtors request that all applicable financial institutions be authorized, when

requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Insurance Policies and surety bonds.

Basis For Relief

6. In connection with the operation of their businesses and management of their properties, the Debtors maintain various Insurance Policies. The Insurance Policies include, but are not limited to, general liability, automobile, workers' compensation, umbrella liability, directors and officers liability, products liability, fidelity, and property insurance. The Insurance Policies maintained by the Debtors are set forth on Exhibit B hereto. Of these policies, the following require the Debtors to pay a deductible: property insurance (20 UUN TA9885) – \$25,000 to \$50,000, depending on the claim; fiduciary, crime, kidnapping and ransom (8207-8184) – \$10,000 for fiduciary, \$50,000 for crime; and ocean cargo (OC7300011) – \$5,000. Additionally, the following policies require the Debtors to pay a self-insured retention: the Debtors' primary products liability self-insured retention (N/A) – \$500,000; umbrella liability (policy no. 20 RHU TA9564) – \$10,000; and D&O (01-686-03-49) – \$100,000.

7. The Debtors estimate that, for policies currently in place, they paid approximately \$1,194,151 in premiums and related charges in 2010. The Debtors' estimate that the amount due on account of the Insurance Policies for the remainder of the current policy period is approximately \$159,516. Such amount includes the monthly installment payments due under the Finance Agreement, totaling approximately \$135,359, as well as monthly installment payments for the Insurance Policies that are provided by The Hartford ("**Hartford**"), totaling approximately \$24,157. The Debtors do not believe they owe any prepetition amounts. However, to the extent the finance charge or other obligations owed under the Finance Agreement are considered to be for prepetition time periods, the Debtors request authority, but

not direction, to pay such amounts. As more fully set forth below, it is essential to the Debtors' ongoing business to honor all the obligations described herein.

A. Payment of Insurance Premiums and Brokers' Fees in Connection Therewith

8. Maintenance of insurance coverage under the various Insurance Policies is essential to the continued operation of the Debtors' businesses and is required under the United States Trustee's Operating Guidelines for Chapter 11 Cases (the "Operating Guidelines"), the laws of the various states in which the Debtors operate and the Debtors' various debt agreements. Thus, the Debtors submit that they should be authorized, but not directed, to continue to pay Insurance Policy premiums as such premiums come due in the ordinary course of the Debtors' business.

9. The Debtors have been represented in their negotiations with their various insurance underwriters by Marsh USA Inc. ("Marsh"). The employment of Marsh as the Debtors' insurance broker has allowed the Debtors to obtain the insurance coverage necessary to operate their businesses in a reasonable and prudent manner and to realize considerable savings in the procurement of such policies. Marsh is compensated for its services through commissions paid by the Insurance Carriers, and is not paid for such services by the Debtors. Therefore, the Debtors do not believe they owe Marsh any amounts for prepetition services. However, to the extent that the commissions received by Marsh could be construed as a liability of the Debtors, the Debtors hereby request authority to pay such amounts to Marsh, regardless of whether they were incurred pre or postpetition. The Debtors believe that it is in the best interests of their creditors and estates to continue their business relationship with Marsh, which results in considerable savings to the Debtors at no out-of-pocket cost to the Debtors.

B. Surety Bonds and the Letter of Credit

10. The Debtors are required, under the laws of nine states in which they operate, to provide surety bonds to the applicable state boards of pharmacy. These surety bonds are typically required to ensure compliance of non-resident distributors with the laws and regulations relating to the wholesale distribution of pharmaceuticals. The surety bonds required to be posted by the Debtors total \$825,000. Historically, the Debtors have satisfied their surety bond obligations through a letter of credit, which was posted as collateral to secure the Debtors' obligations to provide surety bonds. As of the Petition Date, there is no amount outstanding under the letter of credit posted by the Debtors in support of their surety bond obligations. The Debtors anticipate that postpetition, such surety bond obligations may be satisfied either through cash deposits provided to the state boards of pharmacy or by entering into new letters of credit, which would be posted as collateral.

11. By this Motion, the Debtors seek authority, but not direction, to continue honoring their surety bond obligations under applicable law, whether through cash deposits totaling up to \$825,000 or through new letters of credit in available amount not to exceed \$825,000 that would secure the Debtors' surety bond obligations.

C. Workers' Compensation Obligations

12. Under the laws of the various jurisdictions in which they operate, the Debtors are required to maintain workers' compensation policies and programs and to provide Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors. Accordingly, the Debtors maintain workers' compensation programs in all states in which they operate pursuant to the applicable requirements of local law.

13. The Debtors fully insure their workers' compensation liabilities through a workers' compensation policy issued by Hartford on March 9, 2011, which runs through March 9, 2012. The Debtors' typical aggregate payments per annum to Hartford for workers' compensation insurance are approximately \$71,500. As discussed above, payments to Hartford are made in monthly installments. The Debtors' remaining obligations under the workers' compensation policy for the current policy period total approximately \$6,645.

14. By this Motion, the Debtors seek authority, but not direction, to pay any and all amounts related to workers' compensation policies and programs that arose prior to the Petition Date as they become due, and to continue honoring all workers' compensation obligations as required by applicable law in the ordinary course of business.

D. Prepetition Insurance Premium Finance Agreement

15. The Debtors maintain an insurance premium finance agreement (the "**Finance Agreement**") with AFCO Premium Credit LLC (including any affiliates or subsidiaries, the "**Insurance Premium Finance Company**" or "**AFCO**"). Pursuant to the Finance Agreement, AFCO agreed to pay the insurance premiums due under certain Insurance Policies, set forth on **Exhibit C**, in exchange for a down payment of \$70,891.00 and nine (9) monthly installment payments of \$45,119.60, for a total of \$406,076.40 in payments from the Debtors. As of the Petition Date, the Debtors' remaining obligations under the Finance Agreement total approximately \$135,359. The Debtors' obligation to pay AFCO under the Finance Agreement is secured by the grant to AFCO of a security interest in any and all unearned premiums and dividends that may become payable under the covered Insurance Policies, as well as loss payments that reduce the unearned premiums (such security interest, the "**IPFC Security Interest**").

16. The Insurance Policies subject to the Finance Agreement, set forth on Exhibit C, are essential to the preservation of the Debtors' businesses, properties, and assets. In the Debtors' business judgment, the terms of the Finance Agreement represent the best possible terms for financing the premiums of the Insurance Policies. The Debtors' estates will benefit by maintaining this low-cost financing from the Insurance Premium Finance Company. Moreover, any interruption of payments might adversely affect the Debtors' ability to obtain financing for future policies on favorable terms. In some cases, the coverage is required by regulations, laws, and/or contracts that govern the Debtors' business obligations. Thus, the Debtors request the authority to continue honoring their obligations pursuant to the Finance Agreement and to continue the grant of the IPFC Security Interest.

Applicable Authority

17. The relief requested in this Motion is supported by several provisions of the Bankruptcy Code that authorize a debtor to honor prepetition obligations in certain circumstances. Under such provisions, various courts have permitted debtors-in-possession to pay prepetition debts on the grounds that payment of such claims was necessary to maximize the value of the Debtors' estates and pursuant to other Bankruptcy Code provisions.

A. Payment of Amounts Related to the Insurance Policies Is Appropriate under Sections 1107 and 1108 of the Bankruptcy Code.

18. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, debtors-in-possession are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor-in-possession is the obligation to "protect and preserve the estate, including an operating business's going-concern value." Id. Some courts have noted that there are instances in which a debtor can

fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” Id.

19. The Debtors submit that it is in the best interests of the estates to continue to maintain the Insurance Policies and to pay any outstanding prepetition insurance premiums and deductibles necessary to do so and, as and only if necessary, to renew their current Insurance Policies, or obtain replacement coverage, in the ordinary course of business and consistent with prepetition practice, pursuant to section 363(b)(1) of the Bankruptcy Code. Moreover, Courts in this District regularly authorize debtors to maintain insurance coverage under similar arrangements where, as here, it is in the best interest of their estates. See, e.g., In re NEC Holdings Corp., Case No. 10-11890 (PJW) (Bankr. D. Del. June 11, 2010); In re Accuride Corp., Case No. 09-13449 (BLS) (Bankr. D. Del. Oct. 9, 2009); In re Stallion Oilfield Servs. Ltd., No. 09-13562 (BLS) (Bankr. D. Del. Oct. 20, 2009); In re Masonite Corp., No. 09-10844 (PJW) (Bankr. D. Del. March 17, 2009); In re Muzak Holdings, LLC, No. 09-10422 (KJC) (Bankr. D. Del. March 12, 2009); In re ACG Holdings, Inc., No. 08-11467 (CSS) (Bankr. D. Del. July 16, 2008); In re Pierre Foods Inc., No. 08-11480 (KG) (Bankr. D. Del. July 16, 2008); In re Linens Holding Co., No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008).

B. Payment of Amounts Related to Workers’ Compensation, Surety Bonds, Insurance Policies, and Finance Agreement Is Appropriate Under Section 363 of the Bankruptcy Code.

20. The Debtors believe that the ordinary course satisfaction of their workers’ compensation and surety bond obligations under applicable law, including providing cash deposits to state boards of pharmacy or entering into a new letter of credit to post as collateral to

secure the surety bond obligations, without further order of the Court, is necessary and essential to the Debtors' operation of their businesses during these Chapter 11 Cases. Failure to satisfy such obligations, which are obligations under the laws of the various states in which the Debtors operate, could result in significant and costly disruptions in the Debtors' operations. Likewise, the Debtors believe that the ordinary course maintenance of their insurance financing programs, including payment of all monthly obligations under the Finance Agreement, and the renewal of or entry into new financing arrangements as may be required as the annual terms of existing arrangements expire and consistent with prepetition practice, without further order of the Court, is also necessary and essential to the Debtors' operation of their businesses, especially where, as here, the Debtors' failure to pay their monthly premium obligations to the Insurance Carriers and the Insurance Premium Finance Company could have disastrous consequences for the Debtors.

21. Specifically, under the terms of the Finance Agreement, the Insurance Premium Finance Company may issue a delinquency charge upon a default of payment of any installments; moreover, the Insurance Premium Finance Company may cancel the insurance policies under the Finance Agreement and issue a cancellation charge upon cancellation. Because the Debtors are required to maintain insurance coverage during these Chapter 11 Cases, the cancellation of these policies would be particularly costly. See United States Trustee Manual 3-3.2.3 (Oct. 1998) (requiring maintenance of appropriate insurance coverage). Even if the Insurance Premium Finance Company did not immediately cancel the insurance coverage upon the Debtors' default, the Debtors' failure to pay monthly premium obligations would result in a depletion of the unearned premiums. See, e.g., Schwinn Plan Comm. v. Transamerica Ins. Fin. Corp., 200 B.R. 980, 985-89 (Bankr. N.D. Ill. 1996); In re Universal Motor Express, Inc., 72 B.R. 208, 210 (Bankr. W.D.N.C. 1987).

22. The use of estate assets to satisfy surety bond and workers' compensation obligations under applicable law and to pay installments under the Insurance Policies and the Finance Agreement constitutes a use of estate property that should be authorized under Section 363(b) of the Bankruptcy Code because a sound business purpose exists for such use. See, e.g., Fulton State Bank v. Schipper, 933 F.2d 513, 515 (7th Cir. 1991); In re Global Crossing Ltd., 295 B.R. 726, 742-43 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). The Debtors have determined, in the exercise of their business judgment, that honoring their surety bond and workers' compensation obligations under applicable law permits the Debtors to operate their businesses in compliance with applicable state laws. The Debtors have further determined, in the exercise of their business judgment, that financing the premiums, pursuant to the terms of the Finance Agreement discussed herein, enables the Debtors to maintain critical insurance coverage at the best possible price. Doing so is in the best interests of the Debtors' estates and their creditors, and these actions should be approved.

C. Payment of Amounts Related to Prepetition Premium Finance Agreement is Appropriate Under Section 361 of the Bankruptcy Code.

23. Security interests created by premium finance agreements, such as the Finance Agreement, are generally recognized as secured claims in bankruptcy to the extent of the amount of unearned premiums financed pursuant to such agreements. Section 361 of the Bankruptcy Code specifically contemplates providing adequate protection to the extent of the diminution in value of a secured creditor's collateral, and such security interests under the Finance Agreement warrant adequate protection in the form of periodic payments pursuant to the Finance Agreement's terms. See, e.g., In re Waverly Textile Processing, Inc., 214 B.R. 476 (Bankr. E.D. Va. 1997); In re Megamarket of Lexington, Inc., 207 B.R. 527 (Bankr. E.D. Ky. 1997); TIFCO,

Inc. v. U.S. Repeating Arms Co., 67 B.R. 990 (Bankr. D. Conn. 1986); In re Krimbrell Trucking Co., Inc., 3 B.R. 4 (Bankr. W.D. Wash. 1979).

24. The Debtors' continued use of the Finance Agreement decreases the value of the unearned premiums that serve as the collateral for the Insurance Premium Finance Company. This loss in value is replaced through the Debtors' payment of the installment payments due under the Finance Agreement. Accordingly, the Insurance Premium Finance Company is entitled to continued payment of these amounts as adequate protection under Section 361 of the Bankruptcy Code as a condition to the Debtors' continued ability to finance the financed Insurance Policies.

D. Payment of Amounts Related to the Insurance Policies Is Also Appropriate Under Section 105 of the Bankruptcy Code and the Doctrine of Necessity.

25. Courts have authorized payment of prepetition obligations pursuant to Section 105(a) of the Bankruptcy Code, which allows a bankruptcy court to enter any order "necessary or appropriate" to carry out the provisions of the Bankruptcy Code. See, e.g., In re Just for Feet, Inc., 242 B.R. 821, 824-26 (D. Del. 1999) (stating that where the debtor "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); In re Ionosphere Clubs, Inc., 98 B.R. at 175 ("The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.").

26. The common source of authority for those court decisions is the "doctrine of necessity" or "necessity of payment" rule first recognized by the Supreme Court over 120 years ago in Miltenberger v. Logansport, C. & S. Ry. Co., 106 U.S. 286 (1882). In Miltenberger, the Supreme Court acknowledged the basic duty of an equity receiver "to protect and preserve the trust funds in its hands." Id. at 310 (quoting Wallace v. Loomis, 97 U.S. 146, 162 (1877)). More

importantly, the Court held that, consistent with this duty, “[m]any circumstances may exist which may make it necessary and indispensable to the business . . . and the preservation of the property, for the receiver to pay preexisting debts . . . out of the earnings of the [debtor] . . . under the order of the court” Id. at 311.

27. Courts have routinely granted the same or similar relief in other large chapter 11 cases. See, e.g., In re NEC Holdings Corp., Case No. 10-11890 (PJW) (Bankr. D. Del. June 11, 2010); In re Regent Commc’ns Inc., Case No. 10-10632 (KG) (Bankr. D. Del. March 2, 2010); 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. May 13, 2009); In re Tweeter Home Entm’t Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re Collins & Aikman Corp., Case No. 05-55927 (SWR) (Bankr. E.D. Mich. May 17, 2005); and In re Tower Auto., Inc., Case No. 05-10578 (ALG) (Bankr. S.D.N.Y. Feb. 3, 2005).

E. The Relief Requested in this Motion is Necessary to Avoid Immediate and Irreparable Harm.

28. Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003; In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm).

29. No court within the Third Circuit has interpreted the “immediate and irreparable harm” language in the context of Bankruptcy Rule 6003 in any reported decision. However, the

Third Circuit has interpreted the same language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh, No. 05-4286, 2007 WL 1643179 at *2 (3d Cir. June 7, 2007) (citing Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Acierno v. New Castle County, 40 F.3d 645, 653-55 (3d Cir. 1994). To the extent that the requirements of Bankruptcy Rule 6003 are applicable to the relief requested in the Motion, the Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm as defined by the Third Circuit Court of Appeals.

F. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

30. Concurrently with the filing of this motion, the Debtors have filed a motion seeking authorization to utilize cash collateral during the pendency of these Chapter 11 Cases. Also, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment made with respect to the Insurance Policies and surety bonds. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, may not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Insurance Policies and surety bonds.

Waiver Of Bankruptcy Rule 6004(h)

31. The Debtors further request that this Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve value for their estates. Accordingly, the Debtors respectfully request that this Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

32. 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.

33. 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 an order, substantially in the form attached hereto as Exhibit A, (a) authorizing, but not directing, the Debtors to (i) maintain their existing Insurance Policies and pay all policy premiums and brokers' fees arising thereunder or in connection therewith; (ii) continue honoring surety bond obligations under applicable law through either letters of credit or cash deposits provided to state pharmacy boards, as required under state law; (iii) continue honoring their obligations pursuant to their workers' compensation policies and programs as required by applicable law and insurance premium financing agreement for the purpose of financing the purchase of certain insurance coverage; (iv) continue to grant the IPFC Security Interest to the Insurance Premium Finance Company; and (v) as and only if necessary, renew their current Insurance Policies and workers' compensation policies and programs, or obtain replacement coverage, in the ordinary course of business and consistent with prepetition practice; and (b) granting such other and further relief as is just and proper.

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.,¹

Debtors.

Chapter 11

Case No. 11-13036 (____)

Joint Administration Pending

ORDER UNDER 11 U.S.C. §§ 105(a), 361 AND 363(b) AUTHORIZING THE DEBTORS TO (I) MAINTAIN EXISTING INSURANCE POLICIES AND PAY ALL POLICY PREMIUMS AND BROKERS' FEES ARISING IN CONNECTION THEREWITH; (II) CONTINUE HONORING SURETY BOND OBLIGATIONS; (III) CONTINUE HONORING WORKERS' COMPENSATION OBLIGATIONS AND INSURANCE PREMIUM FINANCE AGREEMENT; (IV) CONTINUE GRANT OF SECURITY INTEREST TO AN INSURANCE PREMIUM FINANCE COMPANY; AND (V) ENTER INTO NEW INSURANCE POLICIES

("Insurance Financing Order")

Upon consideration of the motion (the "Motion")² of the Debtors for entry of an order authorizing, but not directing, the Debtors to (i) maintain their existing insurance policies and pay all policy premiums and brokers' fees arising thereunder or in connection therewith; (ii) continue honoring surety bond obligations; (iii) continue honoring their obligations pursuant to workers' compensation programs and the insurance premium financing agreement for the purpose of financing the purchase of several forms of insurance coverage; (iv) continue the grant of a security interest to the Insurance Premium Financing Company; and (v) as and only if necessary, renew their current Insurance Policies and workers' compensation policies and

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.

programs, or obtain replacement coverage, in the ordinary course of business and consistent with prepetition practice; 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 provided herein.
2. Pursuant to Sections 105(a), 361 and 363(b) of the Bankruptcy Code, the Debtors are authorized, but not directed, to pay brokers' fees and claims administrators' fees arising under or in connection with the Insurance Policies as they become due.
3. The Debtors are authorized, but not directed, to pay their regular insurance premiums and installment payments under the Finance Agreement as they become due in the ordinary course of business, regardless of whether attributed to the prepetition period or the postpetition period.
4. The Debtors are authorized, but not directed, to continue to grant the IPFC Security Interest to the Insurance Premium Finance Company.
5. The Debtors are authorized, but not directed, to continue honoring, in the ordinary course of business, their surety bond obligations under applicable law, whether through the prepetition letter of credit, entering into new letters of credit, or through cash deposits, in a

collective aggregate amount (or, with respect to letters of credit, available amount) not to exceed \$825,000, provided to state boards of pharmacy.

6. The Debtors are authorized, but not directed, to continue honoring, in the ordinary course of business, their workers' compensation obligations as required by applicable law.

7. The Debtors are authorized, but not directed, to continue honoring, in the ordinary course of business, their Finance Agreement, and renew or enter into new financing arrangements as the terms of the existing arrangements expire and consistent with prepetition practice, without further order of the Court.

8. The Debtors are authorized, but not directed, as and only if necessary, to renew their current Insurance Policies and workers' compensation policies and programs, or to obtain replacement coverage, in the ordinary course of business and consistent with prepetition practice.

9. The financial institutions with which the Debtors maintain accounts are authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Insurance Policies and surety bonds

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors under this Order, shall be deemed an assumption of any executory contract arising out of an existing financing program, agreement or contract, or otherwise shall constitute a waiver of the Debtors' rights under Section 365 of the Bankruptcy Code or an admission by the Debtors that any such financing program, agreement or contract constitutes an executory contract within the meaning of Section 365 of the Bankruptcy Code.

11. Neither the provisions contained herein, nor any actions or payments made by the Debtors under this Order, shall be deemed an admission as to the validity of the underlying

obligation, a waiver of any rights the Debtors may have to subsequently dispute such obligation, or an assumption or rejection of any executory contract.

12. All time periods set forth in this Order shall be calculated in accordance with Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

13. This court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested herein is necessary to avoid immediate and irreparable harm.

14. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, this Order shall not be stayed for fourteen days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen day stay provided in such rules is hereby expressly waived and shall not apply.

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 to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

17. 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

All Insurance Policies Maintained by the Debtors

Type of Policy	Insurance Co.	Policy No.	Effective Date & Term	Premium
Products Liability	N/A – Self-Insured Retention	N/A	03/09/2011 – 03/09/2012	N/A
Excess Products Liability	Illinois Union Insurance Company (ACE)	G21818690-002	03/09/2011 – 03/09/2012	\$238,500.00
Excess Products Liability	Columbia Casualty Company (CNA)	ADE2088049084-4	03/09/2011 – 03/09/2012	\$141,000.00
Excess Products Liability	Ironshore Specialty Insurance Company	000170601	03/09/2011 – 03/09/2012	\$50,000.00
General Liability/Property	Hartford Fire Insurance Company	20 UUN TA9885	03/09/2011 – 03/09/2012	\$10,870.00
Property-All Risk	Hartford Fire Insurance Company	20 UUN TA9885	03/09/2011 – 03/09/2012	\$51,455.00
Umbrella Liability	Hartford Casualty Insurance Company	20 RHU TA9564	03/09/2011 – 03/09/2012	\$26,943.00
Automobile Liability (Master)	Hartford Fire Insurance Company	20 UEN II6177	03/09/2011 – 03/09/2012	\$117,784.00
Automobile Liability (MA)	Hartford Fire Insurance Company	20 MCP IY3911	03/09/2011 – 03/09/2012	\$3,655.00
Workers' Compensation	Hartford Insurance Company	20 WE RT7552	03/09/2011 – 03/09/2012	\$79,778.00
Fiduciary, Crime, Kidnapping & Ransom	Federal Insurance Company (Chubb)	8207-8184	03/09/2011 – 03/09/2012 (crime, kidnapping & ransom) 3/09/2011 – 03/9/2018 (fiduciary)	\$44,500.00
D&O/EPL	National Union Fire (Chartis)	01-686-03-49	03/31/2011 – 03/31/2018	\$193,110.00
Excess D&O	ACE American	DOXG24576644-002	03/31/2011 – 03/31/2018	\$150,000.00
Ocean Cargo	Continental Insurance Company (CNA)	OC7300011	06/15/2011 until cancelled	\$6,050.00 (annually)
TOTALS:				\$1,113,645

Exhibit C

Financed Insurance Policies Maintained by the Debtors

Type of Policy	Insurance Co.	Policy No.	Effective Date & Term	Premium
Primary Products Liability	Illinois Union Insurance Company (ACE)	G21818690-002	03/09/2011 – 03/09/2012	\$238,500.00
Excess Products Liability	Columbia Casualty Company	ADE2088049084-4	03/09/2011 – 03/09/2012	\$141,000.00
Excess Products Liability	Ironshore Specialty Insurance Company	000170601	03/09/2011 – 03/09/2012	\$50,000.00
Fiduciary, Crime, Kidnapping & Ransom	Federal Insurance Company	8207-8184	03/09/2011 – 03/09/2012	\$32,250.00
TOTALS:				\$461,750.00