

**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. Docket No. 26

**ORDER PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY
CODE AUTHORIZING THE DEBTORS TO RETAIN AND EMPLOY ALVAREZ &
MARSAL NORTH AMERICA, LLC AS RESTRUCTURING ADVISORS FOR THE
DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

("A&M Retention Order")

Upon consideration of the application (the "Application")² of the Debtors for entry of an order authorizing the Debtors to employ, retain and compensate Alvarez & Marsal North America, LLC, together with employees of its wholly owned subsidiaries, agents, affiliates that provide professional-advisory services (all of which are wholly-owned by Alvarez & Marsal North America, LLC's parent company and employees) and independent contractors (collectively, "A&M") to serve as restructuring advisors to the Debtors in these cases; and upon the declaration of Thomas E. Hill in support of the Application; 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

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 Application.

Application is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Application 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 Application is GRANTED, as modified herein.
2. In accordance with Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rule 2014-1, the Debtors are authorized to employ and retain A&M as of the Petition Date as their restructuring advisors on the terms set forth in the Application.
3. Notwithstanding any language in the Engagement Letter to the contrary, A&M will file with this Court interim compensation motions for the monthly payment of fees, subject to a customary holdback, pursuant to the guidelines established in an interim compensation motion for case professionals to be filed with the Court in accordance with the procedures set forth in Sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court and any other applicable procedures and orders of the Court.
4. Notwithstanding anything in this Order, the Application, the Hill Declaration or the Engagement Letter to the contrary, the United States Trustee for the District of Delaware shall retain all rights to object to any fees requested by A&M based on the reasonableness standard provided for in Section 330 of the Bankruptcy Code.
5. A&M shall exhaust the retainer it is holding in satisfaction of allowed compensation and reimbursement awarded before seeking additional payments from the Debtors on account of such allowed awards.

6. The Debtors are authorized to indemnify and hold harmless A&M and its affiliates, their respective directors, officers, partners, members, agents, employees, consultants and each other person, if any, controlling A&M or any of its affiliates, and each of their respective successors and assigns (collectively, the “**Indemnified Persons**”), pursuant to the terms and conditions set forth in the Engagement Letter, subject to the following conditions:

- (a) A&M shall not be entitled to indemnification, contribution, or reimbursement for services other than the services provided under the Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefore are approved by the Court;
- (b) Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person’s gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of A&M’s contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to In re United Artist Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter as modified by this Order;
- (c) If, during the pendency of the Debtors’ cases, the indemnification is held unenforceable by reasons of the exclusions set forth in subparagraph (b) above and A&M makes a claim for the payment of any amounts by the Debtors on account of the Debtors’ contribution obligations, then the proviso set forth in the first sentence of paragraph “D” of the Indemnification and Limitation on Liability Agreement, which proviso seeks to limit the contribution of A&M, shall not apply; and
- (d) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these Chapter 11 Cases, A&M believes that it is entitled to payment of any amounts by the Debtors on account of the Debtors’ indemnification, contribution, or reimbursement obligations under the Engagement Letter (as modified by this Order), including without limitation the advancement of defense costs, A&M must file an application before this Court, and the

Debtors may not pay any such amounts to A&M before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for payment by A&M for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify A&M.


7. To the extent that this Order is inconsistent with the Engagement Letter with respect to the terms and conditions of A&M's retention and employment by the Debtors in these Chapter 11 Cases, the terms of this Order shall govern.

8. 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.

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

10. Notwithstanding anything to the contrary in the Application, the Hill Declaration or the Engagement Letter, during the course of the Debtors' cases, this Court shall retain exclusive jurisdiction with respect to all matters arising or related to the implementation and enforcement of this Order, and the execution or interpretation of the Engagement Letter.

Dated: Oct 17, 2011
Wilmington, Delaware


Peter J. Walsh
United States Bankruptcy Judge