

**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. 27

**ORDER PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE
BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO RETAIN
AND EMPLOY LAZARD FRERES & CO. LLC AS INVESTMENT BANKER FOR THE
DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

("Lazard Retention Order")

Upon the application (the "Application")² of the above-captioned debtors (collectively, the "Debtors") for entry of an order pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rule 2014-1 authorizing the Debtors to employ and retain Lazard Frères & Co. LLC ("Lazard") as investment banker to the Debtors *nunc pro tunc* to the Petition Date on the terms set forth in the engagement letter between Debtors and Lazard, dated as of March 12, 2010 (the "Engagement Letter"), and the related indemnification agreement (the "Indemnity Agreement" and, together with the Engagement

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 herein but not defined herein shall have the meanings ascribed to such terms in the Application.

Letter, the "Lazard Agreement"); and upon consideration of the Declaration of Daniel M. Aronson, a Managing Director of Lazard in support of the Application; and the Court being satisfied that the relief requested herein and the employment of Lazard is necessary and in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court being satisfied that the terms of the Lazard Agreement are reasonable terms for purposes of Section 328(a) of the Bankruptcy Code; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being satisfied that notice of this Application and opportunity for a hearing on this Application was appropriate under the particular circumstances and that no other or further notice need be given; and the Court being satisfied that Lazard neither holds nor represents any interest adverse to the Debtors' estates; and the Court being satisfied that Lazard is a "disinterested person," as that term is defined in Bankruptcy Code Section 101(14) of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Application is GRANTED, as modified herein.
2. In accordance with Bankruptcy Code Sections 327(a) and 328(a), Bankruptcy Rules 2014 and 2016, and Local Rule 2014-1, the Debtors are authorized to employ and retain Lazard in accordance with the terms and conditions set forth in the Lazard Agreement, as modified herein, effective *nunc pro tunc* to the Petition Date.
3. All of Lazard's compensation as set forth in the Lazard Agreement, including, without limitation, the Monthly Fee, the Restructuring Fee, the Sale Transaction Fee, the

Financing Fee and the Designated Amendment Fee (each as defined in the Lazard Agreement), are approved pursuant to Bankruptcy Code Section 328(a).

4. Lazard shall file fee applications for monthly, interim and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in Bankruptcy Code Sections 330 and 331, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court; provided, however, that Lazard shall be compensated and reimbursed pursuant to Bankruptcy Code Section 328(a) and that Lazard's fees and expenses shall not be evaluated under the standard set forth in Bankruptcy Code Section 330, except as set forth in paragraph 5 below.

5. Notwithstanding anything in this Order to the contrary, the United States Trustee for the District of Delaware shall retain all rights to object to any Monthly Fee, Restructuring Fee, Sale Transaction Fee, Financing Fee or Designated Amendment Fee requested by Lazard based on the reasonableness standard provided for in Section 330 of the Bankruptcy Code.

6. The Debtors are authorized to pay Lazard's fees and to reimburse Lazard for its costs and expenses as provided in the Lazard Agreement, in accordance with the monthly, interim and final fee application process approved by this Court, and none of the fees payable to Lazard shall constitute a "bonus" or fee enhancement under applicable law.

7. Lazard shall apply any retainer remaining at the time of its final fee application in satisfaction of compensation and reimbursement awarded with respect to such application, and promptly pay to the Debtors' estates any retainer remaining after such application.

8. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, or any guidelines regarding submission and approval of fee applications, in light of services to be provided by Lazard and the structure of

Lazard's compensation pursuant to the Engagement Letter, Lazard and its professionals shall be granted a limited waiver of the information requirements set forth in Local Rule 2016-2 and the United States Trustee Fee Guidelines in connection with the services to be rendered pursuant to the Engagement Letter, to keep and submit time records in one-half hour increments.

9. Lazard shall not be entitled to be reimbursed for fees and expenses of its outside counsel for any retention application and/or fee application matters. Additionally, in the event that, during the pendency of the Chapter 11 Cases, Lazard seeks reimbursement for any other attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in Lazard's own application (interim or final, as the case may be) and such invoices and time records shall be subject to the U.S. Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

10. Paragraph 4 of the Engagement Letter shall not preclude this Court from ordering appropriate remedies in the event that the Chapter 11 Cases are found to be administratively insolvent.

11. During the pendency of the Chapter 11 Cases, the second sentence of paragraph 11 of the Engagement Letter, relating to fiduciary duty, shall have no force or effect.

12. Nothing in the Application, the Aronson Declaration or this Order shall be construed to authorize the sharing of compensation in contravention of Bankruptcy Code Section 504. Further, nothing in paragraph 13 of the Engagement Letter permits Lazard to employ the services of any of its affiliates (other than affiliates providing less than 25 hours per month or

150 hours in the aggregate) absent such affiliate conducting a conflicts check and filing a declaration of disinterestedness, subject to the foregoing restriction on the sharing of compensation.

13. The provisions set forth in the Indemnity Agreement are approved, subject during the pendency of these cases to the following:

- a. subject to the provisions of subparagraph (d), infra, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, and shall indemnify, and provide contribution and reimbursement to, the Indemnified Persons (as defined in the Indemnity Agreement) in accordance with the Indemnity Agreement for any claim arising from, related to, or in connection with the services provided for in the Engagement Letter;
- b. notwithstanding any provisions of the Indemnity Agreement to the contrary, the Debtors shall have no obligation to indemnify Lazard or provide contribution or reimbursement to Lazard (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from Lazard's bad faith, self-dealing, breach of fiduciary duty (if any), willful misconduct or gross negligence, (ii) for a contractual dispute in which the Debtors allege the breach of Lazard's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to In re United Artists Theatre Company, et. al., 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing pursuant to subparagraph (d), infra, to be a claim or expense for which Lazard should not receive indemnity, contribution or reimbursement under the terms of the Indemnification Letter, as modified by this Order;
- c. if, during the pendency of the Debtors' cases, the indemnification is held unenforceable by reason of the exclusions set forth in subparagraph (b) above and Lazard 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 second sentence of the contribution provisions in the second paragraph of the Indemnity Agreement shall not apply; and
- d. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these cases, Lazard

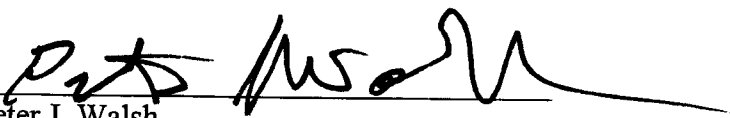
believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Indemnity Agreement, as modified by this Order, including without limitation the advancement of defense costs, Lazard must file an application therefor in this Court, and the Debtors may not pay any such amounts to Lazard before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time during which the Court shall have jurisdiction over any request for compensation and expenses by Lazard for indemnification, contribution, or reimbursement and is not a provision limiting the duration of the Debtors' obligation to indemnify Lazard.

14. The defined term "Sale Transaction" stated in footnote 2 of the Engagement Letter, attached as Exhibit B to the Application, is modified to remove the phrase "for the purpose of a Restructuring" from the introductory clause of the definition.

15. The Debtors are authorized, empowered and directed to take all actions necessary to implement the relief granted pursuant to this Order.

16. Notwithstanding anything to the contrary in the Application, the Aronson Declaration or the Engagement Letter, during the pendency of these cases, this Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation 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