

**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

Hearing Date: November 7, 2011 at 2:00 p.m. (ET)
Obj. Deadline: October 31, 2011 at 4:00 p.m. (ET)

**DEBTORS' APPLICATION FOR AN ORDER PURSUANT TO
SECTION 327(e) OF THE BANKRUPTCY CODE AUTHORIZING
THE DEBTORS TO RETAIN AND EMPLOY EDWARDS WILDMAN
PALMER LLP AS SPECIAL INTELLECTUAL PROPERTY COUNSEL
FOR THE DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE**

(“EWP Retention Application”)

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby apply to this Court (the “**Application**”) for entry of an order pursuant to Section 327(e) of title 11 of the United States Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Rule 2014 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, in substantially the form attached hereto as Exhibit A, authorizing the Debtors to retain and employ Edwards Wildman Palmer LLP² (“**EWP**”), *nunc pro tunc* to the Petition Date (as defined below) as the Debtors’ counsel. In

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.

support of this Application, the Debtors rely on the Declaration of Peter J. Manso, as a partner of EWP (the “**Manso Declaration**”), attached hereto as Exhibit B. In further support of the Application, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction over this Application 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 Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought herein are section 327(e) of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014-1 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 September 29, 2011 (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. On September 30, the Court entered an order consolidating these Chapter 11 cases for procedural purposes only [Docket No. 42]. On October 12, 2011, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors pursuant to Section 1102 of the Bankruptcy Code [Docket No. 90]. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases.

² Effective October 1, 2011, Edwards, Angell, Palmer, & Dodge, LLP completed its merger with Wildman,

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 [Docket No. 3] (the "**First Day Declaration**").

Relief Requested

5. By this application, the Debtors seek court approval pursuant to Section 327(e) of the Bankruptcy Code to retain and employ EWP as their special intellectual property counsel in these Chapter 11 Cases, *nunc pro tunc* to the Petition Date, to perform certain necessary legal services for the Debtors in the matters of intellectual property, advice, protection and enforcement during the course of these Chapter 11 Cases. The retention of EWP shall be based on the terms and conditions under which EWP has traditionally represented the Debtors and as represented in the Manso Declaration.

Basis for Relief

6. The Debtors have selected EWP as their special intellectual property counsel attorneys because of EWP's long-standing representation of the Debtors and its attendant intimate knowledge of the Debtors' businesses, affairs, complex pharmaceutical technology, intellectual property portfolio and pharmaceutical assets, including Debtors' Zyclara® franchise, as well as EWP's extensive experience and expertise in the services set forth below to which EWP is to be employed. Since the Debtors are a specialty pharmaceutical company focused on generating sales growth and developing, in-licensing and acquiring branded prescriptions products primarily in the areas of dermatology, respiratory and women's health, the services of EWP are necessary to enable the Debtors to attempt to maximize Debtor's intellectual property and pharmaceutical assets value, to maintain Debtors' patent and trademark portfolio and to

avoid loss of patent and trademark rights. EWP is also responsible for the Debtors' intellectual property portfolio which includes about 241 active matters and approximately 500 patent and trademark properties, both foreign and domestic.

7. From 2006 to the present, EWP has provided legal services to the Debtors including but not limited to the filing and enforcing of the Debtors' patents and other intellectual property. During that time, on behalf of the Debtors, EWP has prepared and prosecuted numerous patents to issuance by the United States Patent Office and other patent offices throughout the world, and is still currently filing and prosecuting a plethora of patent applications in the United States and throughout the world to avoid abandonment, loss of rights and to attempt to maximize asset value. In addition, EWP has represented the Debtors in litigation and opposition matters, including the case of Graceway Pharm., LLC. v. Perrigo Co., Case No. 2:10-cv-00937 (WJM)(D.N.J. March 8, 2010), that is referenced in the First Day Declaration. EWP also represents the Debtor in trademark matters, including filing applications for new federal trademark registrations, maintaining existing registrations and evaluating possible trademark infringement actions against third parties.

8. The continued services of EWP to the Debtors are necessary to protect the Debtors' assets and a nunc pro tunc order is required because EWP is currently representing the Debtors in significant and intense ongoing patent strategies, enforcements and prosecutions, including but not limited to the Debtors' invaluable Zyclara® franchise that is referenced in the First Day Declaration. EWP is also currently representing the Debtors the enforcement of its licensing agreements as well as evaluating possible enforcement actions against infringers of the Debtors' other intellectual property rights. Finally, EWP is currently assisting the Debtors and the Debtors' investment banker, Lazard Freres & Co. LLC, with the extensive marketing, sales

and auction process of the Debtors' intellectual property portfolio and assets during these Chapter 11 Cases.

9. Since EWP has historically served as the Debtors' outside counsel for these various intellectual property matters, EWP has developed significant expertise with respect to the Debtors' complex technology and intellectual property franchise, including Debtors' Zyclara® franchise, and the EWP's continued representations of the Debtors with respect to the intellectual property matters described herein is necessary and important to, *inter alia*, (i) avoid loss of crucial intellectual property rights, (ii) attempt to maximize value of Debtor's intellectual property portfolio, including Debtors' Zyclara® franchise, (iii) avoid duplicating services and incurring additional fees regarding the same with another law firm, including additional fees due to inherent inefficiencies and learning curves. Additionally, the services performed by EWP are extremely sophisticated, especially in connection with the Debtors' complicated technology, and are not duplicative of those performed by any other professionals retained in the Debtors' Chapter 11 Cases.

Services to be Provided

10. In connection with these Chapter 11 Cases, the Debtors have requested authorization to retain EWP as special counsel to the Debtors in matters of intellectual property advice and strategy, prosecution, protection and enforcement and to continue its representation of the Debtors in the matters described above (the "**Representative Matters**"). The Debtors seek to retain EWP subject to the oversight and orders of this Court to act as special counsel to the Debtors in matters of intellectual property advice, protection and enforcement and to continue its representation of the Debtors in the matters described above. EWP will be involved in the bankruptcy and reorganization issues as they relate to intellectual property aspects of the Debtors' operations, but will not serve as the primary bankruptcy and reorganization counsel to

the Debtors. While certain aspects of the representation will necessarily involve both EWP and the Debtors' bankruptcy and reorganization co-counsel Latham & Watkins and Young Conaway Stargatt & Taylor, LLP, the Debtors believe that EWP's services will complement, rather than duplicate, the services to be performed by such bankruptcy and reorganization co-counsel. The Debtors are very mindful of the need to avoid duplication of services, and appropriate procedures will be implemented to ensure that there is minimal duplication of effort as a result of EWP's role as special counsel.

11. EWP has stated its desire and willingness to act in these cases and to render the necessary professional services described above as special intellectual property counsel to the Debtors. EWP is well qualified to serve as special counsel to the Debtors for the intellectual property matters and knows of no reason why EWP should not be retained.

Professional Compensation

12. The Debtors understand that EWP intends to apply for compensation for professional services rendered in connection with these Chapter 11 Cases, subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the guidelines established by the Office of the United States Trustee and any applicable order of this Court, on an hourly basis, plus reimbursement of actual, necessary expenses and other charges that EWP incurs, which has been the traditional arrangement between the Debtors and EWP. It was the practice of both the Debtors and EWP to undertake new matters for the Debtors without a written engagement agreement. Under the arrangement traditionally used by the Debtors and EWP, fees are based upon EWP's standard hourly rates at the time the services are rendered. Hourly rates vary with the experience and seniority of the individuals assigned. EWP's current hourly rates for professional services rendered in connection with the intellectual property matters currently range from:

Partners	\$450 to \$700 per hour
Associates	\$295 to \$550 per hour
Counsel	\$430 to \$485 per hour
Paraprofessionals	\$180 to \$230 per hour
Patent Agents	\$220 to \$250 per hour

13. These hourly rates are subject to periodic adjustments to reflect economic and other conditions and are consistent with the rates charged generally to EWP's other clients for intellectual property matters, whether in court or otherwise, and regardless of whether a fee application is required. These rates and rate structure reflect that such intellectual property matters are typically national in scope and involve great complexity, high stakes and severe time pressures.

14. Consistent with EWP's policy with respect to its other clients, EWP will continue to charge the Debtors for all services provided and for other charges and disbursements incurred in the rendition of services. It is EWP's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred but for representation of that particular client. It is also EWP's policy to charge its clients only the amount actually incurred by EWP in connection with such items.

15. During the course of these Chapter 11 Cases, EWP will apply to the Court for allowance of compensation for professional services rendered and reimbursement of expenses incurred in these cases in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the United States Trustee Fee Guidelines, and any orders entered in these cases governing professional compensation and reimbursement for services rendered and charges and disbursements incurred. Such applications will constitute a request for interim payment against EWP's reasonable fees and expenses to be determined on a final basis at the conclusion of these Chapter 11 Cases.

16. EWP will also seek compensation for all time and expenses associated with its retention as a Section 327(e) professional, including the preparation of this Application, the Manso Declaration and related documents, as well as any monthly fee statements and/or interim and final fee applications.

17. The Debtors submit that EWP's rates are reasonable and should be approved by this Court subject to a determination of the amounts to be paid to EWP upon application for allowance. EWP also has informed the Debtors that its prevailing rates may change from time to time consistent with its normal business practices and that any such changes will be reflected in the first EWP fee application following the change.

No Adverse Interest With Respect to Intellectual Property Matters

18. To the best of the Debtors' knowledge and based on the Manso Declaration, EWP has in the past represented, currently represents, and likely in the future will represent certain parties-in-interest in these Chapter 11 Cases, but only in matters wholly unrelated to the Debtors, these Chapter 11 Cases, and such entities' claims against or interests in the Debtors.

19. To the best of the Debtors' knowledge, and except as otherwise set forth in the Application and in the Manso Declaration, EWP does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters as to which EWP is to be employed under section 327(e) of the Bankruptcy Code. Further, to the best of the Debtors' knowledge and except as otherwise set forth in the Manso Declaration, the partners, counsel, and associates of EWP do not have any connection with any of the Debtors, their affiliates, their creditors, or any other party-in-interest, or their respective attorneys and accountants, the United States Trustee for the District of Delaware or any person employed in the office of the same, or any judge in the United States Bankruptcy Court for the District of Delaware or any person employed in the offices of the same.

20. EWP has received compensation from the Debtors for its prepetition services, including compensation paid by the Debtors in the ordinary course of business during the 90 day period preceding the Petition Date. The details of those payments including dates and amounts, are set forth in the Manso Declaration.

21. The Debtors understand that EWP will continue to conduct periodic conflicts analyses to determine whether it is performing or has performed services for any significant parties-in-interest in these Chapter 11 Cases and will promptly update the Manso Declaration to disclose any material developments regarding the Debtors or any other pertinent relationships that come to EWP's attention. The Debtors submit that the engagement and retention of EWP on the terms and conditions set forth herein is necessary and in the best interests of the Debtors, their estates, and their creditors and should be approved.

Notice

22. 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) counsel to 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 (the "**Notice Parties**"). In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

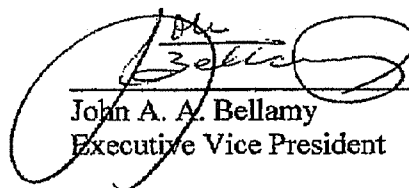
23. A copy of the Motion is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Motion are available for free on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (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) authorizing the Debtors to retain and employ EWP as special intellectual property counsel for the Debtors *nunc pro tunc* to the Petition Date, and (b) granting such other and further relief as this Court deems appropriate.

Dated: 21 Oct, 2011
Wilmington, Delaware

Respectfully Submitted,

GRACEWAY PHARMACEUTICALS, LLC



A handwritten signature in black ink, appearing to read "John A. Bellamy", is written over a horizontal line. The signature is stylized and cursive.

John A. A. Bellamy
Executive Vice President

On behalf of the other Debtors listed on Schedule I hereto:
Authorized Signatory

Schedule I

Graceway Pharma Holding Corp.

Graceway Holdings, LLC

Graceway Canada Holdings, Inc.

Graceway International, Inc.

Chester Valley Pharmaceuticals, LLC

Chester Valley Holdings, LLC