

**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.

Objection Deadline: November 3, 2011 at 12:00 p.m.

**APPLICATION PURSUANT TO BANKRUPTCY CODE
SECTIONS 328(a), 1103 (a), AND 1103(b) AUTHORIZING THE
EMPLOYMENT AND RETENTION OF ELLIOTT GREENLEAF
AS CO-COUNSEL TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS *NUNC PRO TUNC* AS OF OCTOBER 11, 2011**

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors-in-possession (the “Debtors”), hereby submits this Application Pursuant to Bankruptcy Code Sections 328(a), 1103(a), and 1103(b) Authorizing the Employment and Retention of Elliott Greenleaf as Co-Counsel to the Official Committee of Unsecured Creditors *Nunc Pro Tunc* as of October 11, 2011 (the “Application”). In support of this Application, the Committee respectfully represents as follows:

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

1. On September 29, 2011 (the “Petition Date”), the Debtors commenced their bankruptcy cases (collectively, the “Bankruptcy Case”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. The Debtors continue to operate its business and manage its properties as a debtor-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108.

3. On October 11, 2011, the United States Trustee appointed the Committee, which consists of the following members: Value Recovery Fund LLC (Michael Iuliano), Metaphor Inc. (Dwayne Hann), and 3M Company (Maureen Harms). *See* Appointment of Official Committee of Unsecured Creditors (Docket No. 90).

4. On October 11, 2011 (the “Retention Date”), the Committee met and selected Lowenstein Sandler (“LS”) and Elliott Greenleaf (“EG”) as Counsel to the Committee. On October 12, 2011, the Committee selected FTI Consulting (“FTI”) to serve as its Financial Advisors.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicates for this Application are 11 U.S.C. §§ 328, 1103(a) and 1103(b) and Federal Rules of Bankruptcy Procedure 2014(a), 2016, and 5002.

RELIEF REQUESTED

7. The Committee desires to retain and employ EG as its Counsel in the Bankruptcy Case and, by this Application, requests that the Court enter an order authorizing it to retain and employ EG, *nunc pro tunc* to the Retention Date. By separate application, the Committee has also requested that the Court approve the retention and employment of LS as its Counsel. EG has discussed with LS and this Committee a division of responsibility in order to minimize duplication of efforts on behalf of the Committee. Accordingly, the Committee respectfully requests the entry of an order, pursuant to Bankruptcy Code Section 1103, authorizing the employment and retention of EG as its Delaware counsel to perform the legal services that will be necessary during the Bankruptcy Case.

8. The Committee has selected EG as its Counsel because of EG's expertise in the field of debtor and creditor law and business reorganizations under Chapter 11 of the Bankruptcy Code and experience handling matters in the District of Delaware. EG's attorneys have represented debtors, creditors' committees, bank groups, officers and directors, and other parties-in-interest in numerous bankruptcy cases in the District of Delaware and in other jurisdictions.

9. Attorneys at EG have become familiar with the Debtor's business affairs and capital structure. Accordingly, EG has the necessary background to deal effectively with many of the legal issues that may arise in the context of a bankruptcy case. Thus, in order to maximize the value of the Debtor's estate and because of EG's recognized expertise in bankruptcy law, the Committee desires that EG represent it in the Bankruptcy Case.

10. The Committee's employment of EG is appropriate and necessary to enable the Committee to execute faithfully its duties as a statutory committee of unsecured creditors and to implement a successful reorganization.

SERVICES TO BE PROVIDED BY EG

11. The Committee anticipates that, in connection with the Bankruptcy Case, EG will provide it with general legal services as needed, including, but not limited to, the following:

- (a) render legal advice with respect to the powers and duties of the Committee and the other participants in the Debtors' cases;
- (b) assist the Committee in its investigation of the acts, conduct, assets, liabilities and financial condition of the Debtors, the operation of the Debtors' business and any other matter relevant to the Bankruptcy Cases, as and to the extent such matters may affect the Debtors' creditors;
- (c) participate in negotiations with parties-in-interest with respect to any disposition of the Debtors' assets, plan of reorganization and disclosure statement in connection with such plan, and otherwise protect and promote the interests of the Debtors' unsecured creditors;
- (d) prepare all necessary applications, motions, answers, orders, reports and papers on behalf of the Committee at Court hearings as necessary and appropriate in connection with the Bankruptcy Cases;
- (e) render legal advice and perform legal services in connection with the foregoing;
- (f) perform all other necessary legal services in connection with the Bankruptcy Case, as may be requested by the Committee;
- (g) render legal advice with respect to all Delaware substantive and procedural matters, including, but not limited to local rules and practices of the United States Court for the District of Delaware and the United States Bankruptcy Court for the

District of Delaware; and

to serve as Conflicts Counsel, as needed.

12. As set forth above, EG has discussed a division of responsibility with LS, FTI, and the Committee. It is the Committee's intent to ensure that its professionals do not unnecessarily duplicate their efforts on the Committee's behalf. Subject to this Court's approval, EG will charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date services are rendered. These rates may change from time to time in accordance with EG's billing practices and procedures. EG will maintain detailed, contemporaneous time records of time and any action and necessary expense incurred in connection with the rendering of legal services described above by category and nature of services rendered.

13. EG intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Order Establishing Procedures for Interim Compensation pursuant to the Bankruptcy Code Section 331, and any other applicable orders entered in this case in connection with all services performed and expenses incurred on and after the Retention Date.

14. The Committee proposes to pay EG its customary hourly rates in effect from time to time for services rendered, as set forth in the Affidavit of Rafael X. Zahralddin-Aravena (the "Affidavit") attached hereto as Exhibit A, and to reimburse EG according to its customary reimbursement policies, which rates and policies the Committee believes to be

reasonable. All payments are subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and applicable orders of this Court.

BASIS FOR RELIEF

15. Bankruptcy Code Section 1103(a) provides:

At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

11 U.S.C. § 1103 (a)

16. To the best of the Committee's knowledge, and except as disclosed herein and in the attached Affidavit, EG has not represented the Committee, the Debtor, its creditors, equity security holders, or any other parties-in-interest, or their respective attorneys, in any matter relating to the Debtor or its estate and is a "disinterested person" within the meaning of Sections 1103 and 101(14) of the Bankruptcy Code.

17. The Committee believes that the employment of EG to perform the services described herein as may be required by the Committee is necessary and in the best interest of the Debtor and the Debtor's estate.

NOTICE AND NO PRIOR APPLICATION

18. Notice of this Application has been provided to (a) the Debtors; (b) Counsel to Debtors; (c) Counsel to Lenders; (d) United States Trustee for the District of Delaware; (e) Proposed Counsel to the Official Committee of Unsecured Creditors; and, (f) all parties required to receive service under Rule 2002-1(b) of the Local Rules. The Committee

respectfully submits that, given the administrative nature of the relief requested, no other notice of the relief requested herein need to be given.

19. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Committee respectfully requests the entry of an Order, in the form attached herewith, (i) authorizing the retention of EG to represent the Committee in this Chapter 11 case, and (ii) granting the Committee such other and further relief as is just and proper.

Dated: October 27, 2011

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF GRACEWAY
PHARMACEUTICALS, LLC., *et al.*

By: /s/ Michael Iuliano
Value Recovery Fund, In its capacity
as a member of the Official Committee
of Unsecured Creditors
By: Michael Iuliano