

**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 (MFW)

Joint Administration Pending

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
ESTABLISHING EXCLUSIVE PROCEDURES FOR THE ASSERTION,
RESOLUTION, AND SATISFACTION OF CLAIMS ASSERTED
PURSUANT TO BANKRUPTCY CODE § 503(b)(9)**

(“503(b)(9) Administration 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, establishing the exclusive procedures for the assertion, resolution, and satisfaction of claims asserted pursuant to Section 503(b)(9) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”). In support of this Motion, the Debtors respectfully state:

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).

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) and 503(b)(9) of the Bankruptcy Code and Rule 3003(c)(3) 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 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 are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions filed on the Petition Date.

Relief Requested

5. Section 503(b)(9) of the Bankruptcy Code provides for the allowance, as an administrative expense, of the value of any goods sold to the Debtors in the ordinary course of their business and received by the Debtors within twenty days before the Petition Date. Specifically, the Section provides that:

After notice and a hearing, there shall be allowed, administrative expenses . . . including—

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under [the Bankruptcy Code] in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.

11 U.S.C. § 503(b)(9).

6. During the twenty-day period immediately preceding the Petition Date, the Debtors purchased on credit various products, samples, office supplies, packing supplies, and other goods (collectively, “**Goods**”) in the ordinary course of their business and for use in their operations. In many instances, the invoices for the Goods were not received prior to the Petition Date or the Debtors were unable to pay the vendors and suppliers (collectively, the “**Vendors**”) who delivered Goods to the Debtors during the twenty-day period prior to the Petition Date. Thus, the Debtors believe the Vendors are likely to assert claims under Section 503(b)(9) of the Bankruptcy Code (each, a “**503(b)(9) Claim**” and collectively, the “**503(b)(9) Claims**”). Based on their books and records, the Debtors estimate that the total value of the 503(b)(9) Claims is approximately \$2,748,889 and that such claims may be asserted by approximately ten Vendors.

7. Because Section 503(b)(9) is a relatively recent addition to the Bankruptcy Code, the Debtors believe that there will be some uncertainty among the Vendors as to the procedures and methods they must undertake to properly assert 503(b)(9) Claims. This uncertainty may result in numerous inquiries and demands on the Debtors’ employees and professionals, as well

as the initiation of piecemeal litigation, which would divert the attention of the Debtors and their professionals from the more pressing task of administering these Chapter 11 Cases. To avoid the resulting distraction, delay, and expense that may ensue, the Debtors seek entry of an order, pursuant to Sections 105(a) and 503(b)(9) of the Bankruptcy Code, (a) authorizing them to establish procedures exclusively for the assertion of the 503(b)(9) Claims and the resolution, allowance, and satisfaction thereof and (b) prohibiting the Vendors from pursuing the assertion or collection of 503(b)(9) Claims outside of such procedures.

8. Proposed 503(b)(9) Procedures. The Debtors propose the following procedures (the “**503(b)(9) Procedures**”) with respect to all of the 503(b)(9) Claims:

- (a) Any Vendor asserting a 503(b)(9) Claim would be required to prepare a proof of claim (a “**Proof of 503(b)(9) Claim**”), using the form attached hereto as Exhibit B, that sets forth (a) the value of Goods the claimant contends the Debtors received within twenty days prior to the Petition Date; (b) documentation, including invoices, receipts, bills of lading and the like, identifying such Goods for which the claim is being asserted; and (c) documentation identifying which of the Debtors the Goods were shipped to, the date such Goods were received by such Debtor, and the alleged value of such Goods;
- (b) All Proofs of 503(b)(9) Claims would be required to be filed with (i) BMC Group, Inc., Attn: Graceway Claims Processing, PO Box 3020, Chanhassen, MN 55317-3020 (if by first-class mail), or BMC Group Inc., Attn: Graceway Claims Processing, 18750 Lake Drive East, Chanhassen, MN 55137 (if by overnight courier or hand-delivery); (ii) proposed co-counsel to the Debtors, (a) Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606 (Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq.), and (b) Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, Delaware 19899 (Attn: Kara Hammond Coyle, Esq.); and (iii) the Debtors, c/o John A. A. Bellamy, Executive Vice President & General Counsel, Graceway Pharmaceuticals, LLC, 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620, so as to be received no later than sixty days after the Order is entered by the Court (the “**503(b)(9) Claim Filing Deadline**”);
- (c) The Debtors would have sixty days after the 503(b)(9) Claim Filing Deadline to subsequently file with this Court any objections (“**Objections**”) to the 503(b)(9) Claims (the “**Objection Deadline**”);

- (d) Vendors would have thirty days from the Objection Deadline to file with the Court and serve any responses (“**Responses**”) to such Objections (the “**Response Deadline**”);
- (e) The Debtors would have twenty-one days from the Response Deadline to file with the Court and serve any replies to such Responses (the “**Reply Deadline**”);
- (f) Any outstanding Objections would be heard by this Court at the next hearing following the Reply Deadline;
- (g) Notwithstanding and without limiting the foregoing, the Debtors would be authorized, but not required, to negotiate, in their sole discretion, with any Vendor and to seek an agreement resolving any objection to such Vendor’s 503(b)(9) Claim, and approval of such an agreement would be subject to notice and a hearing; and
- (h) To the extent a 503(b)(9) Claim is allowed, such 503(b)(9) Claim would be satisfied solely pursuant to and as set forth in such plan of reorganization or plan of liquidation as may be confirmed by this Court.²

9. The Debtors propose that the 503(b)(9) Procedures be the sole and exclusive method for the assertion, resolution, allowance, and satisfaction of the 503(b)(9) Claims and request that all Vendors be prohibited from invoking any other means of asserting claims pursuant to Section 503(b)(9) of the Bankruptcy Code, including, without limitation, the filing of a motion for allowance or to compel payment of any 503(b)(9) Claims.

10. Procedure for Providing Notice of 503(b)(9) Filing Deadline. The Debtors propose to serve on all Vendors known to have sold goods to any of the Debtors within the twelve months preceding the Petition Date a notice of the 503(b)(9) Filing Deadline in the form of notice attached hereto as Exhibit C.

Basis for Relief

11. In the ordinary course of their business, the Debtors purchase a substantial amount of Goods from a variety of Vendors, and accordingly, they expect that numerous

² Provided, however, that if any Vendor is a party to an executory contract that is assumed and assigned to a third party, nothing herein will prevent payment in full of any cure amount associated with such contract.

503(b)(9) Claims may be filed. Deferring litigation of claims and establishing uniform procedures for resolving such claims is a common practice in Chapter 11 cases, as is the establishment of a bar date. See Fed. R. Bankr. P. 3003(c)(3) (“The court shall fix . . . the time within which proofs of claim or interest may be filed.”); see also In re Orleans Homebuilders, Inc., Case No. 10-10684 (PJW) (Bankr. D. Del. Apr. 6, 2010); In re Smurfit-Stone Container Corporation, Case No. 09-10235 (BLS) (Bankr. D. Del. Mar. 10, 2009). Moreover, the Debtors believe that the 503(b)(9) Procedures will facilitate the Debtors’ ability to negotiate with the Vendors, expediting the resolution of the 503(b)(9) Claims and assisting with the economical administration of these Chapter 11 Cases.

12. Section 105(a) of the Bankruptcy Code provides that bankruptcy courts “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). The Debtors submit that establishing and implementing the 503(b)(9) Procedures is necessary and appropriate and that the 503(b)(9) Procedures are consistent with the intent of Section 503(b)(9) of the Bankruptcy Code.

13. The Debtors believe that their ability to address the 503(b)(9) Claims in this uniform manner will assist in the timely resolution of such claims and promote the orderly and efficient administration of these Chapter 11 Cases. The relief requested in this Motion is therefore in the best interests of the Debtors and their respective estates, their creditors, and other parties-in-interest, and should be granted in all respects.

14. Nothing in this Motion should be construed as impairing the Debtors’ right to contest or challenge any 503(b)(9) Claim on any grounds, and the Debtors expressly reserve all of their rights with respect thereto.

Notice

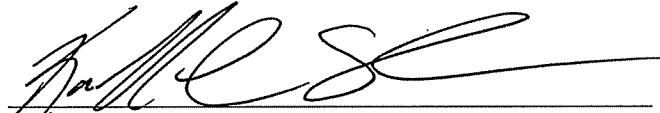
15. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (c) special restructuring and bankruptcy counsel to the administrative 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; (i) the Vendors expected to assert 503(b)(9) Claims; and (j) 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.

16. 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 the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) authorizing the 503(b)(9) Procedures, (b) prohibiting the Vendors from pursuing 503(b)(9) Claims outside of such procedures, and (c) granting such other and further relief as this Court deems appropriate.

Dated: September 29, 2011
Wilmington, Delaware

Respectfully Submitted,



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