

**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

**DEBTORS' APPLICATION FOR AN ORDER PURSUANT TO SECTIONS 327(a) AND
328(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO RETAIN
AND EMPLOY LATHAM & WATKINS LLP AS ATTORNEYS FOR THE DEBTORS
NUNC PRO TUNC TO THE PETITION DATE**

("L&W 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 Sections 327(a) and 328(a) of title 11 of the United States Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, and Rules 2014-1 and 2016-1 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 Latham & Watkins LLP ("**L&W**"), *nunc pro tunc* to the Petition Date (as defined below) as the Debtors' counsel. In support of this Application, the Debtors rely on the Declaration of Josef S.

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).

Athanas, as a partner of L&W (the “**Athanas Declaration**”), attached hereto as Exhibit B. In further support of the Application, the Debtors respectfully state as follows:²

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 Sections 327(a), 328(a), 329 and 1107 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016-1 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 the date hereof (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. 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 Application, the Debtors have requested procedural consolidation and joint administration of these Chapter 11 Cases.

² The facts and circumstances supporting this Application are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions (the “**First Day Declaration**”), filed on the Petition Date (defined below).

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 (including the facts and circumstances supporting this Application) are set forth in the First Day Declaration filed contemporaneously with this Application.

Relief Requested

5. The Debtors seek court approval pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code to retain and employ L&W as their attorneys in these Chapter 11 Cases, *nunc pro tunc* to the Petition Date. Pursuant to Sections 327(a), 328(a), 329 and 1107 of the Bankruptcy Code, the Debtors request that this Court enter an order authorizing the retention of L&W, as their attorneys, to perform the extensive legal services that will be necessary during these Chapter 11 Cases in accordance with L&W's hourly rates and reimbursement policies in effect when services are rendered. In support of this Application, the Athanas Declaration is attached hereto as Exhibit B.

6. The Debtors have selected L&W as their attorneys because of, among other things, L&W's knowledge of the Debtors' businesses and financial affairs and L&W's extensive general experience and knowledge – particularly its recognized expertise in the field of creditors' rights, business reorganizations and sales under chapter 11 of the Bankruptcy Code. In addition, L&W possesses extensive expertise, experience and knowledge practicing before bankruptcy courts. L&W has been involved in many major chapter 11 cases over the last decade and has represented numerous debtors in their bankruptcy matters including, without limitation, National Envelope Corporation, Boston Generating, LLC, Regent Communications, Inc., Eddie Bauer Holdings, Inc., Accuride Corporation, Dayton Superior Corporation, Spansion, Inc., AT&T Latin America, Bally Total Fitness Corporation, Consolidated Freightways, Inc., DVI, Inc., American

Classic Voyages, Leap Wireless International, Inc., Cricket Communications, Inc. and Assisted Living Concepts, Inc.

7. L&W has been advising the Debtors on a variety of matters since March, 2010, including the preparation of these chapter 11 filings. Therefore, L&W will be able to respond as quickly as possible to any and all issues that may arise during these Chapter 11 Cases. L&W is intimately familiar with the Debtors' businesses and affairs and many of the potential legal issues that may arise in the context of these Chapter 11 Cases. Accordingly, the Debtors believe that L&W is both well-qualified and uniquely able to represent them in an efficient and timely manner in these Chapter 11 Cases.

8. Should the Debtors be required to retain attorneys other than L&W in connection with the prosecution of these Chapter 11 Cases, the Debtors, their estates, and all parties-in-interest would be unduly prejudiced by the time and expense necessarily attendant to such attorneys' familiarization with the intricacies of the Debtors and their business operations.

Services to be Provided

9. The employment of L&W in accordance with its hourly rates and disbursement policies in effect from time to time is appropriate and necessary to enable the Debtors to execute faithfully their duties in these Chapter 11 Cases. Subject to further order of this Court, it is proposed that L&W be employed to render legal services relating to the day-to-day administration of these Chapter 11 Cases and the myriad issues that may arise in these cases, including, without limitation:

- a. advising the Debtors with respect to their powers and duties as debtors-in-possession in the continued management and operation of their business and properties;
- b. attending meetings and negotiating with representatives of creditors, interest holders and other parties-in-interest;

- c. taking all necessary action to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors and representing the Debtors' interests in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the estates;
- d. preparing motions, applications, answers, orders, reports, and papers necessary to the administration of the Debtors' estates;
- e. taking necessary action on behalf of the Debtors to obtain approval of a disclosure statement and confirmation of a plan;
- f. advising the Debtors in connection with any potential sale of assets and taking necessary action to guide the Debtors through a potential sale of their assets in the Bankruptcy Court;
- g. appearing before this Court or any appellate courts and protecting the interests of the Debtors' estates before those Courts; and
- h. performing all other necessary legal services for the Debtors in connection with these Chapter 11 Cases, including (i) analyzing the Debtors' leases and executory contracts and the assumption or assignment thereof and (ii) advising on corporate, litigation, environmental, finance and other legal matters.

10. Contemporaneously herewith, the Debtors have also sought to retain the law firm of Young Conaway Stargatt & Taylor, LLP ("YCS&T") to act as their co- counsel and as conflicts counsel in these Chapter 11 Cases. The Debtors will submit a separate application to retain YCS&T. L&W has advised the Debtors that it intends to monitor carefully and coordinate with YCS&T and any other professionals retained by the Debtors in these Chapter 11 Cases and will clearly delineate their respective duties so as to prevent duplication of effort, whenever possible. It is anticipated that the efficient coordination of efforts of the Debtors' attorneys and other professionals will add to the progress and efficient administration of these Chapter 11 Cases.

Professional Compensation

11. The Debtors understand that L&W 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 L&W incurs. The hourly rates and corresponding rate structure utilized by L&W in these Chapter 11 Cases are similar to the hourly rates and corresponding rate structure predominantly used by L&W for restructuring, workout, bankruptcy, insolvency and comparable matters and similar complex corporate, securities, and litigation matters whether in court or otherwise, regardless of whether a fee application is required. These rates and rate structure reflect that such restructuring and other complex matters are typically national in scope and involve great complexity, high stakes, and severe time pressures

12. L&W's hourly rates are set at a level designed to fairly compensate L&W for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions and are consistent with the rates charged elsewhere. In the event that L&W's rates increase, the Debtors will file a notice detailing the new rate structure and will serve such notice on the Notice Parties (as defined below).

13. Consistent with L&W's policy with respect to its other clients, L&W will continue to charge the Debtors for all services provided and for other charges and disbursements incurred in the rendition of services. It is L&W'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 L&W's policy to charge its clients only the amount actually incurred by L&W in connection with such items.

14. During the course of these Chapter 11 Cases, L&W 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 L&W's reasonable fees and expenses to be determined on a final basis at the conclusion of these Chapter 11 Cases.

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

16. As set forth in the Athanas Declaration, as of the Petition Date L&W holds a prepetition retainer as an advance toward L&W's fees and services in the approximate amount of \$579,099.96 (the "**Retainer**"), based on a current estimate of L&W's prepetition fees and expenses incurred as of the Petition Date. Prior to the Petition Date, L&W applied amounts received from the Debtors as compensation for professional services performed, as well as for reimbursement of reasonable and necessary expenses incurred in connection therewith.

17. The Debtors submit that L&W's rates are reasonable and should be approved by this Court subject to a determination of the amounts to be paid to L&W upon application for allowance. L&W 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 L&W fee application following the change.

L&W's Disinterestedness

18. Based on the Athanas Declaration, L&W 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 Athanas Declaration, the partners, counsel, and associates of L&W (a) 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; (b) are "disinterested persons," as that term is defined in Section 101(14) of the Bankruptcy Code; and (c) do not hold or represent any interest adverse to the estates.

20. The Debtors understand that L&W 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 Athanas Declaration to disclose any material developments regarding the Debtors or any other pertinent relationships that come to L&W's attention.

21. The Debtors submit that the engagement and retention of L&W on the terms and conditions set forth herein and in the Engagement Letter is necessary and in the best interests of the Debtors, their estates, and their creditors and should be approved.

Notice

22. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. 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.

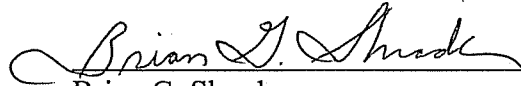
23. A copy of the Motion is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Motion are available for free on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling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

Dated: September 29, 2011
Wilmington, Delaware

Respectfully Submitted,

GRACEWAY PHARMACEUTICALS, LLC



Brian G. Shrader
Chief Financial Officer

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