

**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

**APPLICATION OF THE DEBTORS TO RETAIN AND EMPLOY
PRICEWATERHOUSECOOPERS LLP AS TAX CONSULTANT
NUNC PRO TUNC TO THE PETITION DATE**

("PwC 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 (the "**Order**"), in substantially the form attached hereto as Exhibit A, authorizing the Debtors to retain and employ PricewaterhouseCoopers LLP ("**PwC**") to perform tax consulting services for the Debtors, *nunc pro tunc* to the Petition Date (as defined below). The Debtors seek to retain and employ PwC pursuant to the terms of the engagement letter, dated July 28, 2011 and effective as of August 8, 2011, between PwC and the Debtors, a copy of which is attached hereto as Exhibit B (the "**Engagement Letter**"). In support of this Application, the Debtors respectfully state:²

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).

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).

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 requested herein are Sections 327(a), 328(a) and 1107 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016-2 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 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 official statutory 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.

4. A description of the Debtors’ businesses, the reasons for commencing these Chapter 11 Cases, and the relief sought from the 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. By this Application, the Debtors seek authority to retain and employ PwC, *nunc pro tunc* to the Petition Date, to provide the Debtors with certain tax consulting services, upon the terms and conditions of the Engagement Letter and pursuant to Sections 327(a) and 328 and 1107 of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1. In support of this Application, the Debtors submit the Affidavit of Mark Yarbrough, attached hereto as Exhibit C (the "**Yarbrough Affidavit**").

Basis for Relief

6. The Debtors have reviewed the qualifications and experience of PwC's personnel and believe that such personnel have considerable experience in advising debtors with respect to federal, international, state and local tax consulting services. PwC is a leading full-service, accounting, consulting and financial services firm with over 75 offices and over 30,000 employees in the United States. PwC is the United States-based affiliate of a global network of separate and independent member firms that operate locally in countries around the world. PwC has been employed in numerous cases under the Bankruptcy Code, including the chapter 11 cases of AbitibiBowater, Inc., American Home Mortgage Holdings, AmTrust Financial Corporation, Cadence Innovation LLC, Constar International, Inc., Harry & David Holdings, Inc., Home Interiors & Gifts Inc., HUB Holding Corp., Local Insight Media Holdings, Inc., Midland Food Services, Inc., New Creative Enterprises, Inc., Orchard Brands, Oriental Trading Company, Orleans Homebuilders, Inc., Propex, Inc., Townsends, Inc., Tribune Company, Trico Marine Services, Inc., Urban Brands, Inc., and Washington Mutual, Inc. PwC's depth of experience and breadth of service capabilities render it particularly well qualified and able to provide services to the Debtors during these Chapter 11 Cases.

7. The Debtors have selected PwC, subject to the Court's approval, to serve as their tax consultant in connection with these Chapter 11 Cases. In light of the size and complexity of these Chapter 11 Cases, the Debtors require the services of an experienced professional and one that is familiar with the Debtors' businesses and operations and the chapter 11 process. On August 8, 2011, the Debtors engaged PwC to provide federal, international, state and local tax consulting and restructuring services. However, PwC has performed tax consulting services, including preparation of federal and state tax returns and tax provision, as well as general federal and state tax consulting services for the Debtors, since September 2009, and is therefore particularly well acquainted with the Debtors' operations, debt structure, creditors, and related matters. In providing such services to the Debtors over the past two years, PwC's professionals have worked closely with the Debtors' management and other professionals. Accordingly, PwC has developed significant relevant experience regarding the Debtors that will assist PwC in providing effective and efficient services in these Chapter 11 Cases.

Services to Be Provided

8. The Debtors anticipate that PwC will provide the Debtors with federal, international, state and local tax consulting services in connection with the Debtors' restructuring alternatives. Pursuant to the terms of the Engagement Letter, PwC will provide the following tax consulting services (the "**Tax Services**"): ³

- (a) Advising the Debtors in identifying the potential federal, international, state and local income tax implications associated with any proposed restructuring alternatives to be evaluated by the Debtors which may include, but are not limited to, disposition of assets, debt-for-equity exchanges, rationalization or wind-down of the Debtors' corporate structure or other strategic alternatives;

³ To the extent that this summary and the terms of the Engagement Letter are inconsistent, the terms of the Engagement Letter shall control. Capitalized terms in this summary not otherwise defined herein shall have the meanings ascribed to them in the Engagement Letter.

- (b) Assisting the Debtors with their determination of the potential amount of cancellation of indebtedness income and its determination of the effect of tax attribute reduction under § 108 of the Internal Revenue Code (“**IRC**”) and applicable state tax laws associated with any proposed restructuring alternatives to be evaluated by the Debtors giving consideration to various elections that may be beneficial for the Debtors;
- (c) Assisting the Debtors with their determination of whether and when an ownership change, within the meaning of IRC § 382 may occur as a result of any of the proposed restructuring alternatives to be evaluated by the Debtors, including the evaluation of any beneficial elections that may be made by the Debtors contained in IRC § 382;
- (d) Assisting the Debtors with their evaluation of the tax basis in subsidiary stock under applicable federal consolidated return regulations and applicable state tax laws and, if there is an excess loss account (i.e., negative tax basis) with respect to the stock of any subsidiary, providing tax consulting to the Debtors regarding methods they may employ to reduce the income recognition related thereto;
- (e) Assisting the Debtors with their evaluation of the tax basis in assets on an entity level basis under applicable federal regulations and applicable state tax laws, including the evaluation of any tax attributes that the Debtors may have;
- (f) Advising the Debtors with their determination of the tax treatment of any transaction related costs and other costs incurred in connection with any proposed restructuring alternative; and
- (g) Documenting, as appropriate, the tax analysis, opinions, recommendations, conclusions, and correspondence for the tax issues or other tax matters described above.

Compensation

9. PwC’s retention in these Chapter 11 Cases is conditioned upon its ability to be retained in accordance with its customary terms and conditions of employment, including the proposed compensation arrangement set forth in the Engagement Letter (the “**Fee Structure**”). The Fee Structure is consistent with, and typical of, arrangements entered into by PwC and other tax consulting firms of comparable expertise and experience for engagements of similar size and complexity. PwC intends to apply to the Court for the allowance of compensation for

professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and consistent with the Fee Structure. PwC has agreed to accept as compensation such sums as may be allowed by the Court. PwC understands that interim and final fee awards are subject to approval by this Court.

10. PwC's requested compensation for professional services rendered to the Debtors will be based upon the time required by the individuals assigned to the engagement at individual hourly rates according to the experience level required. The hourly rates that will be charged by PwC professionals for the Tax Services, subject to periodic adjustments, are as follows:

<u>Professional Level</u>	<u>Hourly Rates</u>
Partner	\$625 - \$680
Director	\$355 - \$425
Manager	\$265 - \$340
Senior Associate	\$210 - \$240
Associate	\$135 - \$165

In the normal course of business, PwC revises its regular hourly rates to reflect changes in responsibilities, increased experience and increased costs of doing business. In the event that PwC's rates increase, PwC will file a notice detailing the new rate structure and serve such notice on the Debtors, the Debtors' counsel, the United States Trustee, and counsel to any committee appointed in these Chapter 11 Cases.

11. PwC will also seek reimbursement for reasonable and necessary expenses, including telephone and other charges, mail and express mail charges, document processing,

travel expenses,⁴ expenses for “working meals,” and computerized research, as well as non-ordinary costs such as secretarial and other overtime.

12. PwC has no agreement with any non-affiliated entity to share any revenue earned in these Chapter 11 Cases.

13. The Debtors are advised that it is not the practice of PwC’s professionals to keep detailed time records in one-tenth-of-an-hour increments (i.e., six minute increments) as are customarily kept by attorneys who are compensated subject to approval of the Bankruptcy Court. Instead, the customary practice of PwC’s professionals is to keep reasonably detailed records of services rendered during the course of an engagement in half-hour (0.5) increments. The Debtors request that pursuant to Local Rule 2016-2(g), PwC be excused from compliance with such requirements and instead be required to deliver only a narrative summary, by project category, of services rendered to the Debtors as exhibits to each fee application that PwC files in these Chapter 11 Cases. In such summary, PwC will identify each professional rendering services, the number of hours expended and the amount of compensation requested. Detailed time records will be provided in half-hour (0.5) increments.

14. In addition to the Fee Structure described above, the Debtors shall reimburse PwC for any fees and reasonable out-of-pocket expenses incurred in connection with PwC’s retention in these Chapter 11 Cases. The PwC professionals providing services to the Debtors pursuant to the Engagement Letter will consult with internal PwC bankruptcy retention and billing advisors to ensure compliance with the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the guidelines established by the United States Trustee

⁴ Pursuant to the Engagement Letter, PwC will charge the Debtors an internal “per ticket charge” for booking travel. This charge is an allocation of estimated costs of running the PwC travel department in a manner intended to maximize cost savings.

and such other procedures as may be fixed by order of this Court, as well as to decrease the overall fees associated with the administrative aspects of the engagement. The services provided by the PwC bankruptcy retention and billing advisors shall include, but are not limited to, assistance with (i) the bankruptcy retention documents; (ii) required disinterestedness disclosures; and (iii) preparation of fee applications. Due to the specialized nature of these services, and consistency between bankruptcy venues, specific billing rates exist for these PwC bankruptcy retention and billing advisors.⁵

15. The Debtors believe that the fee structure appropriately reflects the nature and scope of services to be provided by PwC in these complex Chapter 11 Cases, PwC's substantial experience with respect to tax consulting services, and the fee structures typically utilized by PwC and other leading tax consultants. The Debtors respectfully submit that the employment of PwC is in the best interests of the Debtors, their creditors and their estates.

Indemnification

16. Subject to the approval of the Court, and as set forth in the Engagement Letter (as may be modified by the Court's Order), the Debtors agree to indemnify and hold harmless PwC, its subcontractors and their respective partners, principals and employees from and against all third-party claims, suits and actions, and all associated damages, settlements, losses, liabilities, costs, and expenses, arising from or relating to the Services and/or Deliverables (as such terms are defined in the Engagement Letter) under the Engagement Letter, except to the extent finally determined to have resulted from the gross negligence or other intentional misconduct of PwC or its subcontractors, as further described in the Engagement Letter.

⁵ The rate per hour for these PwC bankruptcy retention and billing advisors by level of experience will be as follows: Director: \$550; Manager: \$400; Senior Associate: \$290; Associate: \$225 and Paraprofessional: \$150. These rates also are subject to periodic adjustments.

17. Except to the extent finally determined to have resulted from PwC's gross negligence or intentional misconduct, PwC's liability to pay damages for any losses incurred by the Debtors as a result of breach of contract, negligence or other tort committed by PwC is limited to no more than the total amount of fees paid to PwC under the Engagement Letter, as further described in the Engagement Letter.

18. The Debtors believe that the indemnification provision and limitations on liability are reasonable terms and conditions of PwC's engagement. The Debtors further believe that these provisions are comparable to those generally obtained by professional services firms of similar stature to PwC and for comparable engagements, both in and out of court.

No Duplication of Services

19. The Debtors intend for PwC's services to compliment, and not duplicate, the services to be rendered by any other professional retained in these Chapter 11 Cases. PwC understands that the Debtors have retained and may retain additional professionals during the term of the engagement and will work cooperatively with such professionals to avoid duplication of any respective work conducted by the professionals on behalf of the Debtors.

PwC's Disinterestedness

20. To the best of the Debtors' knowledge, and as disclosed in the Yarbrough Declaration, PwC (a) is a "disinterested person" within the meaning of Section 101(14) of the Bankruptcy Code, except that PwC was employed by the Debtors prior to the Petition Date as allowed by Section 1107(b) of the Bankruptcy Code, and (b) does not hold or represent any interest adverse to the Debtors' estates.

21. The Debtors are aware that PricewaterhouseCoopers LLP, Canada ("**PwC Canada**") is providing tax compliance and consulting services to Graceway Canada Company

(“Graceway Canada”), a non-debtor affiliate of the Debtors. PwC disclosed to the Debtors that PwC Canada was providing these services to Graceway Canada and further informed the Debtors that they have established an ethical wall between the separate engagement teams. Such measures are described in more detail in the Yarbrough Declaration. Additionally, PwC informed the Debtors that, to the extent PwC seeks assistance from PwC Canada or other members of the PwC Worldwide Organization (as defined in the Yarbrough Declaration), such assistance will be limited to helping PwC provide tax consulting services regarding the impacts on the Debtors. Accordingly, the Debtors do not have any objections to the respective services being provided by the separate PwC engagement teams.

22. PwC was paid fees totaling approximately \$201,980 by the Debtors in the 90 day period prior to the Petition Date, as is detailed in the Yarbrough Declaration. PwC has received no other compensation from the Debtors pursuant to the Engagement Letter. The Debtors have not provided PwC with any Retainer. As of the Petition Date, PwC is not owed a prepetition claim by the Debtors for fees for services rendered.

23. To the extent that PwC discovers any new relevant facts or relationships bearing on the matters described herein during the period of PwC’s retention, PwC will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

Notice

24. The Debtors have provided notice of this Application 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; and (i) 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.

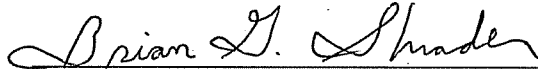
25. A copy of the Application is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Application are available for free on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested 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 (a) enter the Order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to employ and retain PwC, *nunc pro tunc* to the Petition Date, to provide the Debtors' with certain tax consulting services in accordance with the Engagement Letter and (b) grant 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