

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (PJW)

Jointly Administered

Hearing Date: March 1, 2012 at 11:00 a.m. (ET)

Objection Deadline: February 15, 2012 at 4:00 p.m. (ET)

**DEBTORS' FIRST SUPPLEMENTAL APPLICATION  
FOR AN ORDER AUTHORIZING DEBTORS TO EXPAND THE SCOPE OF  
RETENTION AND EMPLOYMENT OF PRICEWATERHOUSECOOPERS LLP  
TO INCLUDE TAX COMPLIANCE SERVICES  
NUNC PRO TUNC TO JANUARY 16, 2012**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this supplemental application (the “First Supplemental Application”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), authorizing the Debtors to expand the scope of retention and employment of PricewaterhouseCoopers LLP (“PwC”) for purposes of providing the Debtors with Tax Compliance Services (defined below), *nunc pro tunc* to January 16, 2012, pursuant to the terms of the Tax Compliance Engagement Agreement (defined below). In support of this First Supplemental Application, the Debtors submit and incorporate by reference the declaration of Mark Yarbrough in support of the First Supplemental Application (the “Second Supplemental”

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<sup>1</sup> 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 400, 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.

Yarbrough Declaration”), attached hereto as Exhibit B. In further support of this First Supplemental Application, the Debtors respectfully state as follows:

### JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b), and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105(a), 327(a), and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2014 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”).

### GENERAL 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, 2011, the Court entered an order consolidating these Chapter 11 Cases for procedural purposes only [Docket No. 42].

4. These Chapter 11 Cases are pending before the Honorable Peter J. Walsh, Judge for the United States Bankruptcy Court for the District of Delaware, located at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). On October 11, 2011, the Office of the United States Trustee appointed

an official committee of unsecured Creditors pursuant to Section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”) [Docket No. 90].

5. Also on the Petition Date, the Debtors filed the Application of the Debtors to Retain and Employ PricewaterhouseCoopers LLP as Tax Consultant *Nunc Pro Tunc* to the Petition Date (the “**Original Application**”), as well as the declaration of Mark Yarbrough in support of the Original Application, which was annexed to the Original Application as Exhibit C (“**Original Yarbrough Declaration**”) [Docket No. 28]. On October 16, 2011, the Debtors filed the supplemental declaration of Mark Yarbrough in support of the Original Application [Docket No. 109] (the “**First Supplemental Yarbrough Declaration**,” and together with the Original Yarbrough Declaration and the Second Supplemental Yarbrough Declaration, the “**Yarbrough Declarations**”). Attached to the Original Application as Exhibit B was the agreement between the Debtors and PwC for the provision of federal, international, state and local tax consulting and restructuring services (the “**Original Engagement Agreement**”).

6. On October 17, 2011, the Bankruptcy Court entered the *Order Authorizing the Debtors to Retain and Employ PricewaterhouseCoopers LLP as Tax Consultant Nunc Pro Tunc to the Petition Date* (the “**Original Retention Order**”) [Docket No. 131], approving the relief requested in the Original Application and authorizing the Debtors to employ PwC to provide tax consulting services on the terms set forth in the Original Application and the Original Engagement Agreement.

7. The Debtors require tax compliance services in order to comply with applicable federal and state laws, including laws specifically relating to the pharmaceutical industry (the “**Tax Compliance Services**”). Failure to comply with such laws could result in significant assessments of taxes, penalties and interest to the Debtors. The Tax Compliance

Services were not anticipated or contemplated by the Original Engagement Agreement at the time it was executed. The Debtors believe that PwC has extensive experience and an excellent reputation for providing tax services of this nature, including in chapter 11 cases. PwC is currently engaged to provide other services to the Debtors under the terms of the Original Engagement Agreement and, consequently, is familiar with the Debtors' businesses. Accordingly, the Debtors believe PwC is uniquely situated to provide the necessary services in a cost efficient manner. Therefore, the Debtors have determined to retain PwC to provide the Tax Compliance Services.

### **RELIEF REQUESTED**

8. By this First Supplemental Application, the Debtors seek entry of an order pursuant to Section 327(a) of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014, expanding the scope of the retention and employment of PwC to include the Tax Compliance Services, *nunc pro tunc* to January 16, 2012, upon the terms and conditions contained in the engagement agreement attached to the Second Supplemental Yarbrough Declaration as Exhibit 1 (the "**Tax Compliance Engagement Agreement**").

### **SCOPE OF THE TAX COMPLIANCE SERVICES**

9. As set forth in the Tax Compliance Engagement Agreement, the Tax Compliance Services include the following:

- (a) Preparation of U.S. Corporation Income Tax Return, Form 1120 for Debtors for the tax year beginning January 1, 2011 through December 31, 2011 and for the tax year beginning January 1, 2012 through the applicable termination date of the Debtor entities (collectively, the "**Engagement Period**") and any schedules or statements required thereunder;
- (b) Preparation of required state corporate income tax returns for the Engagement Period and any schedules or statements required thereunder;

- (c) Completion of Schedule UTP, if applicable;
- (d) Correspondence with taxing authorities, calculations required to determine the applicable amount of cancelled debt, assistance with calculating the gain and/or loss on the sale of assets and assistance with questions and inquiries relating to tax matters and other items that may be relevant to Graceway for prior, current and future tax years;
- (e) Acting as Debtors' Electronic Return Originator, allowing the taxing authorities to inform Debtors of (i) any acknowledgement that return(s) have been accepted, (ii) the reason(s) for any delay in processing a return or refund, and (iii) information regarding any refund offset; and
- (f) Providing additional services (the "**Additional Services**") outside the scope of these tax return preparation services that may not be significant enough to require a separate engagement letter, including (i) providing advice, answers to questions and/or opinions on tax planning or reporting matters, including research, discussions, preparation of memoranda, and attendance at meetings relating to such matters, as mutually determined to be necessary and (ii) providing advice and/or assistance with respect to matters involving the Internal Revenue Service or other tax authorities on an as-needed or as-requested basis.

### **COMPENSATION AND EXPENSES**

10. Pursuant to the terms and conditions of the Tax Compliance Engagement Agreement, and subject to the Bankruptcy Court's approval, PwC will seek compensation for the Tax Compliance Services, but excluding the Additional Services, on a fixed fee basis. The fixed fee for such services is estimated to be \$90,000 for the 2011 tax year, based on PwC's hourly rates as in effect on the date the Tax Compliance Engagement Agreement was executed (set forth below). The fixed fee will be billed according to the following schedule, subject to the interim and final fee application process discussed in paragraph 16 below, with any adjustments to the final fee amount to be approved by the Debtors.

Upon signing the Tax Compliance Engagement Agreement: \$15,000  
February 15, 2012: \$25,000  
March 15, 2012: \$40,000  
April 15, 2012: \$10,000

11. The fee for the Tax Compliance Services, but excluding the Additional Services, is estimated to be within the range of \$25,000 to \$45,000 for the 2012 short period tax year, based on PwC's hourly rates as in effect on the date the Tax Compliance Engagement Agreement was executed (set forth below).

12. The Additional Services will be billed according to the hourly rates set forth below.

<b>Level Professional Providing Services</b>	<b>Range of Hourly Rates</b>
Partner / Principal	\$625-\$680
Director	\$355-\$425
Manager	\$265-\$340
Senior Associate	\$210-\$240
Associate and other staff	\$135-\$165

13. In addition to the rates set forth above, the Debtors have agreed to reimburse PwC for reasonable and documented expenses incurred in connection with PwC's performance of the Tax Compliance Services.

14. All compensation and expenses will continue to be sought in accordance with Sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and orders of this Court.

15. It is not the general practice of PwC professionals to keep detailed time records (i.e., increments of one-tenth of an hour (six minutes)) similar to those customarily kept by attorneys who are compensated through the Bankruptcy Court. The PwC professionals' customary practice provides a description of the services rendered and the amount of time spent on each date in rendering services on behalf of their clients.

16. PwC will file interim and final fee applications for the allowance of compensation for Tax Compliance Services rendered and reimbursement of expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local

Rules, and any applicable orders of the Court, by submitting a monthly narrative summary of each project category describing the services offered, identification of each professional, number of hours spent and the amount of compensation requested, as well as reasonably detailed records of its hourly fees incurred in connection with its services that shall set forth a description of the services rendered by each professional and the amount of time spent on each date in one-half (0.5) hour increments.

17. The Debtors believe that such time descriptions still provide the ability to review the time entries and evaluate the services provided by PwC's professionals. Accordingly, to the extent necessary based on the foregoing, the Debtors respectfully request that the information-keeping requirements set forth in Local Rule 2016-2(d) be waived to permit PwC and its professionals to maintain their time records in one-half (0.5) hour increments.

18. Consistent with the prevailing standards for retention of professionals in chapter 11 cases in the Third Circuit, the Debtors requested, and PwC agreed, that notwithstanding any contrary provisions in the Tax Compliance Engagement Agreement, all of PwC's fees and expenses in these cases will be subject to approval of the Court upon proper application by PwC in accordance with Sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, the fee and expense guidelines established by the U.S. Trustee, any other applicable requirements.

#### **PwC'S DISINTERESTEDNESS**

19. Based upon the Declarations, the Debtors believe that except as otherwise set forth in the Declarations: (a) PwC is not a creditor, equity security holder or insider of the Debtors; (b) PwC is not, and was not, within two years of the Petition Date, a director, officer or employee of the Debtors; and (c) PwC does not hold or represent any interest materially adverse to the Debtors or any class of creditors or equity security holders. Accordingly, the Debtors

submit that PwC is a “disinterested person” as defined in Section 101(14) of the Bankruptcy Code. The Debtors have been advised that PwC will continue to update its disclosure with respect to its disinterestedness as new connections are identified.

### **INDEMNIFICATION PROVISION**

20. The Tax Compliance Engagement Agreement provides that the Debtors will indemnify PwC and its personnel, subcontractors and agents under certain circumstances.

21. The Debtors believe that the indemnification provision, as modified by the language set forth in the proposed Order, is customary and reasonable under the circumstances. See, e.g., In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003) (order approving indemnification by the debtors); In re Joan & David Halpern, Inc., 248 B.R. 43 (Bankr. S.D.N.Y. 2000) (authorizing indemnification of financial advisor by the debtors).

22. Moreover, the terms and conditions of the Tax Compliance Engagement Agreement, including the indemnification provision therein, were negotiated by the Debtors and PwC at arm’s length and in good faith. The Debtors respectfully submit that the indemnification provision in the Tax Compliance Engagement Agreement, viewed in conjunction with the terms of the Original Retention Order, is reasonable and in the best interests of the Debtors, their estates and creditors. Accordingly, the Debtors request that the Court approve the indemnification provision, as provided for in the Order.

### **BASIS FOR RELIEF**

23. Section 327(a) of the Bankruptcy Code, in relevant part, provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor’s] duties under the [Bankruptcy Code].



11 U.S.C. § 327(a).

24. Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm], the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

25. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Bankruptcy Code and the Bankruptcy Rules to support entry of an order authorizing the Debtors to expand the scope of PwC's retention and employment in these Chapter 11 Cases to include the Tax Compliance Services.

26. At the Debtors' request and due to the Debtors' need for the services, PwC has already begun providing the Tax Compliance Services in order for the Debtors to be able to timely file necessary returns and comply with the applicable federal and state laws, including laws specifically relating to the pharmaceutical industry. Therefore, the Debtors request approval of the Tax Compliance Engagement Agreement *nunc pro tunc* to January 16, 2012.

#### **NOTICE**

27. Notice of this First Supplemental Application has been provided to the following parties, or, in lieu thereof, their counsel: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors' first lien facility; (c) special restructuring and bankruptcy counsel to the administrative agent for the lenders under the Debtors' first lien facility; (d) counsel to the administrative agent for the lenders under the Debtors' second lien facility; (e) the administrative agent for the lenders under the Debtors' second lien facility; (f) counsel to the Creditors' Committee; (g) the creditors listed on the Debtors' consolidated list of 30 largest unsecured

creditors, as filed with the Debtors' chapter 11 petitions; (h) the Food and Drug Administration; (i) the Internal Revenue Service; (j) the U.S. Public Health Service; (k) the Centers for Medicare and Medicaid Services; (l) counsel to, receiver for, and counsel to the receiver for Graceway Canada Company; and (m) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**NO PRIOR REQUEST**

28. No prior request for the relief sought herein has been made to this or any other court.

29. WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors to expand the scope of retention and employment of PricewaterhouseCoopers LLP as requested herein on the terms of the Tax Compliance Engagement Agreement; and (b) granting such other and further relief as the Court deems appropriate.

Dated: February 1, 2012  
Wilmington, Delaware

Respectfully Submitted,



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