

**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: March 16, 2012 at 9:30 a.m. (ET)

Objection Deadline: February 28, 2012 at 4:00 p.m. (ET)

**MOTION OF GSW ADVERTISING, LLC FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 503(b)**

GSW Advertising, LLC (“GSW”), by and through its undersigned counsel, hereby moves (the “Motion”) pursuant to sections 503(b) of title 11 of the United States Code (the “Bankruptcy Code”) for the entry of an order (i) allowing GSW an administrative expense claim against Graceway Pharmaceuticals, LLC in the above-captioned case (“Graceway”) and (ii) directing Graceway to pay the amount of the administrative expense claim to GSW. In support of the Motion, GSW respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief sought herein is 11 U.S.C. § 503(b).

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

3. On September 29, 2011 (the “Petition Date”), Graceway and its affiliated debtors (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in possession of their respective properties pursuant to sections 1107 and 1108 of the Bankruptcy Code. On September 30, 2011, the Court entered an order consolidating the Debtors’ cases for procedural purposes only [D.I. 42], and on October 11, 2011, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to 11 U.S.C. § 1102. [D.I. 90].

4. Both prior to and following the Petition Date, GSW provided advertising and marketing services to Graceway pursuant to a Project Estimate Contract dated April 12, 2011, signed by both GSW and Graceway (the “Agreement”). *See Declaration of Mark Frank in Support of Motion of GSW Advertising, LLC For Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* (attached hereto as **Exhibit A**, the “Declaration”) at ¶ 3. Pursuant to the Agreement, GSW agreed to provide, and did provide, assistance to Graceway in preparing a new website for Zyclara Cream (the “Services”). Declaration at ¶ 3. The preparation of the website continued during the Graceway bankruptcy. Declaration at ¶ 4. Prior to the Petition Date, GSW provided services in the amount of \$88,050 and billed \$3,986.63 in out-of-pocket expenses. After the Petition Date, GSW provided an additional \$11,925.00 worth of services and incurred \$162.50 in additional out-of-pocket expenses, for a total amount due of \$12,087.50 (the “GSW Administrative Expense Claim”). Declaration at ¶ 4.

RELIEF REQUESTED

5. GSW respectfully requests that the Court enter an order (a) allowing the GSW Administrative Expense Claim; and (b) directing Graceway to pay to GSW the amount of the GSW Administrative Expense Claim.

BASIS FOR RELIEF REQUESTED

6. GSW is entitled to the allowance of an administrative claim in the amount of \$12,087.50 pursuant to section 503 of the Bankruptcy Code that provides, in relevant part:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual, necessary costs and expenses of preserving the estate . . .

11 U.S.C. § 503(b)(1)(A). “Under [11 U.S.C.] § 507, certain categories of expenses and claims enjoy priority. Administrative expenses allowed under § 503(b) receive first priority in the distribution of the assets of the debtor’s estate.” *Former Emp. of Builders Square Retail Stores v. Hechinger Inv. Co. of Del. (In re Hechinger Inv. Co. of Del.)*, 298 F.3d 219, 224 (3d Cir. 2002). “One of the main policies underlying section 503(b)(1)(A) is to provide an incentive for creditors and others to continue or commence doing business with an insolvent entity.” *In re Summit Metals, Inc.*, 379 B.R. 40, 56–57 (Bankr. D. Del. 2007) (quoting 4 *Collier on Bankruptcy* ¶ 503.06[2] (Alan N. Resnick et al. eds., 15th ed. rev., 2006)).

7. “For a claim in its entirety to be entitled to . . . priority under § 503(b)(1)(A)[i], the debt must arise from a transaction with the debtor-in-possession and the consideration supporting the claimant’s right to payment must be beneficial to the debtor-in-possession in the operation of the business.” *In re Bernard Tech., Inc.*, 342 B.R. 174, 177 (Bankr. D. Del. 2007) (quoting *Calpine Corp. v. O’Brien Env’tl Energy, Inc. (In re O’Brien*

Env'tl Energy, Inc.), 181 F.3d 527, 532–33 (3d Cir. 1999)). Further, the costs and fees for which administrative expense priority is sought must have provided an actual benefit to the estate, and have been necessary to preserve the value of estate assets. *Id.* Indeed, “[i]f the debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume a contract, the debtor-in-possession is obligated to pay for the reasonable value of those services.” *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (noting that the reasonable value of those services often is the amount specified in the applicable contract).

8. By continuing to provide the Services post-petition, GSW benefited the Debtors’ estates. GSW’s services allowed Graceway to continue to develop the Zyclara Cream website. The costs incurred by GSW in continuing to develop the website were actual and necessary for the estates. At this point and due to services rendered post-petition, the website is ready for review by the legal and medical regulatory team of Graceway and/or the buyer, Medicis Pharmaceutical Corporation. Declaration at ¶ 5. The Services preserved the estates by allowing for the marketing of Graceway’s Zyclara product on the website, which, once the website is launched, will then be able to generate funds through sales that can be used to pay creditors. Declaration at ¶ 6.

NO PRIOR REQUEST

9. GSW has not made a previous application for the relief requested herein to this or any other Court.

NOTICE

10. Notice of this Motion will be given to: (i) counsel to the Debtors; (ii) the Office of the United States Trustee for the District of Delaware; (iii) counsel for the Official

Committee of Unsecured Creditors; and (iv) all parties that have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. GSW submits that no other or further notice of this Motion is required.

WHEREFORE, GSW respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit B**, (a) allowing the GSW Administrative Expense Claim as an administrative expense in the amount of \$12,087.50 under section 503(b) of the Bankruptcy Code, (b) directing Graceway to pay to GSW the amount of the GSW Administrative Expense Claim; and (c) granting GSW such other and further relief as the Court deems just and proper.

Dated: February 14, 2012
Wilmington, DE

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Erin R. Fay

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