

**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: October 17, 2011 at 4:00 p.m. (ET)

Obj. Deadline: October 14, 2011 at 4:00 p.m. (ET)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
APPROVING CROSS-BORDER INSOLVENCY PROTOCOL**

("Cross-Border Insolvency Protocol 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, approving the Cross-Border Protocol (defined below). In support of this Motion, the Debtors respectfully state:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 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 pursuant to 28 U.S.C. §§ 1408 and 1409.

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), 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 500, Bristol, TN 37620 (Attn: John Bellamy).

2. The statutory bases for the relief requested herein are Sections 105 and 362 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”).

Background

A. U.S. Proceeding

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]. The Office of the United States Trustee for the District of Delaware has not yet appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to Section 1102 of the Bankruptcy Code (the “**Committee**”).

4. A description of the Debtors’ business, the reasons for commencing these Chapter 11 Cases, and the relief sought from this 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 [Docket No. 3].

B. Canadian Proceeding

5. On October 3, 2011, Graceway Canada Company (the “**Canadian Debtor**”)² filed an application in the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) seeking the appointment of a receiver to oversee the sale of certain assets of the Canadian Debtor (the “**Canadian Proceeding**”) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”).

6. On October 4, 2011, the Canadian Court issued an order (the “**Receivership Order**”) pursuant to which it, *inter alia*, appointed RSM Richter Inc. as the receiver (the “**Receiver**”) in the Canadian Proceeding, imposed a stay of all proceedings against the Canadian Debtor and its property in Canada, created certain liens, and set forth certain other limitations and procedures for all parties-in-interest in the Canadian Proceeding. The Honourable Justice Morawetz presides over the Canadian Proceeding.

7. Pursuant to the Receivership Order, the Receiver will oversee the sale process, consult with the Canadian Court regarding the sale process and, if satisfied with the results of the sale process, ultimately recommend to the Canadian Court that the sale be approved by the Canadian Court. The Canadian Debtor remains in possession and control of its assets and will continue to manage and operate its business throughout the Canadian Proceeding.

² The Canadian Debtor is also the Debtors’ post-petition lender. On September 30, 2011, the Court entered an order authorizing the Debtors to enter into a six million dollar priming debtor-in-possession financing facility with the Canadian Debtor [Docket No. 52].

Relief Requested

8. In order to facilitate the administration of the Canadian Proceeding and the Chapter 11 Cases (collectively, the Chapter 11 Cases and the Canadian Proceeding are referred to herein as the “**Insolvency Proceedings**”), the Debtors request that the Court enter the Order, approving the proposed cross-border protocol (the “**Cross-Border Protocol**”), in substantially the form attached to the Order as Exhibit 1. On October 4, 2011, as part of the Receivership Order, the Canadian Debtor received approval of the Cross-Border Protocol by the Canadian Court. The Cross-Border Protocol was attached as an appendix to the Receivership Order and becomes effective when the same order is entered by this Court.

Basis for Relief Requested

9. The Canadian Debtor is part of the Debtors global corporate enterprise and therefore has been and will continue to be actively involved in the Debtors’ efforts to sell certain assets through a sale under Section 363 of the Bankruptcy Code. Following months of investigating their strategic alternatives, on September 23, 2011, the Boards of Directors for the Debtors approved an offer from Galderma S.A., a Swiss company (the “**Stalking Horse Bidder**”), to purchase substantially all of the assets, property and assume certain liabilities of the Debtors and the Canadian Debtor. The bid of the Stalking Horse Bidder is subject to an auction and requires that the sale be approved by both this Court and the Canadian Court.

10. Accordingly, the Debtors submit that it is necessary to implement a cross-border protocol between this Court and the Canadian Court (collectively, the “**Courts**”) to coordinate the Insolvency Proceedings to allow for joint hearings during which the Debtors and Canadian Debtor will seek approval of the asset purchase agreement entered into by the Debtors and the Canadian Debtor, bidding procedures, the sale process, and ultimately, the Section 363 sale and other hearings, if necessary. After conferring with counsel to the Canadian Debtor, at this time,

the Debtors believe that it would be beneficial to both the Debtors and the Canadian Debtor to conduct a joint hearing with respect to the Courts' consideration of the bidding procedures and with respect to the ultimate approval of the sale.

11. Additionally, a cross-border protocol is needed to ensure that: (a) the Insolvency Proceedings are coordinated to avoid inconsistent, conflicting or duplicative rulings by the Courts; (b) all parties-in-interest are provided sufficient notice of key issues in both Insolvency Proceedings; (c) the substantive rights of all parties-in-interest are protected; and (d) the jurisdictional integrity of the Courts is preserved. The Cross-Border Protocol is designed to achieve these objectives by implementing a framework of general principles and timing considerations to address the basic administrative and procedural issues arising out of the cross-border nature of the Insolvency Proceedings. Such coordination is essential and should, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith, and avoid duplication of effort and the possibility of conflicting rulings by the Courts.

12. The Cross-Border Protocol provides that it shall not divest or diminish the independent jurisdiction of this Court over the Chapter 11 Cases or of the Canadian Court over the Canadian Proceeding. In particular, nothing in the Cross-Border Protocol shall be construed to, among other things, (a) require this Court to take any action inconsistent with the laws of the United States, (b) require the Canadian Court to take any action inconsistent with the laws of Canada, (c) require the Debtors or any estate professionals to take any action, or refrain from taking any action, that would result in a breach of duty imposed on them by applicable law, (d) authorize any action that otherwise requires the specific approval of this Court, except to the extent such action is specifically provided for in the Cross-Border Protocol as approved by this

Court, or (e) preclude the Debtors or any party-in-interest from asserting such party's substantive rights under the applicable laws of the United States, Canada, or any other jurisdiction.

Applicable Authority

13. The relief requested herein is authorized under the Court's general equitable powers, which are codified in Section 105(a) of the Bankruptcy Code. Under Section 105(a), the court "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 purpose of Section 105(a) is "to assure the bankruptcy court's power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 Collier on Bankruptcy, ¶ 105.01, at 105-6 (15th ed. rev.). The Cross-Border Protocol provides a necessary and appropriate means for communication between the two Courts and it provides a framework for coordination of the Insolvency Proceedings. Such communication and coordination will prove beneficial to the administration of both the Chapter 11 Cases and the Canadian Proceeding.

14. A number of courts, in this District and elsewhere, have authorized similar protocols for managing cross-border insolvency proceedings. See, e.g., In re Circuit City Stores, Inc., Case No. 08-35653 (KRH) (Bankr. E.D. Va. May 7, 2010); In re Eddie Bauer Holdings, Inc., Case No. 09-12099 (MFW) (Bankr. D. Del. July 7, 2009); In re Milacron Inc., Case No. 09-11235 (JVA) (Bankr. S.D. Ohio Apr. 6, 2009); In re Smurfit-Stone Container Corp., Case No. 09-10235 (BLS) (Bankr. D. Del March 12, 2009); In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 14, 2009); In re Progressive Molded Prods., Case No. 08-11253 (KJC) (Bankr. D. Del. 2008 July 14, 1008); In re Quebecor World (USA) Inc., Case No. 08-10152 (JMP) (Bankr. S.D.N.Y. Apr. 8, 2008); In re Pope & Talbot, Inc., Case No. 07-11738 (CSS) (Bankr. D. Del. 2007 Dec. 14, 2007). Accordingly, the Debtors submit that there is ample authority and precedent for granting the relief requested herein.

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 Canadian Debtor and lender under the Debtors' debtor-in-possession financing facility; (j) counsel to the Canadian Debtor and lender under the Debtors' debtor-in-possession financing facility; (k) the Receiver; (l) counsel to the Receiver; and (m) 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, in substantially the form attached hereto as Exhibit A, (a) approving the Cross-Border Protocol and (b) granting such other and further relief as the Court may deem just and proper.

Dated: October 4, 2011
Wilmington, Delaware

Respectfully Submitted,

/s/ Kara Hammond Coyle
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