

**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

RE: Docket No. 684

Objection Deadline: May 2, 2012 at 4:00 p.m.  
Hearing Date: May 9, 2012 at 10:30 a.m.

**MOTION OF CARDINAL HEALTH PURSUANT TO 11 U.S.C. § 107(b),  
BANKRUPTCY RULE 9018, AND LOCAL RULE 9018-1(B) FOR AUTHORITY TO  
FILE UNDER SEAL CERTAIN EXHIBITS TO THE MOTION OF CARDINAL  
HEALTH FOR (I) RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11  
U.S.C. § 362(d) AND (II) APPROVAL OF SETOFF UNDER 11 U.S.C. § 553**

Cardinal Health (“Cardinal”)<sup>2</sup>, by and through its undersigned counsel, hereby files this motion (the “Motion to Seal”) for entry of an order pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) authorizing Cardinal Health to file under seal Exhibits E and F to the Motion of Cardinal Health for (i) Relief from the Automatic Stay Pursuant to 11

<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.

<sup>2</sup> As used herein, the term “Cardinal Health” means the following affiliated operating companies and subsidiaries of Cardinal Health, Inc., an Ohio corporation (“CHI”): Cardinal Health 3, LLC; Cardinal Health 104 LP; Cardinal Health 107, Inc.; Cardinal Health 107, LLC.; Cardinal Health 108, Inc.; Cardinal Health 110, Inc.; Cardinal Health 112, LLC; Cardinal Health 113, LLC; Cardinal Health 411, Inc.; Borschow Hospital & Medical Supplies, Inc. Under the Agreements (defined herein), CHI may designate any other subsidiary as “Cardinal Health”.

U.S.C. § 362(d) and (ii) Approval of Setoff Under 11 U.S.C. § 553 (the “Motion”). In support of the Motion to Seal, Cardinal respectfully represents as follows:

**BACKGROUND**

1. On September 29, 2011 (the “Petition Date”), the Debtors commenced these bankruptcy proceedings by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

2. After filing for bankruptcy protection, the Debtors pursued a sale of substantially all of their assets pursuant to section 363 of the Bankruptcy Code. On November 22, 2011, an Order was entered by this Court approving a sale to Medicis Pharmaceutical Corporation, LLC (the “Sale”).

3. On February 28, 2012, the Debtors filed the Plan, amending an earlier version. The Plan is a liquidating plan. The confirmation hearing is currently set for April 11, 2012.

4. Prior to the Petition Date, in the ordinary course of business, Cardinal and the Debtor Graceway Pharmaceuticals, LLC (“Graceway”) entered into the Distribution Services Agreement (the “DSA”) and the Cardinal Health Wholesale Purchase Agreement (the “WPA”, and collectively with the DSA, the “Agreements”). In summary, the DSA provided that Cardinal would provide distribution services to Graceway in exchange for a fee. The WPA provided that Cardinal would purchase pharmaceutical products from Graceway for resale to various entities, including, but not limited to, hospitals, supermarkets, pharmacies, nursing homes, and clinics. The DSA is attached to the Motion as Exhibit E. The WPA is attached to the Motion as Exhibit F.

## **JURISDICTION**

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **RELIEF REQUESTED**

6. By this Motion to Seal, Cardinal seeks entry of an order, pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b), permitting Cardinal to file Exhibits E and F to Motion under seal.

## **BASIS FOR RELIEF**

7. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall . . .

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

11 U.S.C. § 107(b).

8. Bankruptcy Rule 9018 sets forth the procedures for application of section 107 of the Bankruptcy Code. Pursuant to Bankruptcy Rule 9018, the Court, on a motion or upon its own initiative,

may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation.

Fed. R. Bankr. P. 9018. Local Rule 9018-1(b) further provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(b).

9. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). Instead, if the material sought to be protected satisfies one of the categories identified in section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application.” *See In re Orion Pictures Corp.*, 21 F.3d at 27 (emphasis in original).

10. Cardinal seeks to file under seal certain exhibits to the Motion. Exhibits E and F attached to the Motion consist of documents that contain commercially sensitive, confidential and/or proprietary information regarding the pricing and business operations of Cardinal. The disclosure of such commercially sensitive, confidential and proprietary information to the general public would be prejudicial and detrimental to Cardinal, and could cause irreparable harm to the business operations of Cardinal. Accordingly, Cardinal respectfully requests that Exhibits E and F to Motion be filed under seal.

#### **NOTICE**

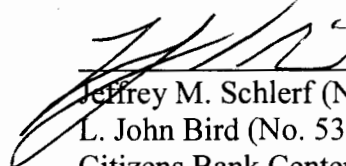
11. Notice of this Motion to Seal has been given to (a) counsel for the Debtors, (b) counsel to the Official Committee of Unsecured Creditors, (c) the Office of the United States Trustee, and (d) all parties that have requested notice in these chapter 11 cases

pursuant to Rule 2002 of the Bankruptcy Rules. In light of the nature of the relief requested and the absence of any adverse impact on any party in interest, Cardinal submits that no further notice of this Motion to Seal is required.

WHEREFORE, Cardinal respectfully requests that this Court enter an order substantially in the form annexed hereto as **Exhibit A** authorizing Cardinal to file Exhibits E and F to the Motion under seal and granting Cardinal such other and further relief as the Court deems just and proper.

Dated: April 10, 2012  
Wilmington, Delaware

**FOX ROTHSCHILD LLP**



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Jeffrey M. Schlerf (No. 3047)  
L. John Bird (No. 5310)  
Citizens Bank Center, Suite 1600  
919 North Market Street  
Wilmington, DE 19801  
Telephone: (302) 654-7444  
Facsimile: (302) 656-8920

-and-

Samuel H. Israel  
2000 Market Street, Twentieth Floor  
Philadelphia, PA 19103-3222  
Telephone: (215) 299-2000  
Facsimile: (215) 299-2150

*Attorneys for Cardinal Health*