

**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)  
*Joint Administration*

Hearing Date: July 12, 2012 at 9:30 am ET  
Objection Deadline: July 2, 2012 at 4:00 pm ET

**MICROSOFT’S MOTION FOR ALLOWANCE AND PAYMENT OF  
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 503**

Microsoft Corporation, a Washington corporation, and its wholly-owned affiliate, Microsoft Licensing, GP (collectively “Microsoft”), as parties in interest in the above-captioned Chapter 11 cases, hereby move for allowance and payment of an administrative expense claim in the amount of \$30,507.52, subject to adjustment by the applicable per diem rate, or such other amount to be determined, and in support thereof, aver as follows:

**BACKGROUND**

1. On September 29, 2011, the above-captioned debtors (“Debtors”) commenced their bankruptcy cases pursuant to Chapter 11 of the United States Bankruptcy Code.
2. Debtors have operated their business and managed their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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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 (MFW); Graceway Holdings, LLC, a Delaware limited liability company (2502), Case No. 11-13038 (MFW); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (MFW); Chester Valley Holdings, LLC, a Delaware limited liability company (9457), Case No. 11-13039 (MFW); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713), Case No. 11-13041 (MFW); Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (MFW); and Graceway International, Inc., a Delaware corporation (2399), Case No. 11-13043 (MFW). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, 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.

### **JURISDICTION AND VENUE**

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

### **BASIS FOR ADMINISTRATIVE EXPENSE CLAIM**

6. As set forth in the *Proof of Claim filed by Microsoft Corporation and Microsoft Licensing, GP* (Claim # 187), Microsoft and Debtors are party to a license agreement identified as Business Agreement No. U894051, Master Agreement No. 01E70763, and Enrollment Agreement No. 7346323 (collectively, the “License”).

7. Pursuant to the License, the Debtors have licensed and used certain Microsoft software and Software Assurance upgrades (the “Software”) throughout their business enterprise. The Debtors do not “own” the Microsoft licensed Software; rather, the Software is copyrighted material that Debtors have licensed from Microsoft.

8. The License is subject to a three-year enrollment term, which commenced on July 1, 2009 and expires June 30, 2012. Fees due under the License are payable in three annual installments. To date, the Debtors have failed to pay the third annual installment.

9. This administrative expense claim relates to unpaid post-petition fees for the third annual installment, evidenced on Invoice No. 9816577057, attached as Exhibit A, which covers licenses for July 2011-June 2012.

10. Microsoft believes that Debtors have used and continue to use the Software post-petition to operate and to administer their bankruptcy cases. Debtors’ use of the Software benefited and preserved their estates.

11. Accordingly, pursuant to 11 U.S.C. §503(b)(1), Microsoft asserts a right to allowance and payment of an administrative expense claim for each day, post-petition, that Debtors have used and continue to use the Software. The per diem amount due under Invoice No. 9658912743 is approximately \$601.68, which is the face amount of the invoice, \$219,611.67, divided by 365 days.

12. The License was rejected effective December 2, 2011 (Dkt. # 309 and #335). For the period between the petition date on September 29, 2011, and the rejection date on December 2, 2011, the total administrative expense claim is \$38,507.52 (65 days post-petition multiplied by the per diem rate), subject to increase or decrease by the per diem amount depending on Debtors' period of actual use of the Software.

13. Microsoft asserts its administrative expense claim without prejudice to any rights Microsoft may have to take copyright enforcement action against any third parties improperly using the Software without Microsoft's consent and without paying the full amount due under the License.

WHEREFORE, Microsoft requests allowance and payment of an administrative expense in the amount of \$38,507.52, increased by \$601.68 for each day after December 2, 2011 that Debtors continued to use the Software, or such other amount as is appropriate based on Debtors' period of actual use of the Software.

Dated: June 6, 2012  
Wilmington, Delaware

**BROWN STONE NIMEROFF LLC**

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