

**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: July 12, 2012 at 9:30 a.m. ET
Objection Deadline: June 28, 2012 at 4:00 p.m.

**PRIME THERAPEUTICS LLC'S MOTION FOR
ALLOWANCE AND PAYMENT OF AN
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 503(b)**

INTRODUCTION

After the Debtors' bankruptcy cases were filed, Prime Therapeutics LLC ("Prime") continued to provide valuable services to the Debtors by collecting, managing, and distributing rebates from the Debtors to sponsors of health care plans. Prime benefited the estate and its creditors by providing these services, and the services resulted in costs that were both actual and necessary for the preservation of the Debtors' estate. For these reasons, and others set forth below, Prime respectfully asks the Court to enter an order allowing Prime an administrative expense claim in the amount of \$127,428.69, and directing the Debtors to pay Prime such amounts.

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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).

JURISDICTION

The statutory basis for the relief sought herein is 11 U.S.C. § 503(b). The Court has jurisdiction over Prime's 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), and the Court constitutes the proper venue both for this proceeding and for Prime's Motion pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

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 thereafter continued in possession of their respective properties pursuant to sections 1107 and 1108 of the Bankruptcy Code.

Both prior to and following the Petition Date, Prime collected, managed, and distributed rebates from the Debtors to sponsors of health care plans, sponsors of Medicare Part D Plans, and other, similar entities pursuant to a Rebate and Administrative Fee Agreement dated October 1, 2008 (and related amendments and extensions), and pursuant to a Medicare Part D Rebate and Administrative Fee Agreement dated October 1, 2010 (and a related amendment and extension) (collectively the "Agreements"). (*See Affidavit of Barbara J. Wood in Support of Prime Therapeutics LLC's Motion For Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* (attached hereto as **Exhibit A**) at ¶3.) Prime continued to provide such services during the pendency of the Debtors' bankruptcy cases. (*Id.* at ¶4.) Specifically, in the period following the Petition Date, Prime provided \$127,428.69 worth of services to the Debtors pursuant to the Agreements. (*Id.* at ¶5.)

ARGUMENT

Prime is entitled to an administrative expense claim in the amount of \$127,428.69 pursuant to section 503 of the Bankruptcy Code. Section 503 states, 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).

Certain claims and categories of a bankruptcy estate's expenses are entitled to priority. 11 U.S.C. § 507. Among other things, section 507(a)(2) of the Bankruptcy Code provides that claims arising under section 503(b) should be paid before the claims of other unsecured creditors. “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)). Consistent with this objective, administrative expense claims allowed under section 503(b) are entitled to nearly the highest priority in the distribution of a bankruptcy estate's assets. 11 U.S.C. § 507(a).

“Post-petition obligations are ordinarily given payment priority as administrative expenses” so long as such obligations are deemed to be “actual, necessary expenses of preserving the estate.” *In re Goody's Family Clothing Inc.*, 610 F.3d 812, 817 (3d Cir. 2010). The test to determine whether a party is entitled to allowance of an administrative

expense claim pursuant to section 503(b)(3) is “whether the efforts of the applicant resulted in an actual and demonstrable benefit to the debtor's estate and the creditors.” *See, e.g., In re AM Intern., Inc.*, 203 B.R. 898, 904 (D. Del. 1996) (citing *Lebron v. Mechem Financial, Inc.*, 27 F.3d 937, 944 (3d Cir.1994) (citations omitted)). In instances where a 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).

By continuing to collect, manage, and distribute rebates from the Debtors to sponsors of health care plans during the post-petition period, Prime benefited the estate and its creditors by allowing the Debtors to, in turn, continue serving a critical function for their customers. The Debtors received compensation and repeat business as a result of Prime’s post-petition services and the related costs incurred by the Debtors were, for this reason and others, both actual and necessary for the preservation of the Debtors’ estate.

NO PRIOR REQUEST

Aside from the parallel request contained in its proof of claim, Prime has not made a previous application for the relief requested herein to this or any other Court.

NOTICE

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.

CONCLUSION

For the reasons set forth above, Prime is entitled to the allowance and payment of an administrative expense claim pursuant to section 503(b) of the Bankruptcy Code. Accordingly, Prime respectfully asks the Court to enter an order, substantially in the form attached as **Exhibit B**, allowing Prime's Administrative Expense Claim as an administrative expense in the amount of \$127,428.69 under section 503(b) of the Bankruptcy Code and directing Graceway to pay Prime the amount of its Administrative Expense Claim.

Dated: June 7, 2012
Wilmington, Delaware

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