

**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

**MOTION OF CARDINAL HEALTH FOR ALLOWANCE AND
PAYMENT OF ADMINISTRATIVE CLAIM**

Cardinal Health (“Cardinal”)², by and through its undersigned counsel, hereby files this Motion for Allowance and Payment of Administrative Claim (the “Motion”) pursuant to 11 U.S.C. § 503(b)(1)(A) and in support of its Motion, represents as follows:

JURISDICTION

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

² 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”.

BACKGROUND

4. On September 29, 2011 (the “Petition Date”), the above captioned debtors (“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”).

5. 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”).

6. On April 20, 2012, this Court confirmed the Debtors’ First Amended Joint Plan of Liquidation (the “Plan”). The Plan became effective on May 4, 2012 (the “Effective Date”).

7. Prior to the Petition Date, Cardinal (i) purchased pharmaceutical products from one of the Debtors, Graceway Pharmaceuticals, LLC (“Graceway”), for subsequent resale to various entities, including, but not limited to, hospitals, supermarkets, pharmacies, nursing homes, and clinics and (ii) provided distribution services to Graceway for its pharmaceutical products in exchange for a fee.

8. The business relationship between Cardinal and Graceway created a series of ongoing mutual payment and credit obligations between the parties. Cardinal incurred payment obligations to Graceway for the ongoing purchase of pharmaceutical products, while Graceway incurred payment and credit obligations to Cardinal for, among other things, distribution service agreement fees, Medicaid/Medicare rebates, chargebacks and product return credits. In the ordinary course of their dealings, Graceway settled such payment and credit obligations by

issuing credit memos to Cardinal, who applied such credit memos against outstanding amounts owed to Graceway.

9. Following the Petition Date, Cardinal and Graceway continued their prepetition course of dealings until the time of the Sale. As a result, Graceway owes certain amounts to Cardinal on account of post-petition distribution fees, chargebacks, rebates and product returns.

RELIEF REQUESTED

10. By this Motion and pursuant to Bankruptcy Code section 503(b), Cardinal requests the Court enter an order substantially in the form of order attached hereto granting Cardinal an allowed administrative expense claim in the amount of \$1,086,664.73.

BASIS FOR RELIEF

11. 11 U.S.C. § 503 provides:

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

(3) the actual, necessary expenses, ...incurred by—

(D) a creditor... in making a substantial contribution in a case under chapter 9 or 11 of this case.

12. The United States Bankruptcy Court for the District of Delaware has parsed the “actual” and “necessary” requirements and stated that “[d]etermining whether a creditor has an administrative claim is a two-prong test: the expense must have arisen from a post-petition transaction between the creditor and the debt, and the transaction must have been ‘actual and necessary’ to preserve the estate.” In re Unidigital, Inc., 262 B.R. 283, 288 (Bankr. D. Del. 2001) (internal citations omitted).

13. In instances where a trustee or 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 services is often the amount specified in the contract).

14. As set forth within 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* [D.I. 684] (the “Lift-Stay Motion”), Cardinal and Graceway continued their normal business relationship following the Petition Date until the Sale. In their business interactions, Graceway incurred payment and credit obligations to Cardinal for, among other things, distribution service agreement fees, Medicaid/Medicare rebates, chargebacks and product return credits.

15. In the normal course of business between Cardinal and Graceway, Graceway incurred post-petition liabilities to Cardinal totaling \$1,086,664.73 (the “Post-Petition Claim”). Attached as **Exhibit A** is documentation supporting the Post-Petition Claim. This sum includes \$526,780.32 for credits issued to Cardinal for distribution services and \$559,884.41 for rebates, chargebacks and return credits stemming from Cardinal’s purchases from Graceway. This continued relationship was established by a pair of integrated contracts governing the relationship and establishing the fee arrangement between Cardinal and Graceway (which agreements were previously filed under seal as Exhibits E and F to the Lift-Stay Motion).

16. The post-petition relationship between Cardinal and Graceway allowed the Debtors to continue to supply their product to the marketplace, maintaining Graceway’s brand and image during the time that the Debtors sought to sell their assets as a going concern through a 363 sale. Absent Cardinal’s continued distribution and acceptance of returns, Graceway’s

value may have been adversely affected. This damage to Graceway's value would likely have caused potential purchasers of the Debtors' assets to be unwilling to pay the ultimate purchase price obtained by the Debtors in this case. This maintenance of the Debtors' brand and product value, which maximized the going concern value of the enterprise, was an "actual, necessary cost[] and expense[] of preserving the estate".

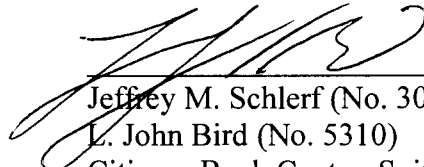
CONCLUSION

WHEREFORE, Cardinal respectfully requests that this Court enter an Order:

- (a) Allowing Cardinal an administrative expense claim for unpaid amounts totaling \$1,086,664.73 to be paid to Cardinal; and,
- (b) Granting such other and further relief as this Court deems fair and just.

Dated: June 8, 2012
Wilmington, Delaware

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