

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Graceway Pharmaceuticals, LLC	:	Chapter 11
Debtor.	:	Case No. 11-13036
	:	(Jointly Administered ¹)
	:	
	:	Judge Peter J. Walsh
	:	
	:	Related to Docket No.1043
		Hearing Date: September 18, 2014 @ 11:00
		Objection Deadline: September 11, 2014

**STATE OF OHIO’S OBJECTION TO MOTION OF LIQUIDATING TRUSTEE
FOR APPROVAL OF SCHEDULE OF UNSECURED CLAIMS**

The Ohio Department of Jobs and Family Services (“**ODJFS**”) and Ohio Department of Taxation (“**ODT**”), (collectively the “**State of Ohio**”) hereby object to *Motion of the Liquidating Trustee for Approval of Schedule of Unsecured Claims* (Doc 1043) (“**Motion**”) as follows:

RELIEF SOUGHT

1. By this response, the State of Ohio seeks to have the Motion overruled as it pertains to Claim 257 and Claim 267 (the “**State of Ohio Claims**”). Further explanation and analysis is provided below.

¹ See, *Order Granting Motion for Joint Administration of Case #11-13036, #11-13037, #11-13038, #11-13039, #11-13041, #11-13042, and #11-13043. The Docket For Case #11-13036 Should Be Consulted For All Matters Affecting This Case. (Related Doc # 4)* (Doc 42, 09.30.2011)

THE MOTION

2. The Motion (or “main document”) is a document consisting of five (5) pages and attached to it are two (2) supporting document, (1) **Exhibit 1 - Proposed Form of Order**, and; (2) **Exhibit 2 - Chart of Unsecured Claims**, in all, comprising an aggregate of twenty (20) pages.
3. The Liquidating Trustee, in the Motion² counsel, moved “. . . *this court for entry of an order determining the claims identified on Exhibit 2, as the Allowed Unsecured Claims, as defined below, upon which the Liquidating Trustee will calculate each holder's pro-rata share of distributions to holders of such claims under the Plan, as defined below*”.
4. In the Proposed Order³, the Liquidating Trustee has proposed that: “*The Claims identified on Exhibit A attached hereto shall be treated as the universe of Allowed Unsecured Claims for the purpose of calculating pro-rata distributions under the Plan*”. Further, the Liquidating Trustee is to retain the right to further object to any of the Claims, “*on any grounds whatsoever*”.
5. In the Chart of Unsecured Claims⁴ the Liquidating Trustee purports to allow the State of Ohio Claims cited therein as follows:

161 & 267	12/23/2011	OHIO DEPARTMENT OF JOB AND FAMILY SERVICES	\$17,547.33
	257 5/22/2012	OHIO DEPARTMENT OF TAXATION	\$0.00

² See, *Motion* (Doc 1043) at page 1

³ See, *Exhibit 1* (Doc 1043-1) at pages 2-3

THE OBJECTION TO THE MOTION

6. The Official Claims Agent is BMC Group, Inc.⁵, and at the website the following information is contained

Claim 257 OHIO DEPARTMENT OF TAXATION

Graceway Pharmaceuticals, LLC 11-13036
5/22/2012 \$1,666.67

Claim 267 OHIO DEPARTMENT OF JOB & FAMILY SERVICES

Graceway Pharmaceuticals, LLC 11-13036
7/9/2012 \$3,364.83

Claim 161 OHIO DEPARTMENT OF JOB & FAMILY SERVICES

Graceway Pharmaceuticals, LLC 11-13036
12/23/2011 \$17,547.33

7. Based on the information available through the claims agent and the Motion, it appears that neither Claim 257 nor Claim 267 will be paid, if the Motion is granted.

Response to the Disallowance

8. First in reviewing the *Claims Objection Order*⁶s (Docs 568, 615, 616, 703 and 914), the first Order (Doc 568) does not dispose of reference any of the State of Ohio Claims listed herein, and the same is true of the Second Order (Doc 615) and the Third Order (Doc 616), as to Order (Doc 703) that is an “*Order Authorizing the Debtors to Enter into an Agreement with CVS*” and, finally, Order (914) is an “*Order Approving Stipulation Between The Liquidating Trustee And The*

⁴ See, *Exhibit 2* (Doc 1043-2) at page 2

⁵ See, *Order Authorizing the Debtors to Retain and Employ BMC Group, Inc.* Doc 43)

⁶ See, *Motion* (Doc 1043), at page 2.

Tennessee Department Of Revenue". Thus, none of the State of Ohio Claims has been previously disallowed.

9. In short, while the Objection seeks to disallow Claim 257 and Claim 267 as late filed, Claim 267 is an administrative tax claim for withholding taxes due pursuant to Ohio Revised Code § 5747.02, et al, for the tax period of January 2012, and Claim 267 is a claim based on an executory contract, and each was filed by governmental agencies but not required by 11 U.S.C. §§ 503 (b)(1)(B) & (D) to be filed to be allowed as an administrative expense claim. Therefore, even if "late filed" they must be allowed as a benefit to the estate.

WHEREFORE, the State of Ohio seeks an order which (i) comports with the foregoing analysis and conclusions regarding the Objection as it pertains to the Claim 257 and Claim 267 (ii) any other relief deemed equitable.

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 9, 2014, a true and accurate copy of the foregoing *Objection to Motion of Liquidating Trustee for Approval of Schedule of Unsecured Liens* was filed via ECF and then true and accurate copies were served as follows:

- (i) via email or ECF upon all those so authorized and;
- (ii) via ordinary US Mail upon the following:

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