

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
GRACEWAY PHARMACEUTICALS, LLC,)	Case No. 11-13036 (PJW)
<i>et al.</i> ¹)	
)	
)	(Jointly Administered)
Debtors.)	
_____)	

**Hearing: November 22, 2011 at 11:00 a.m.
Objection Deadline: November 11, 2011, by 4:00 p.m.**

**CAREMARK ENTITIES’ OBJECTION TO CURE AMOUNTS IN
CONNECTION WITH THE PROPOSED ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS**

Caremark, L.L.C., CaremarkPCS Health, L.L.C., CVS Caremark Part D Services, L.L.C. f/k/a Silverscript, L.L.C., and Pharmacare Management Services, L.L.C. (collectively, the “Caremark Entities”) hereby submit this objection to the cure amounts scheduled by the above-captioned debtors and debtors-in-possession (the “Debtors”) in connection with the proposed assumption and assignment of certain executory contracts to the buyer of certain assets of the Debtors. In support hereof, the Caremark Entities respectfully represent as follows:

BACKGROUND

1. The Caremark Entities are in the business of, among other things, providing certain prescription benefit and formulary management services to large and small businesses

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 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.

across the country. The Caremark Entities are parties to certain Rebate Agreements, dated as of April 1, 2008, with the Debtor (the “Rebate Agreements”).

2. On September 29, 2011, the Debtors filed a motion to sell certain of their assets free and clear of liens, claims, encumbrances and other interests to Galderma S.A., a Switzerland Corporation (“Galderma”), or another higher and better bidder for such assets (the “Sale Motion”). The Sale Motion also requested that this Court approve the assumption and assignment of certain executory contracts to Galderma or another buyer, as applicable.

3. On October 17, 2011, this Court entered an order approving bidding procedures in connection with the Sale Motion (the “Bidding Procedures Order”). The Bidding Procedures Order provides, among other things, that any counterparty to a contract proposed to be assumed and assigned to Galderma (or any other buyer) must file objections, if any, to (a) the proposed assumption and assignment of such contract, or (b) any cure amount listed for such contract, on or before 4:00 p.m. on November 11, 2011.

4. On October 20, 2011, the Debtors filed their Notice of (I) Cure Amounts With Respect to Executory Contracts to be Assumed and Assigned and (II) Potential Assumption and Assignment of Executory Contracts [Docket No. 141], and then on October 21, 2011 filed an Amended Notice thereof [Docket No. 148] (together, the “Cure Notice”). Exhibit 1 to the Cure Notice contains a list of executory contracts that the Debtors potentially intend to assume and assign to Galderma. Exhibit 1 also lists the “cure amount” under each executory contract to be assumed and assigned to Galderma.

5. Exhibit 1 designates the Debtor’s Rebate Agreements with the Caremark Entities as contracts proposed to be assumed and assigned to Galderma. Exhibit 1 also lists the following cure amounts in connection with the Rebate Agreements:

	Contract Counter Party	Contract Description	Contract ID	Cure Amount
80	CAREMARK ²	Managed Care Rebate Agreement	100	\$0.00
81	CAREMARK PCS ³	Managed Care Rebate Agreement	104	\$44,478.91
111	CVS CAREMARK PART D SVCS, LLC (S SCRIPT) ⁴	Managed Care Rebate Agreement	121	\$47,723.66
Total Cure Listed Under Rebate Agreements				\$92,202.57

OBJECTION

6. The Caremark Entities do not object to the Sale Motion or the proposed assumption and assignment of the Rebate Agreements to Galderma.⁵ The Caremark Entities, however, object to the cure amounts for the Rebate Agreements listed on Exhibit 1 to the Cure Notice.

7. The actual pre-petition cure amounts owed by the Debtors under the Rebate Agreements are as follows:

Caremark Entity	Actual Cure Amount
Caremark, L.L.C.	\$2,348.52
CaremarkPCS Health, L.L.C.	\$56,256.98
CVS Caremark Part D Services, L.L.C. f/k/a Silverscript, L.L.C	\$61,510.58
Total Cure Owed Under Rebate Agreements	\$120,116.08

² Although this entity is identified on Exhibit 1 of the Cure Notice only as "CAREMARK," the Caremark Entities assume that the Debtors intended to identify Caremark, L.L.C. as the counter party to this Rebate Agreement.

³ The Caremark Entities assume that the counter party identified on Exhibit 1 of the Cure Notice as "CAREMARK PCS" is in fact CaremarkPCS Health, L.L.C.

⁴ The Caremark Entities assume that the counter party identified on Exhibit 1 of the Cure Notice as "CVS CAREMARK PART D SVCS, LLC (S SCRIPT)" is in fact CVS Caremark Part D Services, L.L.C. f/k/a Silverscript, L.L.C.

⁵ The Caremark Entities reserve their rights to object to the assignment of the Rebate Agreements to a buyer of the Debtors' assets other than Galderma.

8. Additional detail on the cure amounts owed, including identification of the Debtors' outstanding invoices, contains confidential pricing information of the Caremark Entities. The Caremark Entities, however, provided this information to the Debtors in order to allow them to conduct additional analysis on the cure amounts owed.⁶ The Caremark Entities intend to work with the Debtors to attempt to resolve any dispute over cure amounts prior to any contested hearing on this issue.

9. The Caremark Entities also object to the omission from the list of potentially assumed contracts on Exhibit 1 of that certain agreement between the Debtors and Caremark, L.L.C., CaremarkPCS Health, L.L.C., and Pharmacare Management Services, L.L.C. known as the PBM Standard Terms and Conditions agreement. The PBM Standard Terms and Conditions agreement is a related, governing agreement to the Rebate Agreements with Caremark, L.L.C. and CaremarkPCS Health, L.L.C., and those Rebate Agreements cannot be assumed and assigned without a concurrent assumption and assignment of the PBM Standard Terms and Conditions agreement. No specific cure amount is owed under the PBM Standard Terms and Conditions agreement.

10. Exhibit 1 to the Cure Notice also lists a purported contract with CVS Caremark identified as follows:

	Contract Counter Party	Contract Description	Contract ID	Cure Amount
110	CVS CAREMARK	Prescription Drug Care for Employees	730	\$0.00

11. The Caremark Entities do not believe that such an agreement exists between the Debtors and any of the Caremark Entities or their affiliates. The only agreement related to

⁶ In the event that this matter proceeds to a contested hearing on cure amounts, the Caremark Entities intend to file a motion requesting that this Court authorize the filing of any additional information on cure amounts under seal.

providing prescription benefit services for employees of the Debtors of which the Caremark Entities are aware is an agreement between CaremarkPCS Health, L.L.C. and Blue Cross/Blue Shield of Tennessee (“BCBST”). The Debtors are customers of BCBST, and ultimately receive prescription benefit services provided by CaremarkPCS Health, L.L.C. through BCBST in connection with that agreement. However, CaremarkPCS Health, L.L.C.’s agreement is solely with BCBST, and there is no contractual privity between the Debtors and any Caremark Entity in connection with that agreement. The Caremark Entities object to the Cure Notice to the extent that it seeks to assume or create a contractual relationship between the Debtors and any Caremark Entity where none exists.

