

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

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

: **Related to Dkt. Nos. 12, 141, 148**

**OBJECTION OF 3M COMPANY TO THE AMENDED NOTICE OF (I) CURE
AMOUNT WITH RESPECT TO EXECUTORY CONTRACTS TO BE ASSUMED AND
ASSIGNED AND (II) POTENTIAL ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS (DKT. NO. 148)**

3M Company (“3M”), through its undersigned counsel, files this objection (the “Objection”) to the Amended Notice of (I) Cure Amount with Respect to Executory Contracts to be Assumed and Assigned and (II) Potential Assumption and Assignment of Executory Contracts (the “Amended Cure Notice”)(Docket No. 148, 10/21/11) filed by the above-captioned debtors and debtors in possession (the “Debtors”). In support of this Objection, 3M states as follows:

Background

1. 3M and certain of its affiliates have had extensive on-going relationships with the Debtors, Graceway Pharmaceuticals, LLC *et al.* In December 2006, the Debtors entered into a Supply Agreement with 3M for the manufacturing and selling of certain pharmaceutical products (the “Supply Agreement”).

2. The Supply Agreement applies to certain transactions between the Debtors and 3M Innovation Singapore Pte. Ltd. (“3M Singapore”), as well as transactions with 3M Company. 3M Singapore is filing a separate cure objection.

3. The Supply Agreement provides for summary monthly invoices, to be paid within thirty (30) days of invoice.

4. As of the Petition Date (defined below), the correct amount owed by the Debtors to 3M based upon outstanding invoices under the Supply Agreement was **\$5,184,976.72**, net of obligations of \$351,159.17 owed to 3M Singapore.

5. On September 29, 2011 (the “Petition Date”), the Debtors each filed petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

6. On October 20, 2011, the Debtors served the Cure Notice (Dkt. No. 141) and thereafter, on October 21, 2011, the Debtors served their Amended Cure Notice (Dkt. No. 148). The Amended Cure Notice lists executory contracts and unexpired leases which the Debtors may seek to assume and assign in a proposed sale transaction. The Amended Cure Notice lists the following contracts with 3M (the “3M Executory Contracts”) and proposed cure amounts:

<u>Contract Description</u>	<u>Cure Amount</u>
Acquisition Agreement	\$0.00
Acquisition Agreement (Venezuela)	\$0.00
Aldara Product Improvement Master Services agreement	\$31,962.17
Amendment to Cooperation Agreement	\$0.00
Assignment and Assumption Agreement	\$0.00
Cooperation Agreement	\$0.00
Dose by Dose Letter Agreement	\$0.00
First Amendment to the Acquisition Agreement	\$0.00
Letter Agreement re Finance Responsibilities	\$0.00
Pirbuteral Inhalation Product Co-Development Agreement	\$0.00
Quality Agreement	\$0.00
Second Amendment to the Acquisition Agreement	\$0.00
Settlement Agreement	\$0.00
Supply Agreement	\$1,153,965.03
Equipment Acquisition and Installation Letter Agreement	\$0.00
Intellectual Property License Agreement	\$0.00
Technology, Access, Development Option and License Agreement	\$8,902,800.00

7. 3M agrees with the asserted cure amount of \$31,962.17 under the “Aldara Product Improvement Master Services Agreement”.

8. 3M Innovative Properties Company, a 3M Company affiliate, agrees with the asserted cure amount of \$8,902,800.00 under the “Technology, Access, Development Option and License Agreement”.¹

The Objection

9. 3M objects to the Amended Cure Notice because the cure amount listed for the Supply Agreement, \$1,153,965.03, is incorrect and does not provide for payment of aggregate pre-petition and post-petition amounts due and owing to 3M pursuant to the Supply Agreement.

Basis for Objection

10. Section 365(b) of the Bankruptcy Code requires a debtor to cure any defaults and provide adequate assurance of future performance before an executory contract can be assumed. 11 U.S.C. § 365(b). The Debtors have identified the 3M Executory Contracts, including the Supply Agreement, as potential executory contracts that may be assumed and assigned to the successful bidder/purchaser under the asset sale transaction presently pending before this Court (Dkt. No. 12).

11. The Debtors owe 3M the amount of **\$5,184,976.72**, net of the \$351,159.17 owed to 3M Singapore, for outstanding pre-petition invoices under the Supply Agreement, which potentially may be assumed and assigned. These charges are reflected in detail in the 3M Company proof of claim, a true and correct copy of which is attached hereto as Exhibit A, and incorporated by reference as if set forth in full herein. To the extent that the Debtors propose to assume and assign the Supply Agreement, 3M objects unless all pre-petition amounts shown on

¹ 3M Innovative Properties Company and 3M Company are by contract co-obligees of this debt.

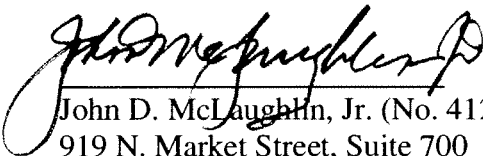
Exhibit A as due and owing, and any post-petition amounts that are unpaid, are paid in full to 3M as of the date of assumption.

12. 3M reserves all rights to amend or supplement this Objection and to object on any other basis to the assumption and assignment of any executory contracts or unexpired leases to which 3M is a party.

WHEREFORE, 3M Company objects to the proposed Supply Agreement Cure Amount and prays that this Court condition the assumption and/or assignment of the Supply Agreement on the payment in full of all outstanding amounts, and for such other relief as this Court may deem to be proper.

Dated: November 11, 2011
Wilmington, Delaware

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