

**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

Response Deadline: February 29, 2012 at 4:00 p.m. (ET)
Hearing Date: March 16, 2012 at 9:30 a.m. (ET)

**DEBTORS' THIRD OMNIBUS (SUBSTANTIVE) OBJECTION
TO CLAIMS PURSUANT TO § 502(b) OF THE BANKRUPTCY CODE,
BANKRUPTCY RULE 3007, AND LOCAL RULE 3007-1**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby file this omnibus objection (the “**Objection**”) to certain claims (collectively, the “**Disputed Claims**”) filed against the Debtors, and listed on Exhibits A through D to the proposed form of order (the “**Proposed Order**”), attached hereto as Exhibit I, pursuant to Section 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), and respectfully request entry of an order in substantially the same form as the Proposed Order. The Disputed Claims set forth on Exhibit A to the Proposed Order are claims for which a duplicate claim was filed against another debtor. The Disputed Claims set forth on Exhibit B to

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.

the Proposed Order are claims the Debtors believe should be disallowed because they are not reflected on the Debtors' books and records. The Disputed Claims set forth on Exhibit C to the Proposed Order are claims the Debtors believe should be reduced. Finally, the Disputed Claims set forth on Exhibit D to the Proposed Order are claims for which the Debtors believe the priority status should be modified. In support of this Objection, the Debtors rely on the *Declaration of Thomas E. Hill in Support of the Debtors' Third Omnibus (Substantive) Objection to Claims Pursuant to § 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1*, attached hereto as Exhibit II. In further support of this Objection, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal bases for the relief requested herein are Section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

BACKGROUND

3. On September 29, 2011, each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On September 30, 2011, the Court entered an order consolidating these Chapter 11 Cases for procedural purposes only [Docket No. 42]. On October 11, 2011, the Office of the United States Trustee appointed an

official committee of unsecured Creditors pursuant to Section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”) [Docket No. 90].

4. Pursuant to an order of the Court entered on September 30, 2011 [Docket No. 43], the Debtors retained BMC Group, Inc. as its notice, claims and balloting agent (the “**Voting and Claims Agent**”). The Voting and Claims Agent is authorized to maintain (i) all proofs of claims filed against the Debtors and (ii) an official claims register by docketing all proofs of claims in a claims database containing, *inter alia*, information regarding the name and address of each claimant, the date the proof of claim was received by the Voting and Claims Agent, the claim number assigned to the proof of claim, and the asserted amount and classification of the claim.

5. On October 17, 2011, this Court entered the *Order Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 126] (the “**Bar Date Order**”), which established that any person or entity (excluding any governmental unit, as defined in Section 101(27) of the Bankruptcy Code), asserting a claim against the Debtors in these Chapter 11 Cases must file a proof of claim so that it is received by the Voting and Claims Agent on or before 4:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the Debtors’ filed their schedules of assets and liabilities and statements of financial affairs (the “**Schedules and Statements**”).

6. The Debtors filed their Schedules and Statements on October 31, 2011. Accordingly, December 30, 2011 at 4:00 p.m. (prevailing Eastern Time) was the deadline for filing proofs of claims against the Debtors (the “**Bar Date**”), other than claims of governmental units and administrative expense claims. Further, the Bar Date Order established that all governmental units asserting claims against one or more of the Debtors must file proofs of

claims so that they are received by the Voting and Claims Agent on or before March 27, 2012 at 4:00 p.m. (prevailing Eastern Time).

7. Notice of the Bar Date was mailed to all known creditors on November 1, 2011. See Affidavit of Service filed by the Voting and Claims Agent on November 8, 2011 [Docket No. 230]. In addition, on November 7, 2011, the Debtors published notice of the Bar Date in The Wall Street Journal (national edition). See Affidavit of Publication of Albert Fox in the Wall Street Journal filed on January 11, 2012.

8. The Debtors have since sold substantially all of their assets pursuant to Section 363 of the Bankruptcy Code and have filed a plan of liquidation. In an effort to clean up the official claims register and leave the liquidating trustee in a good position to begin making distributions in accordance with and as contemplated by the plan if the plan is confirmed on April 11, 2012, the Debtors and their professionals have been reviewing, analyzing and resolving claims on an ongoing basis. To date approximately 220 proofs of claims (each individually a “**Proof of Claim**”) have been asserted in the Chapter 11 Cases.

RELIEF REQUESTED

A. **Cross-Debtor Duplicate Claims**

9. The claimants asserting the claims identified on Exhibit A to the Proposed Order (the “**Cross-Debtor Duplicate Claims**”) asserted duplicate claims against multiple debtors. After reconciling the Cross-Debtor Duplicate Claims against their books and records, the Debtors have determined that the claimants asserting the claims identified on Exhibit A to the Proposed Order, in all likelihood, inadvertently filed multiple claims against multiple debtors. In an effort to maintain an accurate claims register, the Debtors seek to disallow those duplicate claims filed against the inappropriate debtor(s), while preserving the claim filed against the

proper debtor. Accordingly, one of the claims filed by the claimants asserting the Cross-Debtor Duplicate Claims will remain on the claims register as indicated on Exhibit A to the Proposed Order.

10. Therefore, the Debtors object to the allowance of each of the Cross-Debtor Duplicate Claims included on Exhibit A to the Proposed Order and request that such Cross-Debtor Duplicate Claims under the column titled "Claims to Be Disallowed" be disallowed in their entirety. If the Debtors' objection to the Cross-Debtor Duplicate Claims is sustained, the claims listed on Exhibit A to the Proposed Order under the column titled "Remaining Claims" will remain on the official claims register, subject to the Debtors' right to object on any grounds that bankruptcy or nonbankruptcy law permits.

B. No Liability Claims

11. After reviewing each of the Disputed Claims and their supporting materials, as well as the Debtors' books and records which the Debtors believe to be accurate, the Debtors have determined that they are not liable with respect to the claims identified on Exhibit B to the Proposed Order (the "**No Liability Claims**"). The primary basis for the Debtors' objection to each of the No Liability Claims, respectively, is further explained in the column titled "Reason for Proposed Disallowance" on Exhibit B to the Proposed Order. These reasons include that the claimant stated the claimant had no claim and that the liability is included in a Proof of Claim filed by another claimant to whom the liability is actually owed.

12. Accordingly, the Debtors request that the No Liability Claims be disallowed. Failure to disallow the No Liability Claims would result in the applicable claimants receiving an unwarranted recovery against the Debtors' estates, to the detriment of creditors holding valid claims in these cases.

C. Modified Amount Claims

13. The Debtors have reconciled the claims identified on Exhibit C to the Proposed Order (the “**Modified Amount Claims**”) against their books and records. The claimants asserting the Modified Amount Claims asserted an amount that was either higher or lower than the amount of liability reflected in the Debtors’ books and records.

14. Accordingly, the Debtors request that the Modified Amount Claims identified under the column titled “Claim No.” on Exhibit C to the Proposed Order be modified by either reducing them or otherwise fixing them to the dollar values listed under the column titled “Modified Amount” on Exhibit C to the Proposed Order. The Debtors believe Exhibit C to the Proposed Order contains the appropriate amounts of liability for each of the Modified Amount Claims, respectively.

D. Modified Priority Claims

15. The claimants asserting the claims identified on Exhibit D to the Proposed Order (the “**Modified Priority Claims**”) asserted that their claims are entitled to a priority or administrative status, as indicated in the column titled “Asserted Priority Status” on Exhibit D to the Proposed Order. After reconciling the Modified Priority Claims against their books and records, the Debtors have determined that the priority level of the Modified Priority Claims should be adjusted. For each of the Modified Priority Claims, no basis for priority or administrative status exists under Sections 506 or 507 of the Bankruptcy Code.

16. Accordingly, the Debtors request that the Modified Priority Claims be modified as indicated in the column titled “Modified Priority Status” on Exhibit D to the Proposed Order. The Modified Priority Claims include the proper priority in the column titled “Modified Priority Status” on Exhibit D to the Proposed Order.

APPLICABLE AUTHORITY

17. Section 502(b) of the Bankruptcy Code provides in pertinent part that:

the court, after notice and a hearing, shall determine the amount of [a] claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that . . . such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.

11 U.S.C. § 502(b)(1).

18. The Debtors believe the Disputed Claims noted above are unenforceable against the Debtors for the reasons set forth above. Therefore, pursuant to Sections 502(b)(1) of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, the Debtors respectfully request that the Court enter an order disallowing the Cross-Debtor Duplicate Claims and No Liability Claims, fixing the value of the Modified Amount Claims, and modifying the priority of the Modified Priority Claims.

RESPONSES TO THE OBJECTION

19. Filing and Service of Responses: To contest the Objection, a claimant must file and serve a written response to the Objection (a “**Response**”) so that it is actually received by the Clerk of the Court and the parties in the following paragraph no later than 4:00 p.m. (ET) on February 29, 2012 (the “**Response Deadline**”). Claimants should locate their names and claims in this Objection, and carefully review the Proposed Order and the exhibits attached thereto. A Response must address each ground upon which the Debtors object to a particular claim. A hearing to consider the Debtors’ Objection shall be held on March 16, 2012 at 9:30 a.m. (ET), before the Honorable Peter J. Walsh, United States Bankruptcy Judge, at the United States Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801 (the “**Hearing**”).

20. In addition, every Response must be served upon the following entities at the following addresses: (a) Office of the Clerk of the United States Bankruptcy Court; (b) Young Conaway Stargatt & Taylor, LLP, Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq., Rodney Square, 1000 North King Street, Wilmington, Delaware 19801; and (c) Latham & Watkins LLP, Attn: Josef S. Athanas, Esq. and Matthew L. Warren, Esq., 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606.

21. Content of Responses: Every Response to the Objection must contain, at a minimum, the following:

- (a) a caption setting forth the name of the Bankruptcy Court, the above-referenced case number and the title of the Objection to which the Response is directed; the name of the claimant and description of the basis for the amount of the claim;
- (b) a concise statement setting forth the reasons why a particular claim should not be disallowed for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Objection at the Hearing;
- (c) all documentation or other evidence of the claim in question, to the extent not already included with the claimant's Proof of Claim, upon which the claimant will rely in opposing the Objection at the Hearing;
- (d) the name, address, telephone number, and fax number of the person(s) (who may be the claimant or a legal representative thereof) possessing ultimate authority to reconcile, settle, or otherwise resolve the claim on behalf of the claimant; and
- (e) the name, address, telephone number, and fax number of the person(s) (who may be the claimant or a legal representative thereof) to whom the Debtors should serve any reply to the Response.

22. Timely Response Required; Hearing; Replies: If a Response is properly and timely filed and served in accordance with the above procedures, the Debtors will endeavor to reach a consensual resolution with the claimant. If no consensual resolution is reached, the

Court will conduct a hearing with respect to the Objection and the Response at the Hearing on March 16, 2012, at 9:30 a.m. (ET), or such other date and time as parties filing responses may be notified. Only those Responses made in writing and timely filed and received will be considered by the Court at any such hearing.

23. Adjournment of Hearing: The Debtors reserve the right to adjourn the Hearing on any claim included in this Objection. In the event that the Debtors so adjourn the Hearing, they will state that the Hearing on that particular claim referenced in this Objection, and/or Response, has been adjourned on the agenda for the Hearing on this Objection, which agenda will be served on the person designated by the claimants in a Response pursuant to paragraphs 20 and 21(e) above.

24. If a claimant whose claim is subject to the Objection, and who is served with the Objection, fails to file and serve a timely Response in compliance with the foregoing procedures, the Debtors will present to the Court an appropriate order disallowing the Disputed Claim without further notice to the claimant.

25. Separate Contested Matter: Each of the Disputed Claims and the Debtors' objections thereto, as asserted in this Objection, constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. The Debtors request that any order entered by the Court with respect to an objection asserted herein shall be deemed a separate order with respect to each such Disputed Claim.

RESERVATION OF RIGHTS

26. The Debtors expressly reserve the right to amend, modify or supplement this Objection and to file additional objections to any Proofs of Claims filed in these Chapter 11 Cases including, without limitation, objections as to the liability, amount or priority of any

claims listed on Exhibits A through D to the Proposed Order. Should one or more of the grounds for this Objection be dismissed or overruled, the Debtors reserve the right to object to any Disputed Claim listed on Exhibits A through D to the Proposed Order on any other ground.

STATEMENT OF COMPLIANCE WITH LOCAL BANKRUPTCY RULE 3007-1

27. The undersigned representative of Young Conaway Stargatt & Taylor, LLP has reviewed the requirements of Local Rule 3007-1 and certifies that the Objection substantially complies with that Local Rule. To the extent that the Objection does not comply in all respects with the requirements of Local Rule 3007-1, the Debtors believe such deviations are not material and respectfully request that any such requirement be waived.

FURTHER INFORMATION

28. Questions about or requests for additional information about this Objection should be directed to the Debtors' counsel in writing at the following address: Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606 (Attn: Matthew L. Warren, Esq.) or by telephone at (312) 777-7031 or by e-mail at matthew.warren@lw.com.

29. Claimants should not contact the Clerk of the Court to discuss the merits of their Proofs of Claims or this Objection.

NOTICE

30. The Debtors have provided notice of this Objection to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors' first lien facility; (c) special restructuring and bankruptcy counsel to the administrative agent for the lenders under the Debtors' first lien facility; (d) counsel to the administrative agent for the lenders under the Debtors' second lien facility; (e) the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f)

counsel to the Creditors' Committee; (g) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (h) the Food and Drug Administration; (i) the Internal Revenue Service; (j) the U.S. Public Health Service; (k) the Centers for Medicare and Medicaid Services; (l) counsel to, receiver for, and counsel to the receiver for Graceway Canada Company (m) the claimants listed on Exhibits A through D to the Proposed Order attached hereto as Exhibit I; and (n) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

31. A copy of this Objection is available on the Court's website: www.deb.uscourts.gov. Additional copies are available for free on the website of the Voting and Claims Agent at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1 (310) 321-5555 if calling from outside the United States.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit I: (a) granting the relief requested herein; and (b) granting to the Debtors such other and further relief as the Court may deem just and proper.

Dated: February 15, 2012
Wilmington, Delaware

Respectfully Submitted,



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