

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

In re

Graceway Pharmaceuticals, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 11-13036 (PJW)  
(Jointly Administered)

**Hearing Date: March 1, 2012 at 11 a.m.**

**Objections Due: February 23, 2012 at 4 p.m.,  
extended for the U.S. Trustee to February 24,  
2012 at 5 p.m.**

**UNITED STATES TRUSTEE'S LIMITED OBJECTION TO THE MOTION OF THE  
DEBTORS FOR ENTRY OF AN ORDER (A) APPROVING THE DISCLOSURE  
STATEMENT, (B) ESTABLISHING THE VOTING DEADLINE AND OTHER DATES,  
(C) APPROVING PROCEDURES FOR SOLICITING, RECEIVING AND  
TABULATING VOTES ON THE PLAN AND FOR FILING OBJECTIONS  
TO THE PLAN AND (D) APPROVING THE MANNER AND FORMS  
OF NOTICES AND OTHER RELATED DOCUMENTS**

Roberta A. DeAngelis, the United States Trustee for Region 3 ("U.S. Trustee"), by and through her undersigned attorneys, hereby files this Limited Objection to the Motion of the Debtors for Entry of an Order (A) Approving The Disclosure Statement, (B) Establishing The Voting Deadline And Other Dates, (C) Approving Procedures For Soliciting, Receiving And Tabulating Votes On The Plan And For Filing Objections To The Plan And (D) Approving The Manner And Forms Of Notices And Other Related Documents (Docket No. 485) (the "Motion"), and in support of that limited objection states as follows:

**JURISDICTION**

1. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and (iii) 28

U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Motion and this objection.

2. Under 28 U.S.C. § 586, the U.S. Trustee is generally charged with monitoring the federal bankruptcy system. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has “public interest standing” under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6<sup>th</sup> Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on the Motion and the issues raised in this objection.

### **BACKGROUND**

4. On September 29, 2011 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have been in possession of their respective properties and operating their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On October 11, 2011, the U. S. Trustee appointed the Official Committee of Unsecured Creditors.

6. On January 25, 2012, the Debtors filed their Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al. (the “Plan”) and (ii) Disclosure Statement for the Plan (the “Disclosure Statement”), and the Motion.

7. The Debtors submitted, with the Motion, a proposed order to approve the Disclosure Statement that includes a provision that states: “In the event that no votes to accept or reject the Plan are received with respect to a particular Class, such Class shall be deemed to have voted to accept the Plan.” *See Motion*, ¶ 41.

## ARGUMENT

8. The relief the Debtors seek is contrary to the provisions of the Bankruptcy Code regarding acceptance of a plan. 11 U.S.C. § 1126(c) provides as follows:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

9. Section 1126 of the Bankruptcy Code includes a provision for deemed acceptance of a plan by a class, but only if that class is *not impaired* under the plan. See 11 U.S.C. § 1126(f).

10. Here, however, the Debtors seek to have the Court rule that an *impaired* class will be deemed to have accepted the Plan if no one in that class votes for the plan. Such relief is contrary to the express provisions of section 1126 of the Bankruptcy Code regarding acceptance of a plan.

11. In addition, the determination as to whether a class has voted to accept or reject the Plan is a plan confirmation issue, and is not appropriately addressed at the Disclosure Statement stage. What the Debtors seek here is an advisory opinion as to how the Court may rule if a situation arises in which no one in a particular class votes for the Plan. There are only three classes designated as impaired and entitled to vote under the Plan: Class 2 (First Lien Facility Claims); Class 3 (Second Lien Facility Claims), and Class 5 (General Unsecured Claims). It is unlikely that the First and Second Lien Facility claimants will not vote. It is also unlikely that none of the General Unsecured Creditors will vote. There is therefore no

reason why the Court should provide an advisory opinion as to how a class will be treated under this unlikely fact scenario.

**RESERVATION OF RIGHTS**

12. There were a number of other issues raised by counsel for the U.S. Trustee with counsel for the Debtors concerning the Motion and the Disclosure Statement. Counsel for the U.S. Trustee believes that all such other issues have been consensually resolved by way of modifications that will be made to the Disclosure Statement, the proposed order, notices and ballots. However, the U.S. Trustee reserves the right to raise any such issues with the Court to the extent that such modifications are not made, or do not adequately address the U.S. Trustee's issues.

13. The U.S. Trustee reserves and all rights, remedies and obligations to, *inter alia*, complement, supplement, augment, alter, substitute and/or modify this objection and to conduct any and all discovery as may be deemed necessary or as may be required, and to assert such other grounds as may become apparent.

WHEREFORE, the U.S. Trustee requests that this Court (i) deny the Motion to the degree it seeks the Court to order that, in the event that no votes to accept or reject the Plan are received with respect to a particular Class, such Class shall be deemed to have voted to accept the Plan, and (ii) granting such other or further relief as this Court deems appropriate, fair and just.

Dated: February 24, 2012  
Wilmington, Delaware

Respectfully submitted,

**ROBERTA A. DeANGELIS**  
**UNITED STATES TRUSTEE**

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