

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

In Re: ) Chapter 11  
 )  
Graceway Pharmaceuticals, LLC ) Case No. 11 - 13036 (PJW)  
 )  
Debtor. )

**MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSES  
OF THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES**

NOW COMES the Illinois Department of Healthcare and Family Services, a creditor, by Lisa Madigan, Attorney General of the State of Illinois, its attorney, and moves this court for an order granting payment of the administrative expenses owed to the Illinois Department of Healthcare and Family Services by such debtor and in support of this motion states the following:

**Basis for the Claim**

1. The debtor, Graceway Pharmaceuticals, LLC., filed its petition for bankruptcy on September 29, 2011.
2. After September 29, 2011, the debtor, a pharmaceutical manufacturer, continued to sell certain prescription drugs authorized for payment by Medicaid pursuant to a contract with the U.S. Department of Health and Human Services (“DHHS”), signed January 9, 2007, in exchange for rebates paid by debtor to the Illinois Department of Healthcare and Family Services for debtor’s prescription drugs sold to Illinois Medicaid patients. The contract is attached hereto as Exhibit 1.
3. After filing its petition, debtor continued to operate under the contract until debtor rejected the contract on December 31, 2011.

4. The Illinois Department of Healthcare and Family Services paid valuable consideration in the form of payments to third-party pharmacies on behalf of Medicaid patients receiving prescription drugs manufactured by debtor.

5. The debtor-in-possession benefitted from this contract by continuing to sell its prescription drugs to Illinois Medicaid recipients.

6. The administrative claim of the Illinois Department of Healthcare and Family Services is entitled to priority pursuant to Section 503 of the United States Bankruptcy Code because the liability arose while the debtor was in possession and the expense benefitted such debtor in the operation of its business. 11 U.S.C. § 503. See also *In re Goody's Family Clothing Inc.*, 610 F.3d 812, 818 (3d Cir. 2010), *aff'd*, 401 B.R. 656 (D. Del. 2009); *In re Mammoth Mart, Inc.*, 536 F.2d 950, 954 (1st Cir. 1976).

#### **Amount of the Claim**

7. The obligation of the Department of Healthcare and Family Services to pay the pharmacy accrues on the date of sale by the pharmacy.

8. However, the amount of the rebate due from debtor is determined by the date the Department of Healthcare and Family Services actually makes payment to the pharmacy.

9. For sales which accrued between September 29, 2011 to December 31, 2011, the Department of Healthcare and Family Services paid the pharmacies in the First Quarter of 2012.

10. The amount of the rebate is calculated based on the Average Manufacturer Price.

11. The contract between debtor and U.S. DHHS requires debtor to inform the Secretary of Health and Human Services of the Average Manufacturer Price within 30 days of the last day of each quarter. See Exhibit A, Part II, Section (e).

12. Debtor has failed to inform the Secretary of the Average Manufacturer Price for the First Quarter of 2012. Thus, the Illinois Department of Healthcare and Family Services cannot calculate the actual amount of its claim for administrative expenses for sales from September 29, 2011 to December 31, 2011, paid in the First Quarter of 2012.

13. The Illinois Department of Healthcare and Family Services has estimated the amount of the rebates due from debtor, and paid by the Department in the First Quarter of 2012 to be Twelve Thousand One Hundred and Seventy-Four dollars and fifty-seven cents (\$12,174.57) based on the Average Manufacturer Price from the Fourth Quarter of 2011. A schedule of the estimated amount due is attached hereto as Exhibit B.

14. Upon receipt of the Average Manufacturer Price for the First Quarter of 2012, the Illinois Department of Healthcare and Family Services will amend the amount of its claim accordingly.

WHEREFORE, the Illinois Department of Healthcare and Family Services requests that its claim for administrative expenses be paid as a priority for the rebates due from debtor in an amount to be determined.

Respectfully submitted,

ILLINOIS DEPARTMENT OF HEALTHCARE  
AND FAMILY SERVICES

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/s/ Jennifer Kieffer

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