

Declaration of  
Cynthia Tudor

**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

(Jointly Administered)

**DECLARATION OF CYNTHIA TUDOR**

1. I, Cynthia Tudor, am employed by the Centers for Medicare and Medicaid Services (CMS) and have been employed with CMS since December 1992. Currently, I am the Director of the Medicare Drug Benefit and C & D Data Group, a position I have held for five years. As Director of the Medicare Drug Benefit and C & D Data Group, I am responsible for the day-to-day operations of the Medicare Part D program.
2. On September 29, 2011, Graceway Pharmaceuticals filed for bankruptcy under Chapter 11 of the Bankruptcy Code.
3. Graceway has a postpetition debt to the United States of America totaling \$228,648.85. The source of that debt is explained below.
4. On August 19, 2010, Graceway Pharmaceuticals, LLC (Graceway) and the Secretary of Health and Human Services (Secretary) entered into the Medicare Coverage Gap Discount Program Agreement (MCGDPA). The MCGDPA was established under 42 U.S.C. §§ 1395w-114A, 1395w-153. To have its pharmaceuticals covered under Medicare Part D, Graceway was required to enter into a MCGDPA with the Secretary. See 42 U.S.C. § 1395w-153(a)(1). Exhibit 1 is a true and correct copy of the MCGDPA between Graceway and the Secretary. Graceway rejected this executory contract effective December 31, 2011.
5. Under the MCGDPA, Graceway agreed to reimburse certain discounts provided to Medicare Part D beneficiaries under certain conditions within thirty-eight days (38) days of being invoiced.
6. Under the MCGDPA, Medicare beneficiaries in the Part D coverage gap receive a 50 percent discount for the cost of applicable Part D covered drugs at the point of sale (e.g., the pharmacy where the beneficiary purchased the drug). Exhibit 1 at I(b) & II(a). This purchase is recorded as the "prescription drug event" or PDE.
7. The Medicare Part D plan sponsors (Plan Sponsors) provide information about the discounts to a CMS contractor, which collates information from all Plan Sponsors on a

quarterly basis. It then invoices each drug manufacturer for discounts provided to Medicare beneficiaries for the discounts provided by all Plan Sponsors.

As of June 1, 2012, the CMS contractor has invoiced Graceway for \$213,837.78 for PDEs that occurred on or after September 29, 2011, but before January 1, 2012, and that Graceway has yet to pay. Exhibit 2, Worksheets 3 & 4 provide details of information contained in records made contemporaneously and kept in the ordinary course of CMS's business about the discounts provided for qualifying PDEs involving Graceway that occurred on or after September 29, 2011, and before January 1, 2012.

8. Based on records made contemporaneously and kept in the ordinary course of CMS's business, a number of discounts provided for qualifying PDEs that occurred on or after September 29, 2011, but before January 1, 2012, and involved Graceway drugs covered by the MCGDPA have yet to be invoiced. As of June 1, 2012, the current outstanding amount for these qualifying PDEs is \$14,811.07. Exhibit 2, Worksheet 2 details these PDEs as of June 1, 2012.
9. Part D sponsors may continue to submit PDEs with gap discount amounts for 2011 dates of service following the end of the 2011 benefit year. Graceway agreed to reimburse all applicable discounts invoiced to Graceway within a maximum of three (3) years of the date of dispensing based upon PDE information. See section II(a) of the MCGDPA.
10. Part D Sponsors generally submit PDE information promptly, in order to receive prompt payment from the drug manufacturers. However, the additional period for providing information permits Plan Sponsors to be reimbursed for discounts provided later in the process, *e.g.*, upon learning that the Plan Sponsor is the primary payer for the drugs, rather than another insurer.
11. Therefore, the full amount due from Graceway for postpetition PDEs will not be known until February 1, 2015.
12. This claim reflects the estimated liability of Graceway to CMS. This amount is likely to change when additional PDEs are reported. The United States reserves the right to assert subsequently discovered liabilities.

Pursuant to 28 U.S.C. § 1746(2), I declare, under penalty of perjury, that the foregoing is true and correct. Executed on this the 7th day of June, 2012.



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Cynthia Tudor  
Director, Medicare Drug Benefit and C&D Data Gp  
Centers for Medicare & Medicaid Services