

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

AKORN, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11177 (KBO)

Jointly Administered

Re: Docket No. 18

Hearing Date: September 1, 2020 at 10:00 a.m.  
Objection Deadline: Extended to August 28, 2020 at  
12:00 p.m.

**OBJECTION OF THE CHUBB COMPANIES WITH RESPECT TO (I) THE DEBTORS' MOTION SEEKING ENTRY OF AN ORDER (A) AUTHORIZING AND APPROVING BIDDING PROCEDURES, (B) SCHEDULING AN AUCTION AND A SALE HEARING, (C) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) ESTABLISHING NOTICE AND PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND LEASES, AND (E) GRANTING RELATED RELIEF AND (II) NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

ACE American Insurance Company, Westchester Fire Insurance Company, Illinois Union Insurance Company, Federal Insurance Company, Chubb Custom Insurance Company and any of their U.S.-based affiliates and successors (collectively, the "Chubb Companies"), by and through their undersigned counsel, hereby file this Objection (the "Objection") with respect to (I) the *Debtors' Motion Seeking Entry Of An Order (A) Authorizing And Approving Bidding Procedures, (B) Scheduling An Auction And A Sale Hearing, (C) Approving The Form And Manner Of Notice Thereof, (D) Establishing Notice And Procedures For The Assumption And Assignment Of Certain*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors' service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.



2011177200828000000000007

*Executory Contracts And Leases, And (E) Granting Related Relief* [Docket No. 18] (the “Sale Motion”)<sup>2</sup> and (II) the *Notice To Contract Counterparties To Potentially Assumed Executory Contracts And Unexpired Leases* (the “Contract Assumption Notice”), and in support of the Objection, the Chubb Companies respectfully state as follows:

### **BACKGROUND**

#### **A. The Bankruptcy Case.**

1. On May 20, 2020 (the “Petition Date”), Akorn Inc. and certain of its affiliates (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. Upon information and belief, since the Petition Date, the Debtors continue to act as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On May 21, 2020, the Debtors filed the Sale Motion.

4. Pursuant to the Sale Motion, the Debtors seek approval of the Bidding Procedures attached to the Sale Motion and an order authorizing and approving the Debtors’ proposed Sale Transaction with the Stalking Horse Bidder or otherwise Successful Bidder, authorizing the Debtors’ entry into the Stalking Horse APA, and the Debtors’ assumption and assignment of the proposed Assigned Contracts and to Stalking Horse Bidder or otherwise Successful Bidder.

5. Pursuant to the Stalking Horse APA, “all insurance benefits, including rights and proceeds, to the extent arising from or relating to any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to Sellers, with respect to cancelled policies)” are considered to be Acquired Assets. *See* Stalking

---

<sup>2</sup> Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Sale Motion.

Horse APA at § 1.1(s). However, “all current and prior director and officer insurance policies, and all rights and benefits of any nature of Sellers with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries under such insurance policies” are considered Excluded Assets, and are not to be transferred to the Stalking Horse Bidder. *See* Stalking Horse APA at §1.2(e).

6. Further, the Stalking Horse APA provides, in relevant part, that “Purchaser shall have the right to make claims and the right to any proceeds with respect to any matter related to the Assumed Liabilities under any insurance policies for occurrence-based claims pertaining to, arising out of and inuring to the benefit of any Seller for all periods prior to the Closing, and Seller shall use reasonable best efforts to seek the maximum recovery or allow Purchaser to seek recovery[.]” *See* Stalking Horse APA at § 6.9.

7. On June 15, 2020 the Court entered an order approving the Bidding Procedures (the “Order”) [Docket No. 181].

8. On August 7, 2020, the Debtors filed a Notice that no Qualified Bids were received and consequently, the Auction would not take place [Docket No. 429].

9. Pursuant to the Order, the Debtors provided separate Contract Assumption Notices to the Chubb Companies identifying proposed Cure Amounts for certain Policies (as defined herein) that may be assumed and assigned

10. On the Contract Assumption Notice, the Debtors identify the following contracts that may be assumed and assigned to the Stalking Horse Bidder in connection with the Sale Transaction and the proposed Cure Amount with respect to each, which are relevant to the Chubb Companies, the Insurance Programs (as defined herein):

Debtor Party	Contract Counterparty	Contract Name / Description	Cure Amount (if any)
Akorn Inc; Akorn (New Jersey) Inc; Advanced Vision Research Inc DBA Akorn; Oak Pharmaceuticals Inc; Akorn Ophthalmics Inc; Akorn Sales Inc; 13 Edison Street LLC; 10 Edison Street LLC; Versapharm Incorporated; VPI Holdings Corp; Akorn Animal Health Inc	Ace American Insurance Company	Umbrella Liability Business Insurance Policy No. 83 RHU ZV8731 K3	\$0.00
Inspire Pharmaceuticals Inc; Covenant Pharma Inc; Clover Pharmaceuticals Corporation; Olta Pharmaceuticals Corp; Health Care Products a Division of Hi- Tech Pharmacal Company Inc; Hi-Tech Pharmacal Company Inc	Ace American Insurance Company	Umbrella Liability Business Insurance Policy No. 83 RHU ZV8731 K3	\$0.00
Akorn, Inc.	Chubb	International Advantage Commercial Insurance Policy re: Policy No. PHFD38416303 005	\$0.00
Akorn, Inc.	Chubb Group of Insurance Companies	Executive Protection Portfolio re: Policy No. 8153-1429	\$0.00

11. As evident above, the Contract Assumption Notice fails to identify with specificity the contracts the Debtors hold with the Chubb Companies that may be subject to a potential assumption and assignment to the Stalking Horse Bidder, but asserts that, nevertheless, the Cure Amount is \$0.00.

12. As discussed herein, the Chubb Companies issued numerous policies to the Debtors.

**B. The Insurance Programs.**

13. Prior to the Petition Date, the Chubb Companies issued certain insurance policies (as renewed, amended, modified, endorsed or supplemented from time to time, collectively, the “Policies”) to one or more of the Debtors, as named insureds.

14. Pursuant to certain Policies and related agreements (collectively, the “ACE Insurance Program”), ACE American Insurance Company, Westchester Fire Insurance Company and Illinois Union Insurance Company provide, *inter alia*, international, directors’ and officers’, products liability and certain other insurance for specified policy periods subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein; and the insured, including the Debtors, is required to pay to the Chubb Companies certain amounts including, but not limited to, insurance premiums (including audit premiums), deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more particularly described in the ACE Insurance Program (the “ACE Program Obligations”).

15. Pursuant to other Policies and related agreements (collectively, the “Chubb Insurance Program,” and together with the ACE Insurance Program, the “Insurance Programs”) Chubb Companies provide, *inter alia*, fiduciary liability, general liability, package, umbrella, workers’ compensation, automobile liability, cargo, property, crime, cyber liability, employment practices liability, and certain other insurance for specified policy periods subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein; and the insured, including the Debtors, is required to pay to the Chubb Companies certain amounts including, but not limited to, insurance premiums (including audit premiums), deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more particularly described in the Chubb Insurance Program (the “Chubb Program Obligations,” and collectively with the ACE Program Obligations, the “Obligations”).

16. The Debtors’ Obligations are payable over an extended period of time and are subject to future audits and adjustments.

**SUMMARY OF OBJECTION**

17. The Chubb Companies object to (i) the Sale Transaction, (ii) the proposed assumption and the assignment of certain of the Policies, (iii) the proposed Cure Amounts, and (iv) the lack of adequate assurance of future performance

18. The Chubb Companies assert that (i) each of the Insurance Programs must be assumed and assigned or otherwise transferred, if at all, as a whole, and in order to be entitled to any of the benefits of the Insurance Programs, the Stalking Horse Bidder or other Successful Bidder must remain liable for the Obligations thereunder; (ii) to the extent that the Debtors seek to assume and assign or otherwise transfer the Insurance Programs, the Insurance Programs cannot be assigned without the consent of the Chubb Companies, which consent has not been sought or given; (iii) without altering the foregoing, given the intent (at least based on the terms of the Stalking Horse APA and the Contract Assumption Notice) of the Debtors to assign or transfer at least certain portions of the Insurance Programs and/or the proceeds thereof to the Stalking Horse Bidder, the Chubb Companies seek clarification that the Chubb Companies are not responsible for determining which entity, as between the Debtors and the Stalking Horse Bidder or other Successful Bidder, is entitled to proceeds under the Insurance Programs; (iv) the proposed Cure Amounts are improper; and (v) as the Chubb Companies have not been definitively advised as to whether the Stalking Horse Bidder or other Successful Bidder intends to seek assignment of the Insurance Programs, the Chubb Companies therefore lack adequate assurance of future performance of the Insurance Programs by the Stalking Horse Bidder or other Successful Bidder.

**I. Each Of The Insurance Programs And The Obligations Thereunder Are Indivisible.**

19. To the extent that the Debtors purport to assign or transfer some portion of either of the Insurance Programs (but not the entirety of such Insurance Program) to the Stalking Horse Bidder or other Successful Bidder, such a potential split of the Insurance Programs is improper.

20. Each of the Insurance Programs, which are integrated insurance programs, must be read, interpreted and enforced together. *See Huron Consulting Servs., LLC v. Physiotherapy Holdings, Inc. (In re Physiotherapy Holdings, Inc.)*, 538 B.R. 225 (D. Del. 2015) (reversing bankruptcy court decision which permitted debtor to assume one agreement between itself and another party, and not the related agreements; holding that all agreements must be assumed or rejected together); *In re Karfakis*, 162 B.R. 719 (Bankr. E.D. Pa. 1993) (stating “two contracts which are essentially inseparable can be, and should be, viewed as a single, indivisible agreement between the parties”).

21. It is well-established that a party cannot receive the benefits of a contract without being liable for the obligations thereunder. *See Tompkins ex. rel. A.T. v. Troy Sch. Dist.*, 199 Fed. Appx. 463, 468 (6th Cir. 2006) (holding that it is a basic principle of contract law that a party to an agreement is constrained to accept the burdens as well as the benefits of the agreement); *St. Paul Fire & Marine Ins. Co. v. Compaq Computer Corp.*, 457 F.3d 766, 773 (8th Cir. 2006) (finding that a party who accepts the benefit of a contract must also assume its burdens); *Bhushan v. Loma Alta Towers Owners Assoc., Inc.*, 148 Fed. Appx. 882, 888 (11th Cir. 2005) (stating “one who has accepted a contract’s benefit may not challenge its validity in order to escape its burdens”); *S & O Liquidating P’ship v. C.I.R.*, 291 F.3d 454, 459 (7th Cir. 2002) (“A party who has accepted the benefits of a contract cannot ‘have it both ways’ by subsequently attempting to avoid its burdens.”); *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp.*, 659 F.2d 836,

839 (7th Cir. 1981) (“In short, [plaintiff] cannot have it both ways. [It] cannot rely on the contract when it works to its advantage, and repudiate it when it works to [its] disadvantage.” (citations and quotations omitted)); *Ricketts v. First Trust Co. of Lincoln, Neb.*, 73 F.2d 599, 602 (8th Cir. 1934) (finding that “he who seeks equity must do equity, and that one may not accept the benefits and repudiate the burdens of his contract.”); *Meierhenry Sargent Ltd. Liab. P'ship v. Williams*, No. 16-4180, 2017 U.S. Dist. LEXIS 65739, at \*20 (D.S.D. May 1, 2017) (“Various courts have held that a party may not avail itself of a favorable aspect of the contract and then disavow a non-favorable aspect.” (citations omitted)); *Power Sys. & Controls, Inc. v. Schneider Elec. USA, Inc.*, No. 10-137, 2010 U.S. Dist. LEXIS 56671 at \*3 (E.D. Va. June 9, 2010) (“[A] party may not avail itself of one aspect of a contract and disavow another aspect of the contract in order to avoid its consequences. . . .[.]”); *see also In re Fleming Cos.*, 499 F.3d 300, 308 (3d Cir. 2007) (““The [debtor] . . . may not blow hot and cold. If he accepts the contract he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.”) (internal citations omitted); *In re Texas Rangers Baseball Partners*, 521 B.R. 134, 180 (Bankr. N.D. Tex. 2014) (“A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party.”).

22. Additionally, neither the Debtors nor this Court can rewrite the Insurance Programs, but rather the Insurance Programs must be enforced as written. *See, e.g., Wilson v. Career Educ. Corp.*, 729 F.3d 665, 679 (7th Cir. 2013) (“A court may not rewrite a contract to suit one of the parties but must enforce the terms as written.”) (citation omitted); *In re Coupon Clearing Serv., Inc.*, 113 F.3d 1091 (9th Cir. 1997) (noting that a debtor’s estate has “no greater rights in property than those held by the debtor prior to the bankruptcy”); *Trustmark Ins. Co. v. Transamerica Occidental Life Ins. Co.*, 484 F. Supp. 2d 850, 853 (N.D. Ill. 2007) (a “court cannot alter, change



or modify the existing terms of a contract or add new terms or conditions to which the parties do not appear to have assented, write into the contract something which the parties have omitted or take away something which the parties have included.”) (citation omitted); *In re Lloyd E. Mitchell, Inc.*, 06-13250-NVA, 2012 Bankr. LEXIS 5531 (Bankr. D. Md. Nov. 29, 2012) (noting that “insurance contracts cannot be re-written by th[e] Court”).

23. Accordingly, in order to be entitled to any of the benefits of the Insurance Programs, the entirety of the Insurance Programs and the Obligations thereunder must be assumed by the Stalking Horse Bidder or other Successful Bidder.

**II. The Insurance Programs Cannot Be Assigned or Otherwise Transferred Without the Prior Written Consent of the Chubb Companies, Which Has Not Been Sought or Given.**

24. If the Debtors seek to assign or otherwise transfer the Insurance Programs in connection with the Sale Transaction, such assignment or transfer cannot occur without the express written consent of the Chubb Companies.

25. Pursuant to 11 U.S.C. § 365(c), a debtor may not assume or assign an executory contract if applicable law excuses the counterparty from accepting performance from or rendering performance to an entity other than the debtor and such party does not consent to the assumption or assignment. 11 U.S.C. § 365(c)(1)(A) and (B).

26. Applicable non-bankruptcy law does, in fact, prohibit the assignment or transfer of insurance policies without the insurer’s consent. *See, e.g., Banco Popular v. Kanning*, No. A-13-CV-200 RP, 2015 U.S. Dist. LEXIS 175647, at \*25 (W.D. Tex. Mar. 9, 2015) (finding that a purported assignment of an insurance policy that did not comply with the express terms of the insurance policy was not enforceable); *Rotella v. Cutting*, 2011 Tex. App. LEXIS 7116, Tex. App.—Fort Worth 2011, *no pet.*) (where an insurer’s express written consent to any transfer of

rights under an insurance policy is required by the terms of the policy, failure to evidence the insurer's express written consent renders any purported transfer invalid); *Mercedes-Benz of W. Chester v. Am. Family Ins.*, Nos. CA2009-09-244, CA2009-09-245, CA2009-09-246, 2010 Ohio App. LEXIS 1898, at ¶ 22 (Ohio Ct. App. May 24, 2010) (finding that third party "cannot impute a legally binding obligation to pay against [insurer]" where insureds assigned insurance contract without insurer's consent, because to find otherwise "would place an undue risk and burden on [insurer]"); *Touchet v. Guidry*, 550 So. 2d 308, 313 (La. App. 1989) (holding that an insurance policy is a personal contract between the insurer and the named insured and that "coverage terminates when the contract is assigned or transferred without the consent, permission, and approval of both contracting parties") (citations omitted); *Shadid v. Am. Druggist Fire Ins. Co.*, 386 P.2d 311 (Okla. 1963) (noting the importance of an insurer's consent to an assignment of an insurance policy, and holding that the policy does not pass to the purchaser simply by a sale of the insured property).<sup>3</sup>

27. Similarly, insurers cannot be compelled to provide insurance coverage to any entity that is not a party to the insurance contract. *See Atwood v. Progressive Ins. Co.*, No. 950051089S, 1997 Conn. Super. LEXIS 2450, at \*18 (Conn. Super. Ct. Sept. 3, 1997) (stating that "[i]nsurers should not, for example, be forced to assume coverage for a risk which at the time a policy was written was not fairly in its and the insured's contemplation"); *King v. Meese*, 43 Cal. 3d 1217, 1222 (Cal. 1987) (noting that "an insurer may refuse to insure based on any permissible

---

<sup>3</sup> Some courts have found that insurance policies may be assigned to a trust created under § 524(g) pursuant to a plan under § 1123 without the consent of the insurer. *See, e.g., In re Federal-Mogul Global*, 684 F.3d 355, 382 (3d Cir. 2012) (holding that anti-assignment provisions in insurance policies were preempted by § 1123(a)(5)(B) of the Bankruptcy Code to the extent they prohibit transfer to a § 524(g) trust); *In re W.R. Grace & Co.*, 475 B.R. 34, 198-99 (D. Del. 2012) (holding that anti-assignment provisions in insurance policies were preempted by § 1123(a)(5)(B) in the context of the establishment of a § 524(g) trust). The present case does not involve an assignment to a trust created pursuant to § 524(g).

classification”); *Cummins v. Nat’l Fire Ins. Co.*, 81 Mo. App. 291, 296 (Mo. Ct. App. 1899) (“An insurance company may well refuse to insure some persons. They, like any other entity, have a right of choice as to who they will contract with and they can no more be forced to a change of the assured than the assured could be forced to accept insurance from some other company (in which he may have no confidence) than the one contracted with.”). Therefore, the Insurance Programs cannot be assigned without the prior written consent of the Chubb Companies.

28. As a condition precedent for any consent that may be given by the Chubb Companies to an assignment or other transfer of the Insurance Programs, the Debtors and the assignee will be required to execute an assumption agreement, in form and substance acceptable to the Chubb Companies. In the event that the Debtors do attempt to transfer all or any part of the Insurance Programs in connection with the Sale Transaction, any proposed assignee will also need to satisfy the Chubb Companies’ extensive underwriting and financial review process, which takes substantial time to complete.

29. Therefore, because the Chubb Companies’ consent has not yet been sought nor given, the Chubb Companies object to any and all such assignments at this time.

### **III. The Chubb Companies Are Not Required To Make Coverage Determinations Between The Debtors And The Stalking Horse Bidder.**

30. As discussed above, the Stalking Horse APA and the Contract Assumption Notices evidence the Debtors’ intent to assume and assign certain of the Policies and/or the proceeds thereof to the Stalking Horse Bidder or other Successful Bidder through the Sale Transaction.

31. While it is improper, as discussed above, to split the Insurance Programs, any transfer of only a certain portion of either of the Insurance Programs in connection with the Sale Transaction is likely to result in coverage disputes between the Stalking Horse Bidder or other Successful Bidder and the Debtors.

32. To the extent that the Chubb Companies agree to the assignment or transfer of the Insurance Programs, the Chubb Companies should not be put in the position of determining, as between the Debtors and the Stalking Horse Bidder or other Successful Bidder, which entity is entitled to coverage thereunder in connection with a particular claim. Similarly, the Chubb Companies should not be put in the position of determining, as between the Debtors and the Stalking Horse Bidder or other Successful Bidder, which entity is entitled to proceeds under the Insurance Programs.

**IV. The Cure Amounts Must be Evaluated at the Time of Assumption.**

33. On the Contract Assumption Notice, despite failing to identify any specific Policies potentially subject to assumption and assignment, the Debtors state that there is no cure amount due to the Chubb Companies on account of such Policies.

34. As noted above, in order to assume any Policies, the Debtors must assume and assign each of the Insurance Programs in its entirety. Further, as more particularly described in the Insurance Programs, the Debtors are required to pay the Obligations, and therefore, amounts may become due and owing under the Insurance Programs either prior to or after the assumption thereof.

35. The Chubb Companies have contingent, unliquidated claims against the Debtors for the Obligations, given the nature of the Insurance Programs and the Obligations. By way of example and not limitation, premiums may be payable at audit under the terms of the Insurance Programs, based upon factors as they exist throughout the coverage period. Therefore, the Chubb Companies have contingent, unliquidated claims against the Debtors for any additional premium that may become due upon completion of audit(s). By way of further example, as insured claims develop, amounts payable in relation thereto arise at various points in time; so it is common for

amounts to arise in the future with respect to insured claims where the date of loss was prior to the Petition Date.

36. The amount owed by the Debtors on account of the Obligations varies from day to day, and is subject to ongoing reconciliation based on, among other things, claims funding provided by the Debtors and claims submitted to the Chubb Companies.

37. Accordingly, as a condition for the assignment of the Insurance Programs, the assignee must remain liable for all of the Debtors' obligations and liabilities (including the Obligations), whether now existing or hereafter arising, under the Insurance Programs including, without limitation, paying Obligations as they become due.

**V. The Successful Bidder Must Provide Adequate Assurance of Future Performance.**

38. The Chubb Companies have not yet been definitively advised as to whether any Successful Bidder intends to seek assignment of the Insurance Programs.

39. Pursuant to § 365(f)(2) of the Bankruptcy Code, any assignee of a contract must provide adequate assurance of future performance.

40. Considering the fact that the intent of the Stalking Horse Bidder or other Successful Bidder is not yet definitively known, the Chubb Companies do not have, and the Debtors have not supplied, any information, much less sufficient information or a reasonable amount of time, to determine if the Stalking Horse Bidder or other Successful Bidder would be capable of providing adequate assurance of future performance.

41. Accordingly, the Chubb Companies further object on the basis that the Chubb Companies do not have adequate assurance as required by § 365(f)(2) of the Bankruptcy Code.

**VI. Reservation Of Rights.**

42. The Chubb Companies specifically reserve all of their rights with respect to the Insurance Programs and their right to assert additional objections to the Sale Transaction.

WHEREFORE, the Chubb Companies object to the Sale Transaction on the bases set forth herein, and reserve their rights to assert any additional objections to the Sale Transaction and any other document related thereto, and to the assignment of the Insurance Programs, particularly once the ultimate purchaser is established.

Dated: August 28, 2020

Respectfully submitted,

DUANE MORRIS LLP

By: /s/ Drew S. McGehrin  
Drew S. McGehrin, Esq. (DE 6508)  
222 Delaware Avenue, Suite 1600 Wilmington,  
DE 19801  
Telephone: 302-657-4900  
Email: DSMcGehrin@duanemorris.com

-and-

Wendy M. Simkulak, Esq.  
DUANE MORRIS LLP  
30 South 17th Street  
Philadelphia, PA 19103  
Telephone: (215) 979-1000  
Email: WMSimkulak@duanemorris.com

*Counsel for the Chubb Companies*

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

In re:

AKORN, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11177 (KBO)

Jointly Administered

**CERTIFICATE OF SERVICE**

I, Drew S. McGehrin, certify that I am not less than 18 years of age, and that on August 28, 2020, I caused a true and correct copy of the *Objection Of The Chubb Companies With Respect To (I) The Debtors' Motion Seeking Entry Of An Order (A) Authorizing And Approving Bidding Procedures, (B) Scheduling An Auction And A Sale Hearing, (C) Approving The Form And Manner Of Notice Thereof, (D) Establishing Notice And Procedures For The Assumption And Assignment Of Certain Executory Contracts And Leases, And (E) Granting Related Relief And (II) Notice To Contract Parties To Potentially Assumed Executory Contracts And Unexpired Leases* to be made upon the parties set forth on the attached service list by electronic mail, and electronically, via this Court's ECF system, on all parties registered to receive electronic notice.

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: August 28, 2020

/s/ Drew S. McGehrin

Drew S. McGehrin, Esq. (DE 6508)

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors' service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

**SERVICE LIST**

**Counsel to the Debtors**

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attn.: Patrick J. Nash, Jr., P.C. Gregory F.  
Pesce and Christopher M. Hayes  
patrick.nash@kirkland.com  
gregory.pesce@kirkland.com  
christopher.hayes@kirkland.com

-and-

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attn.: Nicole L. Greenblatt, P.C.  
nicole.greenblatt@kirkland.com

**Co-counsel to the Debtors**

Richards, Layton and Finger, PA  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Attn: Paul N. Heath, Amanda R. Steele,  
Zachary I. Shapiro, and Brett M. Haywood  
heath@rlf.com  
steele@rlf.com  
shapiro@rlf.com  
haywood@rlf.com

**Counsel to the Term Loan Agent under the Debtors' Term Loan Agreement**

Wilmer Cutler Pickering Hale and Dorr LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Attn: Andrew Goldman  
andrew.goldman@wilmerhale.com

**Counsel to the Committee**

Jenner & Block LLP  
353 N. Clark St. Chicago, IL 60654  
Attn: Catherine Steege, Landon Raiford, and  
William Williams  
csteege@jenner.com  
lraiford@jenner.com  
wwilliams@jenner.com

-and-

Saul Ewing Arnstein & Lehr  
1201 North Market Street, Suite 2300  
Wilmington, DE 19801  
Attn: Mark Minuti and Luke Murley  
mark.minuti@saul.com  
luke.murley@saul.com

**Counsel to the Ad Hoc Group**

Gibson Dunn & Crutcher  
200 Park Avenue  
New York, New York 10166  
Attn.: Scott J Greenberg and Michael J. Cohen  
sgreenberg@gibsondunn.com  
mcohen@gibsondunn.com

-and-

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Attn: Robert S. Brady  
rbrady@ycst.com

**The United States Trustee**

The United States Trustee for the District of  
Delaware  
844 King Street, Suite 2207  
Lockbox 35  
Wilmington, Delaware 19801  
Attn: Jane M. Leamy  
Jane.M.Leamy@usdoj.gov