

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

In re:

AKORN, INC., *et al.*,

Debtors.

Chapter 11

Case No. 20-11177 (KBO)

(Jointly Administered)

Hearing Date: September 1, 2020 at 10:00 a.m.

Objection Deadline: August 28, 2020 at 12:00 p.m.

Re: Docket No. 434, 547, 552, 566

**GABELLI FUNDS, LLC'S LIMITED RESPONSE TO CONFIRMATION
OBJECTIONS BY PROVEPHARM, INC. AND FRESENIUS KABI AG**

Gabelli Funds, LLC ("Gabelli"), by its undersigned counsel, respectfully submits this limited response (the "Response") to: (1) *Provepharm, Inc.'s Objection to Confirmation of the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* ("Provepharm" and the "Provepharm Objection" or "Pro. Obj.") (Dkt. No. 552); and (2) *Objection of Fresenius Kabi AG to the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* ("Fresenius" and the "Fresenius Objection" or "Fres. Obj.") (Dkt. No. 566) (together, the "Objectors" and "Objections"), and for this Response states as follows:

INTRODUCTION

1. Provepharm and Fresenius, parties to unresolved litigation against the Debtors, make a facile attempt to use the judicially approved and fully consummated pre-Petition Shareholder Settlement¹ to justify their objections to Confirmation of the Modified Plan. Objectors pin their arguments on a series of mischaracterizations as to the nature of the Shareholder Litigation, the resolution of the Shareholder Settlement, and the reach of the management liability

¹ Capitalized terms undefined herein shall have the meaning ascribed to them in the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* (Dkt. No. 547) (the "Modified Plan").



policies for 2017 to 2019 (the “D&O Policies” or “Policies”) that funded the Shareholder Settlement of the direct claims against the named directors and officers of Akorn (the “D&O Defendants”). We address each issue in turn.²

2. First, Objectors ignore the actual allegations in the complaint in the Shareholder Litigation (the “Shareholder Complaint”) in suggesting it asserted claims by or on behalf of Akorn. To the contrary, the operative Shareholder Complaint alleged only *direct* claims brought by Akorn’s shareholders, not claims asserted by or on behalf of Akorn, and the Securities Settlement resulted only in the dismissal and release of *direct* claims for violations of securities law against the D&O Defendants and the company.³

3. Second, the Securities Settlement was granted final approved by the United States District Court for the Northern District of Illinois, reduced to final judgment, and fully consummated well before the Petition Date in these Chapter 11 Cases – including (1) the carriers that issued the D&O Policies (the “Carriers”) made their payments on behalf of the D&O Defendants directly to escrow, and (2) Akorn issued the CVRs and the additional Akorn common shares. Put simply, Objectors are wrong when they suggest that the completed Shareholder Settlement is somehow an executory contract to be assumed or rejected by Debtors – *a position Debtors themselves have never taken*. See e.g., *In re Beck*, 28 Fed. App’x 142, 146 (3d Cir. 2002) (“The Bankruptcy Court and the District Court correctly found that there were no unperformed

² Provepharma and Fresenius also argue that the \$30 million general unsecured claim arising by contract from the Contingent Value Rights (the “CVRs” or “CVR Claim”) should be subordinated to a Section 510(b) Claim (Class 7). In response, we hereby incorporate by reference and respectfully direct the Court to *Gabelli Funds, LLC’s Limited Objection to Confirmation of the Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (Dkt. No. 575).

³ See *In re Akorn, Inc. Data Integrity Securities Litigation*, No. 18-cv-01713 (N.D. Ill.), August 9, 2019 Stipulation and Agreement of Settlement ¶ 1.59 (Dkt. No. 127-1). Notably, Fresenius inexplicably refers to the Shareholder Settlement as an “opt in” settlement, wholly ignoring the fact that the settlement class approved by the Court in that case, like most certified classes in securities actions, is actually a Rule 23 “opt out” settlement that bound all class members that did not affirmatively opt out of the settlement.

obligations of [debtor] at the time he filed for bankruptcy and, accordingly, that the Settlement Agreement was not an executory contract at that time.”).

4. Third, while the Shareholder Settlement did not release any claims asserted by or on behalf of Akorn, Akorn’s pre-Petition settlement of a series of separate derivative cases asserting claims against current and former directors and officers means that, contrary to Objectors’ suggestion, Debtors have no viable causes of action relating to the findings in Delaware Chancery Court.⁴

5. Fourth, neither Provepharm nor Fresenius have claims covered by the D&O Policies – which only insure “claims made” in 2017-2019 – that funded the Shareholder Settlement with the D&O Defendants, and neither Objector offers any argument to the contrary.

6. Fifth and finally, Objectors are wrong when they suggest the \$27.5 million paid by the Carriers to fund the Shareholder Settlement with the D&O Defendants can somehow be returned to the estate to be shared with all impaired creditors. This argument fails both because the proceeds of the D&O Policies (the “Policy Proceeds”) are not property of the Debtors’ estates and because, even if the Shareholder Settlement could be somehow unwound (and the Objectors have provided no explanation *how* this would happen), it would simply put the parties to the Shareholder Settlement and Carriers back in the same position they were before. It would *not* result in the Policy Proceeds being paid into the estates because, among other reasons, the D&O Policies have a priority of payment provision requiring the Carriers first to pay claims against directors and officers (Side A Coverage) (which they did here) and second to pay Akorn for any indemnity payments to directors and officers (Side B Coverage) (not applicable here because Akorn did not make any indemnity payments). Only *after* these

⁴ See the relevant portions of Debtors’ response responding to the Fresenius and Provepharm Objections, which Gabelli joins.

payments does Akorn have “entity coverage” and only for securities claims (Side C Coverage).

7. Here the Policies were exhausted by direct settlement payments by the Carriers on behalf of the D&O Defendants who gave the Carriers full policy releases. Because Akorn neither paid any indemnity nor faces any non-speculative liability for covered outstanding securities claims that could diminish the estates’ assets, the Policy Proceeds are not property of the estate. *See In re World Health Alts., Inc.*, 369 B.R. 805, 811 (Bankr. D. Del. 2007) (holding that with respect to policy proceeds being held in escrow by lead counsel from Side A Coverage for a settlement with directors and officers “there is not a reasonable probability that the Trustee will succeed on the merits of his claim that the proceeds of the Policy are property of the estate or that he has priority or even a co-equal interest in the portion of the Policy that is funding the Settlement.”).

8. Further underscoring the point that the proceeds are not property of the estates, is the D&O Policies only cover “claims first made” during the 2017-2019 policy period and no party in these Chapter 11 Cases – least of all Provepharm or Fresenius – has identified a *single* timely claim that would be covered by the Policies. Put simply, in the absence of any unresolved covered claim there is no basis for any party to these proceedings to assert a claim to the Policy Proceeds.

9. Tellingly, neither Provepharm nor Fresenius cites any authority suggesting the Policy Proceeds are property of the estates. Provepharm ignores the issue entirely and the best that Fresenius can muster is to say that general creditors should benefit *if* “some or all of these insurance proceeds comprise estate property.” (Fres. Obj. ¶ 31). Notably, Provepharm and Fresenius would not recover any Policy proceeds *outside* of bankruptcy. Neither of their respective lawsuits asserts claims against Akorn’s directors and officers or securities claims against Akorn.

10. At bottom, any attempt to “clawback” the Policy Proceeds would be an unnecessary and wasteful expense to the Debtors’ estates. Neither Provepharma nor Fresenius have provided any basis to disturb the Debtors’ business judgment and the UCC’s fiduciary determination that any speculative estate claims against directors and officers or the proceeds of the Policies are not worth disrupting the Modified Plan or attempting to unwind the Shareholder Settlement. *See, e.g., In re Hercules Offshore, Inc.*, 565 B.R. 732, 757 (Bankr. D. Del. 2016) (“The Court need only determine that the Debtors exercised sound business judgment in deciding to accept the settlement integral to the proposed plan.”).⁵

THE POLICIES

11. The primary *Management Liability and Company Reimbursement Policy* (the “Primary Policy”) issued by XL Specialty Insurance Company “is a claims made policy” that “only applies to claims made during the policy period or, if applicable, the optional extension period.”⁶ Each of the excess D&O Policies follow form to the Primary Policy. By virtue of Akorn paying for the optional extension period, the D&O Policies covered any claims first made during the period from June 1, 2017 to June 1, 2019 (the “2017-2019 Policy Period”).

12. The D&O Policies contain three “Insuring Agreements” providing coverage for, variously, the directors and officers for claims against them (Side A), payments by Akorn to indemnify its directors and officers (Side B), and securities claims against Akorn (Side C):

- (A) The Insurer shall pay on behalf of the **Insured Persons Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** . . . except for **Loss** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.

⁵ The Provepharm and Fresenius Objections contain certain other objections to the Modified Plan that do not affect the Shareholder Settlement, the response to which we leave to the Debtors and UCC.

⁶ The Primary D&O Policy is attached hereto as Exhibit A.

- (B) The Insurer shall pay on behalf of the **Company Loss** which the **Company** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from a **Claim** first made against the **Insured Persons**.
- (C) The Insurer shall pay on behalf of the **Company Loss** resulting solely from any **Securities Claim** first made against the **Company** during the **Policy Period**

13. However, these Side A, B and C “Insuring Agreements” are not equally treated.

Consistent with most management liability policies, the Primary Policy contains a “Priority of Payments” provision mandating that, to the “maximum extent practicable” and to the “maximum aggregate Limit of Liability,” the insurers shall pay Side A claims against directors and officers first:

- (a) first, the Insurer shall pay that Loss, if any, which the Insurer may be liable to pay on behalf of the Insured Persons under INSURING AGREEMENT (A);
- (b) second, the Insurer shall pay that Loss, if any, which the Insurer may be liable to pay on behalf of the Company under INSURING AGREEMENT (B); and
- (c) third, the Insurer shall make such other payments which Insurer may be liable to make under INSURING AGREEMENT (C) or otherwise.

14. The Policies provided aggregate coverage of \$30 million for claims made during the 2017-2019 Policy Period. The Carriers that issued the policies did not contest coverage for the allegations in the Securities Litigation or object to the Shareholder Settlement.

THE SHAREHOLDER SETTLEMENT

15. Gabelli and its affiliated investment manager served as lead plaintiffs in the Shareholder Litigation against Akorn and the D&O Defendants. Following more than 15 months of litigation and months of negotiations, on August 9, 2019 – *more than nine months before the Petition Date* – the parties entered the Shareholder Settlement. The settlement allowed Akorn and the D&O Defendants to eliminate litigation liabilities exceeding \$1 billion. (Dkt. 267 at 18).

16. Significantly, because Akorn was limited by, among other things, its covenants with lenders and because the D&O Defendants had limited personal ability to pay (apart from

indemnity through the D&O Policies provided for that purpose), the parties negotiated a unique structure that contained three components with differing characteristics of recovery:

- (1) A cash component of \$27.5 million (the \$30 million policy limits less an exhausted \$2.5 million reserve) paid on behalf of the D&O Defendants directly to escrow for the class by the insurers;
- (2) Deferred financing by Akorn of a portion of its obligations in the form of the CVRs; and
- (3) An equity component paid by Akorn consisting of up to 8.8 million shares of common stock.

17. Due to certain delays related to parties that requested exclusion from the Shareholder Settlement, the Shareholder Settlement received final approval from the United States District Court for the Northern District of Illinois on March 13, 2020. The parties received no relevant objections. The last of the Carriers transferred payment directly into escrow on April 7, 2020.

RESPONSE TO THE PROVEPHARM AND FRESENIUS OBJECTIONS

18. The individual arguments of Provepharm and Fresenius fail in law and fact. Indeed, they put the cart miles before the horse. Each argue that the D&O Proceeds should be paid to the estate for distribution to all impaired unsecured creditors. But neither explains *why* this is so or *how* this would be accomplished. Provepharm does not even address whether the D&O Proceeds are property of the estates and Fresenius can only say “if” and claim, without explanation or authority, there is a “logical inference” that the proceeds belong to the estates. Moreover, beyond vague speculation, neither identifies a litigation claim covered by the D&O Policies that would allow the estates to access the D&O Proceeds even *if* the Debtors or UCC believed it was worth the time and expense to attempt to “clawback” monies that never belonged to the Debtors in the first place.

A. Provepharm's Arguments Are Incorrect

19. By not even attempting to demonstrate the Proceeds are property of the estates, Provepharm's Objection fails at the starting gate. But Provepharm makes certain additional failed arguments that cannot go un rebutted.

20. Provepharm's first erroneous argument is that the Modified Plan has anything whatsoever to do with the \$27.5 million in Policy Proceeds paid by the Carriers on behalf of the D&O Defendants. Provepharm asserts the Modified Plan cannot meet the "best interests" test because, among other things, the Debtors allegedly "gerrymandered the Plan's classification scheme to have to allocate \$27.5 million in D&O Proceeds . . . that in a chapter 7 would otherwise be available for distribution to unsecured creditors." (Pro. Obj. ¶ 14). But no iteration of the Plan, including the most recent Modified Plan, *ever* addressed or included the \$27.5 million paid pre-Petition by the Carriers. This is because Debtors rightly never treated the D&O Proceeds as estate property. In this regard, the Modified Plan is only concerned with the classification of existing claims against the estates such as, for example, the CVRs created by Akorn to finance its portion of the Shareholder Settlement.

21. Provepharm argues relatedly that "[p]ursuing \$27.5 million in available D&O Proceeds and the causes of actions against insiders of the Debtors found by the Chancery Court to have acted wrongfully in chapter 7 is in the best interest of and offers a much better prospect of recovery for unsecured creditors" than does the Plan. (Pro. Obj. ¶ 17). But Provepharm has not, because it cannot, identify *what* those causes of action entail and *how* they would reach the D&O Proceeds. Once again, the 2017-2019 Policy period has expired, and no claims can be brought that would be covered under those policies – even had Debtors not released any such claims in the pre-petition derivative settlements.

22. Provepharm also erroneously argues that the Shareholder Settlement is not a “fully-performed non-executory contract enforceable against the Debtors.” (Pro. Obj. ¶ 10.c.). This is patently incorrect. Courts in this Circuit have routinely held exactly the opposite where, as here, at least one party to the settlement has completed its obligations. *See, e.g., In re Columbia Gas System Inc.*, 50 F.3d 233, 244 (3d Cir. 1995) (holding a settlement agreement is not an executory contract for purposes of Section 365 where the class had completed its obligations); *In re Beck*, 28 Fed. App’x at 146. Once again, Provepharm fails to cite a *single* case to support this argument, or the suggestion the Shareholder Settlement can or should be unwound, or that doing so would benefit impaired creditors.

B. Fresenius’ Arguments Are Incorrect

23. The Fresenius Objection suffers from the same fundamental infirmity as the Provepharm Objection in that it does not even attempt to demonstrate that the D&O Policies are property of the estates. But the Fresenius Objection likewise contains certain uniquely erroneous arguments.

24. Fresenius argues that the “Shareholder Settlement transfers estate causes of action and estate insurance policy proceeds directly to prepetition equity holders” and complains that “Debtors have not presented this settlement to this Court for approval.” (Fres. Obj. ¶ 12). This argument is a red herring. The Shareholder Settlement and its component parts were approved pre-Petition by the District Court in the Northern District of Illinois and the CVRs and common shares will receive treatment commensurate with their classification under whatever iteration of the Modified Plan is confirmed. Fresenius presents no authority requiring reapproval of a pre-petition settlement that has been judicially approved and reduced to a final judgment in another federal court – particularly where, as here, there is no basis to contend the Policy Proceeds are

property of the estates, where the Debtor has released any claims against the insured directors and officers in unrelated derivative litigation, and where Fresenius does not advance any covered claim.

25. Indeed, Fresenius is not even steadfast in its suggestion that the D&O Proceeds are estate property. Rather, Fresenius can muster only the argument that it is the “logical inference” and that “residual value belongs to general unsecured creditors” *if* “some of all of the proceeds comprise estate property.” (Fres. Obj. ¶ 31). This equivocation speaks volumes.

26. Fresenius also argues that Debtors’ theoretical claims against Akorn’s officers and directors “based on a significant record of misconduct found by the Chancery Court” must be “quite valuable” if Akorn was willing to pay settling shareholders \$30 million in cash, the \$30 million CVR claim, and almost 9 million shares. (Fres. Obj. ¶ 34). In addition to disregarding the fact that Akorn did not pay the \$27.5 million (or indeed any cash payment), this clever bit of advocacy relies on a quintessential apples-to-oranges comparison. The \$1 billion in liability Akorn faced under the federal securities laws that it settled with existing common stock and financing in the form of the CVRs has nothing whatsoever to do with the efficacy or value of speculative breach of duty claims against its directors and officers.

C. The D&O Proceeds Are Not Estate Property

27. Finally, Objectors’ various arguments concerning the Policy Proceeds are, in any case, dead-in-their-tracks where, as here, the proceeds are *not* estate property.

28. It well settled that insurance policies paid for by debtors are estate property. *See Acands, Inc. v. Travelers Cas. & Sur. Co.*, 435 F.3d 252, 260 (3d Cir. 2006). “It has long been the rule in this Circuit that insurance policies are considered part of the property of a bankruptcy estate.”). “The more important question here is whether the proceeds of the policy are property of

the estate.” *World Health*, 369 B.R. at 809.

29. Here, the answer to that threshold question is demonstrably *no* because the D&O Policies mandated payment of the insured director and officer obligations first, and beyond that any indemnification of Debtors’ directors and officers is hypothetical and there are no non-speculative claims that could be brought that would implicate Debtors’ Side C entity coverage.

30. In *In re Allied Digital Technologies Corp.*, 306 B.R. 505, 510-511 (Bankr. D. Del. 2004), the court recognized that, as a general matter, policies that provide coverage solely to directors and officers are not estate property but where there is entity coverage the proceeds will be property of the estate, but only “if depletion of the proceeds would have an adverse effect on the estate to the extent the policy actually protects the estate’s other assets from diminution.” (*Id.* at 512). The court reasoned that this could not be the case where any potential indemnification of the directors and officers by the debtor was hypothetical and there was no showing of outstanding claims that could be brought against the debtor that would be covered (*Id.* at 513). This is *precisely* the situation here.

31. The Court’s decision in *World Health* is particularly on point. In that case, a Chapter 7 trustee sought a preliminary injunction to prevent a securities settlement with directors and officers and to direct the transfer of “proceeds which are being used to fund the Settlement and are being held in escrow by Lead Counsel are from the Policy’s *Coverage A*.” (369 B.R. 806, 811). The policy in *World Health* contained similar Side A, B, and C coverage and a virtually identical priority of payment provision that mandated payment of director and officer coverage under Side A first. (*Id.*). Finally, as here, the settlement would “exhaust the insurance proceeds leaving no proceeds for litigation . . . on behalf of creditors.” (*Id.* at 806). Unlike this case however, the settlement at issue in *World Health* was entered into *after* the filing of the Petition. *Id.*

32. Following a comprehensive analysis largely relying on the reasoning of *Allied Digital*, the Court found the proceeds were not property of the estate where they were being paid to fund the directors' and officers' settlement from Side A coverage pursuant to a priority of payment provision. (*Id.* at 809-811). The Court noted the Trustee had "no right" to the Side A coverage, there were no covered claims against the debtor that implicated the Side C coverage, and, consequently, there was "not a reasonable probability that the Trustee will succeed on the merits of his claim that the proceeds of the Policy are property of the estate or that he has priority or even a co-equal interest in the portion of the Policy which is funding the Settlement." (*Id.* at 808-811).

33. Just like *World Health*, here the Policy Proceeds were paid directly into escrow by the Carriers on behalf of the D&O Defendants under the Side A coverage as dictated by the priority of payment provision, and the payments exhausted the Policies. Moreover, like *World Health*, neither Provepharm nor Fresenius has identified a single, non-hypothetical, non-speculative claim covered by the D&O Policies that can be brought for the benefit of impaired creditors now that the 2017-2019 Policy Period has expired. This is because there are none. Indeed, if the Court orders the Debtors to unwind the Shareholder Settlement, the D&O Proceeds will merely return to the Carriers and neither Provepharm nor Fresenius offer any factual or legal authority for their conclusory speculation to the contrary. Respectfully, there is no reason for the Court to depart from the well-settled principles of *Allied Digital* and *World Health* and this alone is sufficient to overrule the Objections.

RESERVATION OF RIGHTS

34. Certain plaintiffs in the multidistrict litigation alleging price fixing of generic pharmaceuticals filed a confirmation objection under seal. (Dkt. No. 553). Gabelli reserves all

rights to respond to such objection to the extent it addresses the CVRs, D&O Proceeds or Shareholder Settlement and to otherwise supplement its response herein to the extent made necessary during the hearing on Confirmation of the Modified Plan.

CONCLUSION

WHEREFORE, Gabelli respectfully requests that the Court overrule the Provepharm and Fresenius Objections and asks the Court to grant such other relief as it deems just and proper.

Dated: August 28, 2020

Respectfully submitted,

FARNAN LLP

/s/ Michael J. Farnan

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Exhibit A

MANAGEMENT LIABILITY AND COMPANY REIMBURSEMENT POLICY DECLARATIONS

Item 8. Premium:

Taxes, Surcharges or Fees: \$0.00
Total Policy Premium: \$320,000.00

Item 9. Policy Forms and Endorsements Attached at Issuance:

DO 71 00 09 99 XL 82 01 07 07 XL 80 24 03 03 DO 72 06 02 00 DO 83 27 07 01 DO 83 125 08 06
DO 83 126 08 06 DO 83 133 12 06 DO 80 395 01 07 DO 80 213 02 03 XL 83 07 01 00
DO 80 562 06 10 DO 83 130 08 06 DO 80 17 05 00 DO 83 09 06 00 DO 80 284 08 04 DO 80 02 02 10
DO 80 342 10 05 DO 80 376 11 06 XL 80 02 03 00 DO 80 436 08 07 DO 83 12 08 00
DO 80 503 11 08 DO 80 142 10 01 DO 80 123 06 01 DO 80 46 07 00 DO 80 129 07 01
DO 80 357 05 06 DO 80 504 12 08 DO 80 286 08 04 DO 80 559 06 10 Manuscript 194 07 01
Manuscript 7260 07 07 XL 83 85 08 08 DO 80 289 09 04 DO 80 717 10 15 DO 80 627 05 12
DO 80 241 11 03 DO 80 05 03 00 DO 80 567 07 10 DO 80 578 11 10 DO 80 480 06 08
XL 80 72 06 13 XL 80 74 07 13

Countersigned: _____ Date _____ By: _____ Authorized Representative _____

THESE **DECLARATIONS** AND THE POLICY, WITH THE ENDORSEMENTS, ATTACHMENTS, AND THE **APPLICATION** SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE **INSURED** RELATING TO THIS INSURANCE.

In Witness Whereof, the Insurer has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page, if required by law, by a duly authorized representative of the Insurer.

Nicholas M. Brown, Jr.

Nicholas M. Brown, Jr.
President

Theresa M. Morgan

Theresa M. Morgan
Secretary

Greenwich Insurance Company

Nicholas M. Brown, Jr.

Nicholas M. Brown, Jr.
President

Theresa M. Morgan

Theresa M. Morgan
Secretary

XL Specialty Insurance Company

IN WITNESS

XL SPECIALTY INSURANCE COMPANY

REGULATORY OFFICE
505 EAGLEVIEW BOULEVARD, SUITE 100
DEPARTMENT: REGULATORY
EXTON, PA 19341-1120
PHONE: 800-688-1840

It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Insurer has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Insurer.



Joseph Tocco
President



Toni Ann Perkins
Secretary

POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE

Coverage for acts of terrorism is already included in your current policy. You are hereby notified that under the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007, the definition of “act of terrorism” has changed. As defined in Section 102(1) of the Act: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury in concurrence with the Secretary of the State, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your existing coverage, any losses caused by certified acts of terrorism may be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States generally reimburses 85% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. However, your policy may contain other exclusions that may affect your coverage. The Terrorism Risk Insurance Program Reauthorization Extension Act contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers’ liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is: \$ waived. Any premium waiver is only valid for the current Policy Period.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION EXTENSION ACT OF 2007, ANY LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE WILL BE PARTIALLY REIMBURSED BY THE UNITED STATES AND I HAVE BEEN NOTIFIED OF THE AMOUNT OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Name of Insurer: **XL Specialty Insurance Company**

Policy Number: **US00075683DO17A**

Signature of Insured

Print Name and Title

Date

NOTICE TO POLICYHOLDERS

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC and possibly the U.S. Department of State. **Please read this Policyholder Notice carefully.**

OFAC administers and enforces sanctions policy based on Presidential declarations of "national emergency". OFAC has identified and listed numerous

- Foreign agents
- Front organizations
- Terrorists
- Terrorist organizations
- Narcotics traffickers

as *Specially Designated Nationals and Blocked Persons*. This list can be found on the U.S. Department of the Treasury's web site - <http://www.treas.gov/ofac>.

The Secretary of the Treasury also has identified a number of entities in the insurance, petroleum, and petrochemicals industries determined to be owned or controlled by the Iranian government. Business transactions with any of these entities are expressly prohibited. These entities have been added to OFAC's list of *Financial Institutions Determined To Be Owned or Controlled by the Government of Iran*. This list can be found on the U.S. Department of the Treasury's web site - <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>, see List of CISADA and NDAA Prohibitions or Conditions

In accordance with OFAC regulations, or any applicable regulation promulgated by the U.S. Department of State, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance will be immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

PN CW 05 0914

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NOTICE TO POLICYHOLDERS**PRIVACY POLICY**

The XL Catlin insurance group (the "Companies"), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as "customers") must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ("GLBA"), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term "personal information" includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Promise

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the XL Catlin insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;
- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;

- Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose “consumer credit report” type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer’s eligibility for credit, insurance or employment. “Consumer credit report type information” means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;

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- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

NOTICE TO POLICYHOLDERS

FRAUD NOTICE

Arkansas	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Colorado	It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable for insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.
District of Columbia	WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
Florida	Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
Kansas	A "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.
Kentucky	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
Louisiana	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Maine	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
Maryland	Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
New Jersey	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
New Mexico	ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

NOTICE TO POLICYHOLDERS

<p>New York</p>	<p>General: All applications for commercial insurance, other than automobile insurance: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.</p> <p>All applications for automobile insurance and all claim forms: Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.</p> <p>Fire: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime.</p> <p>The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy.</p>
<p>Ohio</p>	<p>Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.</p>
<p>Oklahoma</p>	<p>WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.</p>
<p>Pennsylvania</p>	<p>All Commercial Insurance, Except As Provided for Automobile Insurance: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.</p> <p>Automobile Insurance: Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to \$15,000.</p>
<p>Puerto Rico</p>	<p>Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances [be] present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.</p>

NOTICE TO POLICYHOLDERS

Rhode Island	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Tennessee	<p>All Commercial Insurance, Except As Provided for Workers' Compensation It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.</p> <p>Workers' Compensation: It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers' compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.</p>
Utah	Workers' Compensation: Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison.
Virginia	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
Washington	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
West Virginia	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
All Other States	Any person who knowingly and willfully presents false information in an application for insurance may be guilty of insurance fraud and subject to fines and confinement in prison. (In Oregon, the aforementioned actions may constitute a fraudulent insurance act which may be a crime and may subject the person to penalties).

NOTICE TO POLICYHOLDERS

ILLINOIS

This notice is to advise you if you are having problems with your insurance company or agent, do not hesitate to contact the insurance company or agent to resolve your problem.

FOR INFORMATION, OR TO MAKE A COMPLAINT, CALL:

1-800-622-7311
XL CATLIN
SEAVIEW HOUSE
70 SEAVIEW AVENUE
STAMFORD, CT 06902-6040

You may also contact the Public Service Division of the Department of Insurance at the following address:

Illinois Department of Insurance
Consumer Division or Public Services Section
320 W. Washington Street
Springfield, IL 62767

Toll-free: 1-866-445-5364
TDD 217/524-4872 / Fax: 217/558-2083

<http://mc.insurance.illinois.gov/messagecenter.nsf>

Endorsement No.: 1
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

CHANGE OF PREAMBLE ENDORSEMENT

The preamble to this Policy is amended to read in its entirety as follows:

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer) including the Application and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 2
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

TERRORISM PREMIUM ENDORSEMENT

Please note: The portion of your annual premium set forth in Item 8. of the Declarations that is attributable to coverage for acts of terrorism is: \$ waived.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 3
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

ILLINOIS AMENDATORY ENDORSEMENT

1. Section VI. GENERAL CONDITIONS (C) OTHER INSURANCE AND SERVICE IN CONNECTION WITH NON-PROFIT ENTITIES AND JOINT VENTURES (1) is deleted and replaced by the following:

- (1) Except as provided in Section (C)(2) below, if the Insureds have insurance provided by other companies against a Loss covered by this Policy, the Insurer shall not be liable under this Policy for a greater proportion of such Loss than the Limit of Liability stated in the Declarations bears to the total applicable Limit of Liability for all valid and collectible insurance against such Loss.

2. Section VI. GENERAL CONDITIONS (E) CANCELLATION AND RENEWAL OF COVERAGE (2) is amended by the addition of the following:

The Insurer will also mail a copy of notice of cancellation to the Parent Company's broker and any mortgagee or lienholder, if known.

3. Section VI. GENERAL CONDITIONS (E) CANCELLATION AND RENEWAL OF COVERAGE (3) is amended by the addition of the following:

The notice of non-renewal will state the reason for such non-renewal. The Insurer will also mail a copy of the notice to the Parent Company's agent of record or broker and any mortgagee or lienholder, if known.

All other terms, conditions and limitations of this Policy remain unchanged.

Endorsement No.: 4
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND INSURED vs. INSURED EXCLUSION

In consideration of the premium charged, Section III Exclusions (G) of the Policy is amended to read in its entirety as follows:

- “(G) by, on behalf of, or in the name or right of, the Company or any Insured Person, except and to the extent such Claim:
- (1) is brought derivatively by a security holder of the Company who, when such Claim is made and maintained is acting independently of, and without the active solicitation, assistance, participation or intervention of an Insured Person or the Company;
 - (2) is brought by the Bankruptcy Trustee or Examiner of the Company or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the Company;
 - (3) any Claim in the form of a crossclaim, third party claim or other claim for contribution or indemnity by an Insured Person which is part of or results directly from a Claim which is not otherwise excluded by the terms of this Policy; or
 - (4) is an Employment Practices Claim;”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 5
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

EXCLUSION (G) ENDORSEMENT

In consideration of the premium charged, Section III Exclusion (G) of the Policy shall not apply to the extent a Claim is brought and maintained by an Insured Person:

- (a) who has not served as a director, officer, member of the Board of Managers, or employee of the Company for at least two (2) years prior to the date such Claim is first made; and
- (b) who is acting independently of, and without the solicitation, assistance, participation or intervention of an Insured Person or the Company.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 6
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

EXCLUSION (G) ENDORSEMENT

In consideration of the premium charged, Section III Exclusion (G) of the Policy shall not apply to the extent a Claim is brought and maintained in a non-common law jurisdiction outside the United States of America, including its territories and possessions.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 7
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

EXCLUSION (G) ENDORSEMENT

In consideration of the premium charged, Section III Exclusion (G) of the Policy shall not apply to the extent a Claim is brought by a creditors committee of the Company in the event such Company files for relief under Title 11 of the United States Code.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 8
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF LOSS ENDORSEMENT

In consideration of the premium charged, Section II Definitions (M) of the Policy is amended to read in its entirety as follows:

"(M) 'Loss' means damages, judgments, settlements or other amounts (including punitive, exemplary or multiplied damages, where insurable by law) and Defense Expenses in excess of the Retention that the Insured is legally obligated to pay. Loss will not include

- (1) fines, penalties or taxes imposed by law;
- (2) taxes or wages; or
- (3) matters which are uninsurable under the law pursuant to which this Policy is construed.

NOTE: With respect to judgments in which punitive, exemplary or multiplied damage are awarded, the coverage provided by this Policy shall apply to the broadest extent permitted by law. If, based on the written opinion of counsel for the Insured, punitive damages are insurable under applicable law, the Insurer will not dispute the written opinion of the counsel for the Insured."

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 9
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF SECURITIES CLAIM ENDORSEMENT

In consideration of the premium charged, Section II Definitions (Q) of the Policy is amended to read in its entirety as follows:

- "(Q) 'Securities Claim' means a Claim, other than an administrative or regulatory proceeding against or investigation of a Company, made against any Insured:
- (1) for a violation of any federal, state, local regulation, statute or rule (whether statutory or common law) regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities which is:
 - (a) brought by any person or entity based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the purchase or sale of, or offer to purchase or sell, securities of the Company; or
 - (b) brought by a security holder of a Company with respect to such security holder's interest in securities of such Company; or
 - (2) brought derivatively on behalf of the Company by a security holder of such Company.

Notwithstanding the foregoing, the term 'Securities Claim' shall include an administrative or regulatory proceeding against a Company, but only if and only during the time that such proceeding is also commenced and continuously maintained against an Insured Person."

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 10
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

SPECIFIED CLAIMS EXCLUSION

In consideration of the premium charged, no coverage will be available under this Policy for Loss, including Defense Expenses, in connection with any proceeding set forth below, or in connection with any Claim based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any such proceeding or any fact, circumstance or situation underlying or alleged therein:

Those legal proceedings described in Item 3. Of the Form 10K annual report pursuant to Section 13r 15(d) of e Securities Exchange Act of 1934 for year ended December 31, 2001.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 11
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

SECTION 11, 12 & 15 ENDORSEMENT

In consideration of the premium charged:

- (1) Notwithstanding Endorsement No. 8. to this Policy, Section II Definition (M)(3) of the Policy is amended to read in its entirety as follows:

“(3) matters which are uninsurable under the law pursuant to which this Policy is construed; provided that the Insurer will not assert that the portion of any settlement in a Claim arising from an initial or subsequent public offering of the Company’s securities constitutes uninsurable loss due to the alleged violations of Section 11 and/or 12 of the Securities Act of 1933 as amended (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933).”

- (2) Section III Exclusion (F)(2) of the Policy will not apply to allegations in a Claim asserted against an Insured under Section 11 and/or 12 of the Securities Act of 1933 as amended arising out of an initial or subsequent public offering of the Company’s securities (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933).

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 12
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

EXCLUSION (G) ENDORSEMENT

In consideration of the premium charged, Section III Exclusion (G) of the Policy shall not apply to the extent a Claim is brought by an employee or an Insured Person of the Company pursuant to any federal or state whistleblower protection statute or any rule or regulation promulgated thereunder.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 13
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

ADD COVERAGE FOR COSTS INCURRED IN INVESTIGATING AND EVALUATING SHAREHOLDER DERIVATIVE DEMANDS

- (1) In addition to the coverage otherwise provided under this Policy, but still subject to the Insurer's maximum aggregate Limit of Liability as set forth in ITEM 3 of the Declarations, the Insurer shall pay on behalf of the Company all Investigation Costs resulting solely from any Shareholder Derivative Demand first made during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act committed or attempted, or allegedly committed or attempted, by any Insured Person.
- (2) "Investigation Costs" mean reasonable fees and expenses of attorneys and experts retained by the Company, or by its board of directors or any committee thereof, that are incurred by the Company in the Company's investigation or evaluation of a Shareholder Derivative Demand. Investigation Costs will not include the Company's overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees.
- (3) "Shareholder Derivative Demand" means a written demand, made by one or more of the shareholders of the Company upon the Company's board of directors, for the Company to bring a civil proceeding in a court of law against an Insured Person.
- (4) The Insurer's maximum aggregate limit of liability under this Policy for Investigation Costs shall be \$250,000, which amount shall be part of, and not in addition to, the Insurer's maximum aggregate Limit of Liability under this Policy as set forth in ITEM 3 of the Declarations. Payment by the Insurer of Investigation Costs shall reduce the Limit of Liability.
- (5) The coverage provided under paragraph (1) above will be subject to the exclusions set forth in Section III of this Policy and to any exclusions that may be set forth in other endorsements to this Policy, and any references in those exclusions to Loss and Claims shall be deemed to refer instead to Investigative Costs and Shareholder Derivative Demands, respectively.
- (6) No retention will apply to Investigation Costs payable under paragraph (1) above.
- (7) It shall be the duty of the Company to investigate and evaluate any Shareholder Derivative Demand.
- (8) For purposes of the coverage provided under paragraph (1) above, all references in Sections V.C and VI to Loss and Defense Expenses shall be deemed to refer instead to Investigative Costs, and all references in Sections V.C and VI to Claims shall be deemed to refer instead to Shareholder Derivative Demands.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 14
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

ERISA EXCLUSION

In consideration of the premium charged, Section III Exclusions (C) is deleted and replaced by the following:

- (C) for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) as amended or any regulation promulgated thereunder or any similar, federal, state or local law or regulation;

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 15
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND GENERAL CONDITIONS (C)(1) ENDORSEMENT

In consideration of the premium charged, Section VI General Conditions (C)(1) of the Policy is amended to read in its entirety as follows:

- “(1) All Loss payable under this Policy will be specifically excess of and will not contribute with any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 16
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF INSURED PERSON

In consideration of the premium charged, the term "Insured Person," as defined in Section II Definition (J)(1) of the Policy, shall include those individuals holding the following positions for the Company:

General Counsel

All other terms, conditions and limitations of this policy shall remain unchanged.

Endorsement No.: 17
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF APPLICATION ENDORSEMENT

In consideration of the premium charged, the term "Application" shall include all reports, statements, prospectuses and other materials filed by the Company with the Securities and Exchange Commission on or after that date which is one (1) year before the date of the Application but before the Inception Date set forth in ITEM 2 of the Declarations, and Section II DEFINITIONS (A) of the Policy will be deemed to have been amended accordingly.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 18
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

PRIORITY OF PAYMENTS

In consideration of the premium charged:

- (1) It is understood and agreed that if Loss, including Defense Expenses, shall be payable under more than one of the INSURING AGREEMENTS, then the Insurer shall, to the maximum extent practicable and subject at all times to the Insurer's maximum aggregate Limit of Liability as set forth in ITEM 3 of the Declarations, pay such Loss as follows:
 - (a) first, the Insurer shall pay that Loss, if any, which the Insurer may be liable to pay on behalf of the Insured Persons under INSURING AGREEMENT (A);
 - (b) second, the Insurer shall pay that Loss, if any, which the Insurer may be liable to pay on behalf of the Company under INSURING AGREEMENT (B); and
 - (c) third, the Insurer shall make such other payments which the Insurer may be liable to make under INSURING AGREEMENT (C) or otherwise.
- (2) The bankruptcy or insolvency of any entity or organization entitled to coverage under this Policy or of any Insured Person will not relieve the Insurer of any of its obligations hereunder. It is understood and agreed that the coverage provided under this Policy is intended to protect and benefit the Insured Persons. Further, if a liquidation or reorganization proceeding is commenced (whether voluntarily or involuntarily) under Title 11 of the United States Code, as amended, or any similar state, local or foreign law ("Bankruptcy Law") by or against the Parent Company and/or any other entity or organization entitled to coverage under this Policy, then with respect to any covered Claim, the Insureds hereby:
 - (a) waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Bankruptcy Law; and
 - (b) agree not to oppose or object to any efforts by the Insurer or any Insured to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.
- (3) Nothing in this endorsement is intended, nor shall it be construed, to increase the Insurer's maximum aggregate Limit or Limits of Liability under this Policy as set forth in ITEM 3 of the Declarations.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 19
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

WORLDWIDE ENDORSEMENT

In consideration of the premium charged:

- (1) Notwithstanding differences in the substantive and procedural laws of any foreign jurisdiction as compared to the United States federal and state laws, the Insurer agrees to provide coverage in foreign jurisdictions worldwide and agrees that it shall interpret the coverage provided by this Policy at least as broadly, and with the same intent of coverage, as if Loss had been sustained in the United States.
- (2) In the event that a jurisdiction in which any Insured(s) is doing business requires by law or regulation that the Insurer uses approved, filed or otherwise accepted local policy forms, the Insurer shall take such steps as are necessary to ensure that the coverage provided under this Policy is effective in such jurisdiction on the same or better terms and for the same term as hereunder.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 20
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND NOTICE OF CLAIM ENDORSEMENT

In consideration of the premium charged, Section VI General Conditions (A)(1) of the Policy is amended to read in its entirety as follows:

“(1) As a condition precedent to any right to payment under this Policy with respect to any Claim, the Insured shall give written notice to the Insurer of any Claim as soon as practicable after it is first made and the Chief Executive Officer, Chief Financial Officer and/or General Counsel of the Parent Company first becomes aware of such Claim, but in no event later than sixty (60) days after the expiration of the Policy Period.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 21
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DISHONESTY EXCLUSION

In consideration of the premium charged, Section III Exclusion (F) is deleted and replaced by the following:

- (F) brought about or contributed to in fact by any:
 - (1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or
 - (2) profit or remuneration gained by any Insured to which such Insured is not legally entitled;
as determined by a final adjudication in the underlying action;

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 22
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF CLAIM ENDORSEMENT

In consideration of the premium charged:

- (1) The term "Claim," as defined in Section II Definitions of the Policy, will include any official written request for Extradition of any Insured Person or the execution of a warrant for the arrest of any Insured Person where such execution is an element of Extradition.
- (2) Solely for the purposes of this Endorsement, the term "Extradition" means any formal process by which an Insured Person located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 23
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND SECTION IV ENDORSEMENT

In consideration of the premium charged, Section IV Limit of Liability, Indemnification and Retentions (F) of the Policy is deleted in its entirety.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 24
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF INSURED PERSON ENDORSEMENT

In consideration of the premium charged, Section II Definitions (J)(3) and (J)(4) are amended to read in their entirety as follows:

- (3) an individual identified in (J)(1) above who, at the request of the Company, is serving as a director, officer, trustee, regent or governor of a Non-Profit Entity;
- (4) any individual identified in (J)(1) above who, at the request of the Company is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an Insured Person of the Company, regardless of the name or title by which such position is designated, of a Joint Venture; or

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 25
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF INSURED PERSON

In consideration of the premium charged, the term "Insured Person" shall include any employee of the Company, but only if and to the extent that such employee is included as a co-defendant in a Claim contemporaneously with or subsequent to the naming of one or more directors or officers of the Company as a defendant or defendants in such Claim for one or more Wrongful Acts; provided that:

- (1) subject to of the terms, conditions, limitations and endorsements of this Policy, the Insurer shall be liable in respect of Claims against such Insured Persons only to pay Loss under Section I. Insuring Agreement (B), which Loss the Company shall pay to or on behalf of such Insured Persons as indemnification, and
- (2) the Insurer shall not be liable to pay Loss under Section I. Insuring Agreement (A) in respect of Claims against such Insured Persons.

All other terms, conditions and limitations of this policy shall remain unchanged.

Endorsement No.: 26
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

EMERGENCY LOSS ENDORSEMENT

In consideration of the premium charged:

- (1) In addition to the coverage afforded pursuant to Insuring Agreements (A), (B) and (C), but subject to the maximum aggregate Limit of Liability set forth in Item 3 of the Declarations and the provisions below, the Insurer shall pay on behalf of the Company Emergency Loss resulting from an Emergency occurring during the Policy Period, or, if applicable, the Optional Extension Period and reported to the Insurer pursuant to paragraph (7) below.
- (2) It is understood and agreed that the payment of any Emergency Loss pursuant to this Policy shall not waive any rights of the Insurer available under this Policy or at law.
- (3) Solely with respect to this endorsement, the following terms shall have the meanings set forth below:
 - (a) "Effect of the Common Stock Price" means that the price per share of the Company's common stock shall decrease by the greater of \$5 per share or 10% net of the change in the Standard & Poor's Composite Index within a 24 hour period.
 - (b) "Emergency" means the public announcement of any of the following events which, in the good faith opinion of the chief financial officer of the Company, is reasonably likely to cause or did cause an Effect on the Common Stock Price:
 - (i) the Company's past or future earnings or sales, which is substantially less favorable than any of the following: (A) the Company's prior years earning or sales for the same period; (B) the Company's prior public statements or projections regarding earnings or sales for such period; or (C) an outside securities analyst's published estimate of the Company's earnings or sales;
 - (ii) an unforeseen loss of: (A) the Company's intellectual property rights for a patent, trademark or copyright, other than by expiration; (B) a major customer or client of the Company; or (C) a major contract with the Company;
 - (iii) the recall of a major product of the Company or the unforeseen delay in the production of a major product of the Company;
 - (iv) the Company has caused the bodily injury, sickness, mental anguish, emotional distress, disease or death of a group of persons, or damage or destruction of any tangible property including loss of use thereof;
 - (v) layoffs by the Company of its employees, or the death or resignation of one or more key directors or officers of the Parent Company;
 - (vi) a restatement of the previously filed financial statements of the Company;
 - (vii) the elimination or suspension of regularly scheduled dividends previously paid by the Company;
 - (viii) the Company intends to write-off a material amount of its assets;
 - (ix) the Company has defaulted or intends to default on its debt or intends to engage in a debt restructuring;

- (x) the Company intends to file for bankruptcy protection, a third party is seeking to file for involuntary bankruptcy on behalf of the Company, or bankruptcy proceedings are imminent, whether voluntary or involuntary;
- (xi) the commencement or threat of commencement of litigation or governmental or regulatory proceedings against the Company; or
- (xii) an unsolicited written offer or bid, whether publicly announced or privately made, by any person or entity, other than an Insured or any affiliate of an Insured, to a director or officer of the Company to effect a Change in Control;

provided that Emergency shall not include any event relating to:

- (1) any fact, circumstance, situation, transaction, event, or wrongful act which was the subject of any notice given under any other policy;
- (2) any fact, circumstance, situation, transaction, event or wrongful act underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration which was brought prior to April 24, 2001; or
- (3) any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants, contaminants or waste of any kind including but not limited to nuclear material or nuclear waste.

An Emergency shall first occur when any Company or any of its directors or officers first becomes aware of such Emergency. An Emergency shall conclude immediately when the Emergency Firm advises the Company that such Emergency no longer exists or when the applicable limit of liability has been exhausted.

- (c) "Emergency Firm" means any public relations firm, crisis management firm or law firm hired by the Company, with the prior written approval of the Insurer, to perform Emergency Services.
- (d) "Emergency Loss" means:
 - (i) reasonable and necessary fees and expenses incurred by an Emergency Firm in the performance of Emergency Services for the Company;
 - (ii) reasonable and necessary fees and expenses incurred in the printing, advertising, mailing of materials; and
 - (iii) travel costs incurred by any director, officer, member of the Board of Managers, employee or agent of the Company or the Emergency Firm,

in connection with an Emergency and incurred during the pendency of, or within 90 days immediately prior to and in anticipation of, an Emergency for which the Company is legally liable.

- (e) "Emergency Services" means those services performed by an Emergency Firm in advising the Company or a director, officer or employee of the Company on minimizing potential harm to the Company from an Emergency, including but not limited to maintaining and restoring investor confidence in the Company.

- (4) The term "Loss," as defined in Section II Definitions (M) of the Policy, shall include Emergency Loss.
- (5) The maximum aggregate limit of liability for all Emergency Loss resulting from all Emergencies occurring during the Policy Period shall be \$100,000 ("Emergency Sublimit"), which amount is part of and not in addition to the maximum aggregate Limit of Liability of the Insurer under this Policy as set forth in Item 3 of the Declarations.
- (6) As a condition precedent to any right to payment under this Policy with respect to any Emergency, the Insured shall give written notice to the Insurer of an Emergency as soon as practicable after the Emergency commences but in no event later than thirty (30) days after the Company first incurs Emergency Loss. All notices must be sent by certified mail or the equivalent to the address set forth in Item 7 of the Declarations; Attention: Claim Department.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 27
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

EMPLOYED LAWYERS ENDORSEMENT (WITH SUBLIMIT)

In consideration of the premium charged:

- (1) The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations and exclusions, be extended to apply to Loss resulting from a Claim made against any Employed Lawyer of the Company (an "Employed Lawyer Claim").
- (2) The term "Employed Lawyer" means any employee of the Company if and to the extent such employee is or, during the course of such person's employment was,
 - (a) admitted to the practice of law; and
 - (b) employed within the Company's office of general counsel or its functional equivalent for the purpose of providing legal services to or for the benefit of the Company.
- (3) The term "Insured Person" also includes any Employed Lawyer.
- (4) The term "Wrongful Act" also includes any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an Employed Lawyer, but only in connection with an Employed Lawyer's performance of, or actual or alleged failure to perform, legal services to or for the benefit of the Company within the scope of his or her employment.
- (5) No coverage will be available under this endorsement for Loss, including Defense Expenses, from any Claim against an Employed Lawyer based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (a) the service by any such person in any capacity, whether or not with the Company, other than those explicitly set forth in this endorsement; or
 - (b) an Employed Lawyer's performance of, or actual or alleged failure to perform, any legal services other than legal services to or for the benefit of the Company within the scope of the Employed Lawyer's employment.
- (6) The Insurer's maximum aggregate limit of liability for all Loss from all Employed Lawyer Claims shall be \$10,000,000, which amount shall be part of, and not in addition to, the maximum aggregate Limit of Liability for this Policy as set forth in Item 3 of the Declarations, which is applicable to all Loss from all Claims for which this Policy provides coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 28
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND CANCELLATION ENDORSEMENT

In consideration of the premium charged, Section VI General Conditions (E)(1) of the Policy is amended to read in its entirety as follows:

- “(1) Except for the nonpayment of premium, as set forth in (E)(2) below, the Parent Company has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall return to the Parent Company the gross pro rata unearned premium (minus brokerage commission). Return or tender of the unearned premium is not a condition of cancellation.”

Endorsement No.: 29
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

DOMESTIC PARTNER ENDORSEMENT

In consideration of the premium charged, Section II Definition (J)(5) of the Policy shall include the domestic partner of any person set forth in Section II Definition (J)(1) – (J)(4), but only to the extent the domestic partner is a party to any Claim solely in their capacity as a domestic partner to such persons and only for the purposes of any Claim seeking damages recoverable from community property, property jointly held by any such person and domestic partner, or property transferred from any such person to the domestic partner.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 30
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND INSURER'S RIGHTS OF SUBROGATION ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that, in the event of payment under the Policy, the Insurer will not be subrogated to any Insured's potential or actual rights of recovery in connection therewith against any Insured Person unless it shall have been determined by final adjudication in the underlying Claim that such Insured Person committed any act or omission or gained any profit or remuneration so that Section III. EXCLUSION (F) of this Policy, as amended, would be applicable to such Insured Person, and Section VI. GENERAL CONDITIONS (G)(2) of this Policy will be deemed to have been amended accordingly.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 31
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

BANKRUPTCY ENDORSEMENT

In consideration of the premium charged:

- (1) Section II Definitions (B)(3) of the Policy is deleted in its entirety.
- (2) The term "Company," as defined in Section II Definitions (D) of the Policy, shall include the Parent Company and any covered Subsidiary as a debtor in possession, as such term is used in Chapter 11 of the United States Bankruptcy Code.
- (3) The bankruptcy or insolvency of any Insured shall not relieve the Insurer of any of its obligations under this Policy. It is understood and agreed that the coverage provided under this Policy is intended to protect and benefit the Insured Persons. If a liquidation or reorganization proceeding is commenced by the Company, whether voluntary or involuntary, under Title 11 of the United States Code, or any similar state, local or foreign law (collectively, "Bankruptcy Law"), then, with respect to a Claim under this Policy, the Insureds hereby:
 - (a) waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Bankruptcy Law; and
 - (b) agree not to oppose or object to any efforts by the Insurer or any Insured Person to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 32
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND REPRESENTATION CLAUSE ENDORSEMENT

In consideration of the premium charged, Section VI General Conditions (I) of the Policy is amended to read in its entirety as follows:

“(I) REPRESENTATION CLAUSE

The Insured represents that the statements and particulars contained in the Application as well as any prior application submitted to the Insurer are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are material to the risk assumed and form the basis of this Policy. No knowledge or information possessed by any Insured will be imputed to any other Insured. The Insurer may not void and/or rescind this Policy, other than for non-payment of premium.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 33
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

PENDING AND PRIOR LITIGATION EXCLUSION (SPLIT LIMIT)

In consideration of the premium charged:

- (1) With respect to the first \$5,000,000 of the Limit of Liability of this Policy, the Insurer shall not be liable to make any payment for Loss, including Defense Expenses, in connection with any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or Wrongful Act underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration which was brought prior to April 24, 2010.
- (2) In addition to, and not in limitation of the above paragraph:
 - (a) with respect to \$2,500,000 of the Limit of Liability of this Policy which is excess of the first \$5,000,000 of the Limit of Liability of this Policy, the Insurer shall not be liable to make any payment for Loss, including Defense Expenses, in connection with any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or Wrongful Act underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration as of April 24, 2010; and
 - (b) with respect to \$2,500,000 of the Limit of Liability of this Policy which is excess of the first \$7,500,000 of the Limit of Liability of this Policy, the Insurer shall not be liable to make any payment for Loss, including Defense Expenses, in connection with any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or Wrongful Act underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration as of April 24, 2011.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 34
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

OUTSIDE DIRECTORSHIP ENDORSEMENT

In consideration of the premium charged:

- (1) The term "Non Profit Entity", as defined in Section II Definitions of the Policy, is amended to include the following entity (the "For-Profit Entity"):

Aciex Therapeutics

- (2) The term "Insured Person", as defined in Section II Definitions of the Policy, is amended to include service by the following Insured Person(s) as a director or officer of the For-Profit Entity, but only during such time that such service is at the specific written request of the Company:

Rajat Ral

With respect to the For-Profit Entity, the term "Insured Person" shall not include service as a director or officer by any Insured Person other than the Insured Person(s) specifically identified in paragraph (2).

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 35
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

DELETE EXCLUSION (B) ENDORSEMENT

In consideration of the premium charged, Section III Exclusion (B) of the Policy is deleted in its entirety.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 36
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND NOTICE OF CLAIM

In consideration of the premium charged: it is understood and agreed that the Insureds' failure to provide written notice of any Claim to the Insurer within the time prescribed in Section VI. GENERAL CONDITIONS (A)(1) will not invalidate coverage under this Policy unless the failure to provide such timely notice has actually prejudiced the Insurer; provided, however, that there will be an irrebuttable presumption of prejudice to the Insurer if, before written notice of a Claim is given to the Insurer, an Insured's liability in connection with such Claim is determined by a court of competent jurisdiction or by binding arbitration or an Insured enters into any settlement or other compromise of such Claim.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 37
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF INSURED PERSON

In consideration of the premium charged:

- (1) Solely for the purposes of this endorsement, the following terms shall have the meanings set forth below:
 - (a) "Co-Defendant Insured Person" means any natural person employee of the Company, but solely in connection with services performed for the Company; and
 - (b) "Original Insured Person" means any Insured Person, other than a Co-Defendant Insured Person.
- (2) The term "Insured Person," as defined in Section II Definitions (J) of the Policy, is amended to include any Co-Defendant Insured Person, but only with respect to, to the extent that, and during such time that a Claim:
 - (a) made against a Co-Defendant Insured Person is also made and continuously maintained against an Original Insured Person; and
 - (b) is for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such Co-Defendant Insured Person committed or allegedly committed in connection with services performed for the Company.
- (3) No coverage will be available under this Policy for any Claim made: (a) solely against a Co-Defendant Insured Person, or (b) against a Co-Defendant Insured Person and person or entity, other than an Original Insured Person.
- (4) No coverage will be available under this Policy for any Claim made against a Co-Defendant Insured Person based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving a Co-Defendant Insured Person in connection with any services performed for any entity other than the Company, or acting in their capacity as a consultant to any entity other than the Company.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 38
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND DEFINITION OF “CLAIM”

In consideration of the premium charged, the term “Claim” will be deemed to include any proceeding or investigation which is comparable to a proceeding or investigation described in Section II.(C)(2), (3) or (4) of the Policy, and which is brought or commenced in a jurisdiction other than the United States, its territories and possessions before any court, tribunal, agency, organization or other official body having the authority under the laws of such jurisdiction to enter judgment or otherwise make a binding determination of liability or responsibility.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 39
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

ADDITIONAL INSURED ENDORSEMENT

In consideration of the premium charged:

- (1) The term "Company," as defined in Section II Definitions (D) of the Policy, is amended to include the following entities scheduled below, (each an "Additional Company"):

Additional Company	Pending and Prior Litigation Date
Hi-Tech Pharmacal Co., Inc.	April 17, 2014

- (2) No coverage will be available under this Policy for Claims made against any Additional Company, or any Insured Person thereof, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration which was brought prior to the Pending and Prior Litigation Date set forth opposite such Additional Company in paragraph (1) above of this endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 40
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

AMEND GENERAL CONDITIONS (G)(1) ENDORSEMENT

In consideration of the premium charged, Section VI General Conditions (G)(1) of the Policy is amended to read in its entirety as follows:

- “(1) The Insured agrees to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that they will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery. The failure of any Insured Person to give the Insurer cooperation and information as required in this paragraph shall not impair the rights of any other Insured Person under this Policy.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 41
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

EMAIL NOTICES ENDORSEMENT

In consideration of the premium charged, Section VI General Condition (A)(3) of the Policy is amended to read in its entirety as follows:

“(3) All notices under GENERAL CONDITIONS (A)(1) and (2) must be sent by:

- (a) certified mail or the equivalent to the address set forth in ITEM 7 of the Declarations: Attention Claim Department; or
- (b) electronic mail (email) to: proclaimnewnotices@xlcatlin.com.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 42
Named Insured: Akorn, Inc.
Policy No.: US00075683DO17A

Effective: June 01, 2017
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

LINKED LIMIT ENDORSEMENT

In consideration of the premium charged, the Insured agrees with the Insurer that the total of all limits of liability under this Policy and any and all other insurance policies issued or reinsured by the Insurer or its affiliates scheduled hereunder to the Insured or any of the Insured's worldwide affiliates, officers, directors, or employees, (this Policy together with all such other policies being referred to herein as "Program Policies") shall not exceed the amount of the Program Aggregate Limit indicated below:

Program Aggregate Limit: \$10,000,000

Schedule of Program Policies: (list all policies below):

	Named Insured	Issuing XL Group Insurer	Policy Number	Policy Period
Policy 1	Akorn, Inc.	XL Insurance Company SE	CH00009864DO17A	June 1, 2017- June 1, 2018
Policy 2				

In the event that any payment is made under this Policy or any other Program Policy with the effect that the Program Aggregate Limit is exceeded, the Insured under this Policy shall immediately upon the request of the Insurer pay to the Insurer the sum of such excess.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 43
 Named Insured: Akorn, Inc.
 Policy No.: US00075683DO17A

Effective: June 01, 2017
 12:01 A.M. Standard Time
 Insurer: XL Specialty Insurance Company

SIMULTANEOUS TERMINATION ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that if this Policy is canceled pursuant to Section VI General Conditions (E)(1) or (E)(2) of the Policy, any and all other insurance policies issued or reinsured by the Insurer or its affiliates scheduled below to the Insured or any of the Insured's worldwide affiliates, officers, directors, or employees, (this Policy together with all such other policies being referred to herein as "Program Policies"), shall be deemed terminated and cancelled automatically and simultaneously with this Policy.

Schedule of Program Policies:

	Named Insured	Issuing XL Group Insurer	Policy Number	Policy Period
Policy 1	Akorn, Inc.	XL Insurance Company SE	CH00009864DO17A	June 1, 2017- June 1, 2018
Policy 2				

All other terms, conditions and limitations of this Policy shall remain unchanged.

MANAGEMENT LIABILITY AND COMPANY REIMBURSEMENT INSURANCE COVERAGE FORM

**THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to Executive Liability Underwriters, the Underwriting Manager for the Insurer identified in the Declarations (hereinafter the Insurer) including the Application and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

I. INSURING AGREEMENTS

- (A) The Insurer shall pay on behalf of the **Insured Persons Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act** or **Employment Practices Wrongful Act**, except for **Loss** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.
- (B) The Insurer shall pay on behalf of the **Company Loss** which the **Company** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act** or **Employment Practices Wrongful Act**.
- (C) The Insurer shall pay on behalf of the **Company Loss** resulting solely from any **Securities Claim** first made against the **Company** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Company Wrongful Act**.

II. DEFINITIONS

- (A) "**Application**" means:
 - (1) the application attached to and forming part of this Policy; and
 - (2) any materials submitted therewith, which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.
- (B) "**Change In Control**" means:
 - (1) the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets by another entity such that the **Parent Company** is not the surviving entity;
 - (2) the acquisition by any person, entity or affiliated group of persons or entities of the right to vote, select or appoint more than fifty percent (50%) of the directors of the **Parent Company**; or
 - (3) the appointment of a Receiver, Conservator, Liquidator, Trustee, Rehabilitator, or any comparable authority, with respect to the **Parent Company**.
- (C) "**Claim**" means:
 - (1) a written demand for monetary or non-monetary relief;
 - (2) any civil proceeding in a court of law or equity, or arbitration;
 - (3) any criminal proceeding which is commenced by the return of an indictment; and
 - (4) a formal civil, criminal, administrative regulatory proceeding or formal investigation of an **Insured Person** or the **Company** (but with respect to the **Company** only for a **Company Wrongful Act**) which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying in writing such **Insured Person** or the **Company** as a person or entity against whom a proceeding as described in (C)(2) or (3) above may be commenced, including any

proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body having jurisdiction over any **Employment Practices Wrongful Act**.

- (D) "**Company**" means the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or during the Policy Period, subject to GENERAL CONDITIONS VI (D).
- (E) "**Company Wrongful Act**" means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the Company in connection with a **Securities Claim**.
- (F) "**Defense Expenses**" means reasonable legal fees and expenses incurred in the defense of any **Claim** including the premium for an appeal bond, attachment bond or similar bond but will not include applying for or furnishing such bond. **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers or employees.
- (G) "**Employment Practices Wrongful Act**" means any actual or alleged:
- (1) wrongful termination of employment whether actual or constructive;
 - (2) employment discrimination of any kind including violation of any federal, state or local law involving employment or discrimination in employment which would deprive or potentially deprive any person of employment opportunities or otherwise adversely affect his or her status as an employee, because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, or other protected status;
 - (3) sexual or other harassment in the workplace; or
 - (4) wrongful deprivation of career opportunity, employment related misrepresentations, retaliatory treatment against an employee of the **Company**, failure to promote, demotion, wrongful discipline or evaluation, or refusal to hire.
- (H) "**Employment Practices Claim**" means a **Claim** alleging an **Employment Practices Wrongful Act**.
- (I) "**Insured**" means the **Insured Persons** and the **Company**.
- (J) "**Insured Person**" means:
- (1) any past, present or future director or officer, or member of the Board of Managers, of the **Company** and those persons serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States;
 - (2) any past, present or future employee of the **Company** to the extent any **Claim** is a **Securities Claim**;
 - (3) an individual identified in (J)(1) above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor of a **Non-Profit Entity**;
 - (4) any individual identified in (J)(1) above who, at the specific written request of the **Company** is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
 - (5) the lawful spouse of any person set forth in the above provisions of this definition, but only to the extent the spouse is a party to any Claim solely in their capacity as a spouse of such persons and only for the purposes of any Claim seeking damages recoverable from marital community property, property jointly held by any such person and spouse, or property transferred from any such person to the spouse.

In the event of the death, incapacity or bankruptcy of an individual identified in (J)(1), (2), (3), (4) or (5) above, any **Claim** against the estate, heirs, legal representatives or assigns of such individual for a **Wrongful Act** or **Employment Practices Wrongful Act** of such individual will be deemed to be a **Claim** against such individual.

- (K) "**Interrelated Wrongful Acts**" means any **Wrongful Act**, **Company Wrongful Act**, or **Employment Practices Wrongful Act** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related facts, series of related facts, circumstances, situations, transactions or events.
- (L) "**Joint Venture**" means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, during any time in which the Parent Company, either directly or through one or more **Subsidiary(s)**:
- (1) owns or controls at least thirty three percent (33%), but not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
 - (2) has the right, by contract, ownership of securities or otherwise, to elect, appoint or designate at least thirty three percent (33%) of those persons described in (L)(1) above.
- (M) "**Loss**" means damages, judgments, settlements or other amounts (including punitive or exemplary damages, where insurable by law) and **Defense Expenses** in excess of the Retention that the **Insured** is legally obligated to pay. **Loss** will not include:
- (1) the multiplied portion of any damage award;
 - (2) fines, penalties or taxes imposed by law; or
 - (3) matters which are uninsurable under the law pursuant to which this Policy is construed.
- NOTE:** With respect to judgments in which punitive damages are awarded, the coverage provided by this Policy shall apply to the broadest extent permitted by law. If, based on the written opinion of counsel for the **Insured**, punitive damages are insurable under applicable law the Insurer will not dispute the written opinion of counsel for the Insured.
- (N) "**Non-Profit Entity**" means a corporation or organization other than the **Company**, which is exempt from taxation under Section 501 (c)(3), (4) and (10) of the Internal Revenue Code as amended or any rule or regulation promulgated thereunder.
- (O) "**Parent Company**" means the entity named in ITEM 1 of the Declarations.
- (P) "**Policy Period**" means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations or to any earlier cancellation date.
- (Q) "**Securities Claim**" means a **Claim** made against an Insured for:
- (1) any actual or alleged violation of the Securities Act of 1933 as amended, the Securities Exchange Act of 1934 as amended, any similar federal or state statute or any rules or regulations promulgated thereunder; or
 - (2) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty arising from or in connection with the purchase or sale of, or offer to purchase or sell any securities issued by the Company, whether such purchase, sale or offer involves a transaction with the **Company** or occurs in the open market.
- (R) "**Subsidiary**" means any entity during any time in which the **Parent Company** owns, directly or through one or more **Subsidiary(s)**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity's directors.
- (S) "**Wrongful Act**" means any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by any **Insured Person** while acting in his or her capacity as an:
- (1) **Insured Person** of the **Company** or a person serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary**;

- (2) **Insured Person** of the **Company** who at the specific written request of the **Company** is serving as a director, officer, trustee, regent or governor of a **Non-Profit Entity**; or
- (3) **Insured Person** of the **Company**, who at the specific written request of the **Company** is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**.

III. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured Person**, or with respect to INSURING AGREEMENT (C), the **Company**:

- (A) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof; however, this EXCLUSION (A) will not apply to any allegations of libel, slander, defamation, mental anguish or emotional distress if and only to the extent that such allegations are made as part of an **Employment Practices Claim** for an **Employment Practices Wrongful Act**;
- (B) for any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants, contaminants or waste of any kind including but not limited to nuclear material or nuclear waste. With respect to a Claim made under INSURING AGREEMENT (A) only, this EXCLUSION (B) will not apply to a **Claim** unless a court of competent jurisdiction specifically determines the **Company** is not permitted to indemnify the **Insured Person**;

NOTE: EXCLUSIONS (A) and (B) above will not apply with respect to a **Securities Claim** brought by a security holder of the **Company**, or a derivative action brought by or on behalf of, or in the name or right of, the **Company**, and brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, an **Insured**.

- (C) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) as amended or any regulations promulgated thereunder or any similar law, federal, state or local law or regulation;
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act, Company Wrongful Act** or **Employment Practices Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration which was brought prior to the Pending and Prior Litigation Date set forth in ITEM 6 of the Declarations;
- (E) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act, Company Wrongful Act** or **Employment Practices Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other Management Liability policy, Directors and Officers liability policy or similar policy;
- (F) brought about or contributed to in fact by any:
 - (1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or
 - (2) profit or remuneration gained by any Insured to which such Insured is not legally entitled;as determined by a final adjudication in the underlying action or in a separate action or proceeding;
- (G) by, on behalf of, or at the direction of the **Company**, except and to the extent such **Claim**:
 - (1) is brought derivatively by a security holder of the **Company** who, when such **Claim** is made and maintained, is acting independently of, and without the solicitation, assistance, participation or

intervention of an **Insured Person** or the **Company**; or

- (2) is brought by the Bankruptcy Trustee or Examiner of the **Company** or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company**;
- (H) by, on behalf of, at the direction of or in the name or right of any Non-Profit Entity or Joint Venture against an Insured Person for a Wrongful Act or Employment Practices Wrongful Act while acting in his or her capacity as a director, officer, trustee, regent or governor of such, or persons occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an Insured Person of the Company, regardless of the name or title by which such position is designated; or
- (I) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured Person** acting in their capacity as a **Insured Person** of any entity other than the **Company, Non-Profit Entity or Joint Venture**.

No conduct of any **Insured Person** will be imputed to any other Insured to determine the application of any of the above EXCLUSIONS.

IV. LIMIT OF LIABILITY, INDEMNIFICATION AND RETENTIONS

- (A) The Insurer shall pay the amount of **Loss** in excess of the applicable Retention(s) set forth in ITEM 4 of the Declarations up to the Limit of Liability set forth in ITEM 3 of the Declarations.
- (B) The amount set forth in ITEM 3 of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under this Policy. Payment of **Loss**, including **Defense Expenses**, by the Insurer shall reduce the Limit of Liability.
- (C) With respect to the Company's indemnification of its **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Parent Company**, each **Subsidiary** and each **Non-Profit Entity or Joint Venture**, will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (D) The Retention applicable to INSURING AGREEMENT (B) shall apply to any **Loss** as to which indemnification by the **Company, Non-Profit Entity or Joint Venture** is legally permissible, whether or not actual indemnification is made unless such indemnification is not made by the **Company, Non-Profit Entity or Joint Venture** solely by reason of its financial insolvency. In the event of financial insolvency, the Retention(s) applicable to INSURING AGREEMENT (A) shall apply.
- (E) If different retentions are applicable to different parts of any **Loss**, the applicable Retention(s) will be applied separately to each part of such Loss, and the sum of such Retention(s) will not exceed the largest applicable Retention set forth in ITEM 4 of the Declarations.
- (F) Notwithstanding the foregoing, solely with respect to a **Securities Claim**, no **Retention** shall apply to such **Claim** and the **Insurer** will reimburse those **Defense Expenses** incurred by the **Insured** if:
 - (1) the **Securities Claim** is dismissed, or there is a stipulation to dismiss the **Securities Claim**, with or without prejudice and without the payment of any monetary consideration by the **Insured**;
 - (2) there is a final judgment of no liability obtained prior to or during trial, in favor of the **Insured**, by reason of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or
 - (3) there is a final judgment of no liability obtained after trial, in favor of the **Insured**, after the exhaustion of all appeals.

Any reimbursement in the case of (F)(1), (2), or (3) above will only occur if ninety (90) days after the date of dismissal, stipulation, final judgment of no liability is obtained and only if:

- (a) the same **Securities Claim** (or a **Securities Claim** containing **Interrelated Wrongful Acts**) is not brought again within that time; and
- (b) the **Insured** provides the Insurer with an Undertaking in a form acceptable to the Insurer that

such reimbursement of the applicable Retention(s) will be paid back to the Insurer in the event the **Securities Claim** (or a **Securities Claim** containing **Interrelated Wrongful Acts**) is brought after the ninety (90) day period.

V. DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS

- (A) It shall be the duty of the **Insured** and not the duty of the Insurer to defend any **Claim** under this Policy.
- (B) No **Insured** may incur any **Defense Expenses** or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably withheld.
- (C) Upon the written request of an **Insured**, the Insurer will advance **Defense Expenses** on a current basis in excess of the applicable Retention, if any, before the disposition of the **Claim** for which this policy provides coverage. As a condition of the advancement of **Defense Expenses**, the Insurer may require a written undertaking, in a form satisfactory to the Insurer, which will guarantee the repayment of any **Loss** including **Defense Expenses** paid to or on behalf of the Insured if it is finally determined that the **Loss** incurred is not covered under this Policy.
- (D) If both **Loss** covered by this Policy and Loss not covered by this Policy are incurred, either because a **Claim** made against the Insured contains both covered and uncovered matters, or because a **Claim** is made against both the Insured and others (including the **Company** for **Claims** other than **Securities Claims**) not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate allocation of **Loss** between that portion of Loss that is covered under this Policy and that portion of Loss that is not covered under this Policy. Additionally, the **Insured** and the Insurer agree that in determining a fair and appropriate allocation of **Loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by, the Insured and others.
- (E) In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in (D) above, then the Insurer shall advance that portion of **Loss** which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VI. GENERAL CONDITIONS

(A) NOTICE

- (1) As a condition precedent to any right to payment under this Policy with respect to any **Claim**, the **Insured** shall give written notice to the Insurer of any Claim as soon as practicable after it is first made.
- (2) If, during the **Policy Period**, the **Insured** first becomes aware of a specific **Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act** and if, during the **Policy Period**, the Insured:
 - (a) provides the Insurer with written notice of the specific **Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, the circumstances by which the Insured first became aware of such **Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act**; and
 - (b) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act**;then any **Claim** subsequently made arising out of such **Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act** will be treated as if it had been first made during the **Policy Period**.
- (3) All notices under GENERAL CONDITIONS (A)(1) and (2) must be sent by certified mail or the equivalent to the address set forth in ITEM 7 of the Declarations; Attention: Claim Department.

(B) INTERRELATED CLAIMS

All **Claims** arising from the same **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the time at which the earliest such **Claim** is made or deemed to have been made pursuant to GENERAL CONDITIONS (A)(1) above or GENERAL CONDITIONS (A)(2), if applicable.

(C) OTHER INSURANCE AND SERVICE IN CONNECTION WITH NON-PROFIT ENTITIES AND JOINT VENTURES

- (1) All **Loss** payable under this Policy will be specifically excess of and will not contribute with any other insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.
- (2) All coverage under this Policy for **Loss** from **Claims** made against the **Insured Persons** while acting in their capacity as a director, officer, trustee, regent or governor of a **Non-Profit Entity** or persons occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of the **Insured Persons** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Non-Profit Entity** or **Joint Venture** by reason of their service as such.

(D) MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL)

- (1) If during the **Policy Period**, the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity, coverage shall be provided for any **Loss** involving a **Claim** for a **Wrongful Act**, **Company Wrongful Act** or **Employment Practices Wrongful Act** occurring after the consummation of the transaction.
- (2) If, however, by reason of the transaction (or series of transactions) described in (D)(1) above, the entity, assets, **Subsidiary** or liabilities so acquired or so assumed, exceed thirty five percent (35%) of the total assets or liabilities of the **Company**, as represented in the **Company's** most recent audited consolidated financial statements, coverage under this Policy shall be provided for a period of ninety (90) days for any **Loss** involving a **Claim** for a **Wrongful Act**, **Company Wrongful Act**, or **Employment Practices Wrongful Act** that occurred after the transaction has been consummated. Coverage beyond the ninety (90) day period will be provided only if:
 - (a) the Insurer receives written notice containing full details of the transaction(s); and
 - (b) the Insurer at its sole discretion, agrees to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate.
- (3) With respect to the acquisition, assumption, merger, consolidation or otherwise of any entity, asset, **Subsidiary** or liability as described in (D)(1) and (2) above, there will be no coverage available under this Policy for **Claims** made against the acquired, assumed, merged, or consolidated entity, asset, **Subsidiary**, liability, or **Insured Person** for a **Wrongful Act**, **Company Wrongful Act** or **Employment Practices Wrongful Act** committed any time during which such entity, asset, liability or **Subsidiary** is not an **Insured**.
- (4) If during the **Policy Period** any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to the **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act**, **Company Wrongful Act** or **Employment Practices Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.
- (5) If, during the **Policy Period**, there is a **Change In Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** against an **Insured** for a **Wrongful Act**, **Company Wrongful Act** or **Employment Practices Wrongful Act** committed or allegedly committed up to the time of the **Change In Control**; and
 - (a) coverage will cease with respect to any **Claim** for a **Wrongful Act**, **Company Wrongful Act** or **Employment Practices Wrongful Act** committed subsequent to the **Change In Control**; and

- (b) the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change In Control**.

(E) CANCELLATION AND RENEWAL OF COVERAGE

- (1) Except for the nonpayment of premium, as set forth in (E)(2) below, the Parent Company has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will provide not less than twenty (20) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured**, if applicable.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Expiration Date set forth in ITEM 2 of the Declarations.

(F) OPTIONAL EXTENSION PERIOD

- (1) If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** shall have the right, upon payment of an additional premium set forth in ITEM 5 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any **Claim** first made during the period of time set forth in ITEM 5 of the Declarations after the Policy Expiration Date, but only with respect to a **Wrongful Act, Company Wrongful Act, or Employment Practices Wrongful Act**, occurring prior to the Policy Expiration Date.
- (2) As a condition precedent to the right to purchase the Optional Extension Period the total premium for this Policy must have been paid in full. The right of the **Parent Company** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Parent Company** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the Policy Expiration Date.
- (3) If the **Parent Company** elects to purchase the Optional Extension Period as set forth in (F)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date for the Optional Extension Period.
- (4) The purchase of the Optional Extension Period will not in any way increase the Limit Of Liability set forth in ITEM 3 of the Declarations, and the Limit of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

(G) ASSISTANCE, COOPERATION AND SUBROGATION

- (1) The **Insured** agrees to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that they will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.
- (2) In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Insured**. The **Insured** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require.

(H) EXHAUSTION

If the Insurer's Limit of Liability as set forth in ITEM 3 of the Declarations is exhausted by the payment of **Loss**, the premium as set forth in ITEM 8 of the Declarations will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind

whatsoever under this Policy.

(I) REPRESENTATION CLAUSE

The **Insured** represents that the statements and particulars contained in the **Application** as well as any prior application submitted to the Insurer are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are material to the risk assumed and form the basis of this Policy. No knowledge or information possessed by any Insured will be imputed to any other Insured except for material facts or information known to the person(s) who signed the Application. In the event that any of the particulars or statements in the **Application** are untrue, this Policy will be void with respect to any **Insured** who knew of such untruth or to whom such knowledge is imputed.

(J) ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY

- (1) No action may be taken against the Insurer unless, as a condition precedent thereto:
 - (a) there has been full compliance with all of the terms and conditions of this Policy; and
 - (b) the amount of the obligation of the **Insured** has been finally determined either by judgment against the Insured after actual trial, or by written agreement of the **Insured**, the claimant and the Insurer.
- (2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the Insurer to determine their liability, nor may the **Insured** implead the Insurer in any **Claim**.
- (3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
- (4) Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations may only be waived or changed by written endorsement.

(K) AUTHORIZATION AND NOTICES

It is understood and agreed that the **Parent Company** will act on behalf of the **Company** and the **Insured Persons** with respect to:

- (1) the payment of the premiums;
- (2) the receiving of any return premiums that may become due under this Policy;
- (3) the giving of all notices to the Insurer as provided herein; and
- (4) the receiving of all notices from the Insurer.

(L) ENTIRE AGREEMENT

The **Insured** agrees that the Declarations, Policy, including the endorsements, attachments and the **Application** shall constitute the entire agreement between the Insurer or any of its agents and the **Insured** relating to this insurance.

CERTIFICATE OF SERVICE

I, Michael J. Farnan, hereby certify that August 28, 2020, a copy of Gabelli Funds, LLC's Limited Response to Confirmation Objections by Provepharm, Inc. and Fresenius Kabi AG was served on the following via e-mail:

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/s/ Michael J. Farnan
Michael J. Farnan (Bar No. 5165)