

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	
In re:	)	Chapter 11
	)	
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DEBTORS’ MOTION SEEKING ENTRY OF INTERIM AND  
FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) PAY  
THEIR OBLIGATIONS UNDER INSURANCE POLICIES ENTERED INTO  
PREPETITION, (B) CONTINUE TO PAY BROKERAGE FEES, (C) RENEW,  
SUPPLEMENT, MODIFY, OR PURCHASE INSURANCE COVERAGE, AND  
(D) MAINTAIN THE SURETY BONDS, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”): (a) authorizing, but not directing, the Debtors to (i) continue honoring their obligations under prepetition Insurance Policies and satisfy payment of prepetition obligations

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

<sup>2</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Duane Portwood in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on May 20, 2020 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined in this motion shall have the meanings ascribed to them in the First Day Declaration.



related thereto, including the payment of related brokerage fees, (ii) renew, supplement, modify, extend, or purchase insurance coverage in the ordinary course of business on a postpetition basis, and (iii) continue and renew their Surety Bonds on an uninterrupted basis (each as defined herein); and (b) granting related relief. The Debtors estimate that, as of the Petition Date, there is approximately \$2,830,000 in outstanding premiums due on account of the Insurance Policies. Pursuant to the Interim Order, the Debtors seek authority to, on an interim basis: (a) pay, as may become due prior to the Final Hearing, an aggregate amount of approximately (i) \$1,937,000 in connection with the Debtors' Insurance Policies and (ii) any Brokerage Fees to the Broker as may become due (all as defined herein); and (b) maintain the Surety Bonds in the ordinary course of business.<sup>3</sup> In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the Petition Date to consider entry of the Final Order.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with the motion to the extent that it is later determined that the Court, absent consent of the parties, cannot

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<sup>3</sup> Nothing herein shall be deemed an admission of any payments due or past due under any of the Insurance Policies, Brokerage Fees, or Surety Bonds.

enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b) and 1112 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

### **Background**

5. Akorn, Inc., together with its Debtor and non-Debtor subsidiaries (collectively, "Akorn") is a specialty pharmaceutical company that develops, manufactures, and markets generic and branded prescription pharmaceuticals, branded as well as private-label over-the-counter consumer health products, and animal health pharmaceuticals. Akorn is an industry leader in the development, manufacturing, and marketing of specialized generic pharmaceutical products in alternative dosage forms. Headquartered in Lake Forest, Illinois, Akorn has approximately 2,180 employees worldwide and maintains a global manufacturing presence, with pharmaceutical manufacturing facilities located in Illinois, New Jersey, New York, Switzerland, and India. Akorn's operations generated approximately \$682 million in revenue and approximately \$124 million of Adjusted EBITDA in 2019. The Debtors commenced these chapter 11 cases to conduct an orderly sale process that will position the Debtors for sustained future success by right-sizing their balance sheet and addressing their litigation overhangs.

6. On the Petition Date, each of the Debtors filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to

Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

### **The Debtors' Insurance Policies**

7. The Debtors maintain 25 insurance policies (collectively, the "Insurance Policies") administered by multiple third-party insurance carriers (collectively, the "Insurance Carriers"), which provide coverage for, among other things, the Debtors' directors' and officers' liability, directors' and officers' runoff coverage, commercial property, products liability, automobile liability, criminal liability, stop-loss liability, and cyber liability.<sup>4</sup> A schedule of the Insurance Policies is attached hereto as **Exhibit C**. In addition to the Insurance Policies, the Debtors maintain several workers' compensation policies or self-insurance policies that are not reflected in **Exhibit C** and for which relief is not sought in this motion.<sup>5</sup>

8. Depending on the specific policy, the Debtors either pay a one-time down payment for annual coverage or make several, incremental payments throughout the course of the year. The Debtors estimate that, as of the Petition Date, the premiums outstanding on account of the Insurance Policies total approximately \$2,830,000.

9. The ability to maintain Insurance Policies, to extend or reduce those Insurance Policies, and to enter into new insurance policies, as needed in the ordinary course of business, is essential to the preservation of the value of the Debtors' business, operations, and

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<sup>4</sup> The descriptions of the Insurance Policies set forth in this motion constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the descriptions set forth in this motion.

<sup>5</sup> In addition to the Insurance Policies listed on **Exhibit C**, the Debtors maintain numerous insurance policies with respect to, among other things, workers' compensation, employee health, dental, disability, and life insurance benefits. These policies are described, and relief is requested with respect to such policies, in the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs And (II) Granting Related Relief* (the "Wages Motion"), filed contemporaneously herewith.

assets. Moreover, in many instances, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts governing the Debtors' commercial activities, including the requirements of the United States Trustee for the District of Delaware (the "U.S. Trustee") that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. Accordingly, the Debtors request authority to maintain their existing Insurance Policies to the extent appropriate with respect to the Debtors' go-forward operations, to pay prepetition obligations related thereto, to extend or reduce those Insurance Policies, or to enter into new insurance policies, as applicable, in the ordinary course of business.

#### **Brokerage Fees**

10. In connection with the Insurance Policies, the Debtors obtain insurance brokerage services from Arthur J. Gallagher (the "Broker"), who assists the Debtors in obtaining comprehensive insurance coverage for the Debtors' operations by aiding with the procurement and negotiation of the Insurance Policies and enabling the Debtors to obtain those policies on advantageous terms at competitive rates. In connection with these services, the Debtors pay the Broker approximately \$375,000 per year in brokerage fees in connection with procuring all Insurance Policies (the "Brokerage Fees"). As of the Petition Date, the Debtors estimate that there are no outstanding fees on account of the Brokerage Fees.

11. The Debtors believe that continuation of the services of the Broker is necessary to assure the Debtors' ability to secure Insurance Policies on advantageous terms and at competitive rates, facilitate the proper maintenance of the Debtors' Insurance Policies postpetition, and ensure adequate protection of the Debtors' property for the benefit of their estates. Accordingly, out of an abundance of caution, the Debtors request authority to continue paying the Brokerage Fees as and when done in the ordinary course.

**The Debtor's Surety Bonds**

12. In the ordinary course of business, the Debtors are required to provide surety bonds or other forms of credit support (the "Surety Bonds") to certain third parties (collectively, the "Sureties") to secure the Debtors' payment or performance of certain obligations, including obligations owed to federal and state agencies to maintain licenses to sell and/or distribute pharmaceutical products. The Debtors have 14 Surety Bonds with total annual premiums of approximately \$35,000. A schedule of the Surety Bonds currently maintained by the Debtors is attached hereto as **Exhibit D**.

13. To continue their business operations in the ordinary course during these chapter 11 cases, the Debtors must be able to provide financial assurance to the Sureties. This, in turn, requires the Debtors to maintain the Surety Bonds. Accordingly, although the Debtors do not believe that any amounts are due as of the Petition Date, the Debtors seek authority to pay bond premiums as they come due, renew or potentially acquire additional bonding capacity as needed in the ordinary course of business, and execute other agreements, as needed. Failing to provide, maintain, back, or timely replace Surety Bonds will prevent the Debtors from complying with their federal law obligations, and consequently prevent them from undertaking essential functions related to their operations, such as importing goods.

**Basis for Relief**

**I. Continuation of the Insurance Policies is Required by the Bankruptcy Code and U.S. Trustee Operating Guidelines.**

14. Section 1112(b) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). In addition, in many instances, the coverage provided under the Insurance Policies is required by the regulations, laws,

and contracts that govern the Debtors' commercial activities, including the operating guidelines issued by the U.S. Trustee (the "U.S. Trustee Operating Guidelines"). Given this backdrop, the Debtors believe it is essential to their estates, and consistent with the Bankruptcy Code and the U.S. Trustee Operating Guidelines, that they maintain and continue to make all payments required under their Insurance Policies and have the authority to supplement, amend, extend, renew, or replace their Insurance Policies as needed, in their judgment, without further order of the Court.

**II. Paying Obligations Under the Insurance Policies and Maintaining Insurance Coverage in the Ordinary Course is Warranted.**

15. Section 363 of the Bankruptcy Code provides that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, courts in this jurisdiction require only that the debtor "show that a sound business purpose justifies" the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring a "good business reason" under section 363(b) of the Bankruptcy Code). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

16. Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b) of the Bankruptcy Code. Indeed, when applying the "business judgment" standard, courts show great deference to a debtor's business decisions. *See id.*, 147 B.R. at 656 ("Courts are loath to interfere with corporate decisions absent

a showing of bad faith, self-interest, or gross negligence.”); *In re First Wellington Canyon Assocs.*, No. 89-593, 1989 WL 106838, at \*3 (N.D. Ill. Sept. 8, 1989) (stating that “the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion”).

17. Section 105(a) of the Bankruptcy Code further provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if essential to the debtor’s continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of prepetition claims” under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a chapter 11 plan).

18. Paying obligations under the Insurance Policies and Brokerage Fees is warranted under section 363(b) of the Bankruptcy Code and the doctrine of necessity. As described above, maintaining the Insurance Policies is necessary to preserve the value of the Debtors’ assets, thereby ensuring the adequate protection of the Debtors’ property for any party in interest and to minimize exposure to risk. Failing to maintain the Insurance Policies would have a material adverse effect on the ability of the Debtors to maximize the value of their estates.



19. Courts in this district have granted relief similar to the relief requested herein under sections 105(a) and 363(b) of the Bankruptcy Code. *See, e.g., In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. Del. May 18, 2020) (authorizing debtors to continue their current insurance policies, pay prepetition premiums and amounts related thereto, and enter into new insurance policies on a final basis); *Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. Del. Jan. 21, 2020) (same); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019) (authorizing debtors to continue their current insurance policies, pay prepetition premiums and amounts related thereto, and enter into new insurance policies on an interim basis); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 12, 2019) (authorizing debtors to continue their current insurance policies, pay prepetition premiums and amounts related thereto, and enter into new insurance policies on a final basis); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 24, 2019) (same).<sup>6</sup>

### **III. The Surety Bonds are Maintained in the Ordinary Course of the Debtors' Business.**

20. Section 363(c)(1) of the Bankruptcy Code provides that a chapter 11 debtor in possession “may enter into transactions . . . [or] may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define “ordinary course of business.” *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). In determining whether a transaction is in the ordinary course of business, the Third Circuit has adopted the two-part “horizontal” dimension and “vertical” dimension test. *Id.* **First**, the transaction must be analyzed on the horizontal dimension, where the court looks at whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

by companies in that industry. *Id.* at 953. **Second**, the transaction must be analyzed on the vertical dimension, where the court looks at the transaction from the perspective of a hypothetical creditor and asks whether the transaction subjects such a creditor to different economic risks from those he accepted when he decided to extend credit. *See In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007). “In other words, the vertical analysis looks at the ‘debtor’s pre-petition business practices and conduct.’” *In re Blitz U.S.A., Inc.*, 475 B.R. 209, 214 (Bankr. D. Del. 2012) (quoting *Nellson*, 369 B.R. at 797).

21. Here, the Debtors seek only to maintain their existing Surety Bonds and honor their obligations related thereto in the ordinary course of business on a postpetition basis. Such obligations include, among other things, renewing the Surety Bonds when they expire and paying the premiums when they come due. Further, the Surety Bonds cover obligations that are required by law or regulations.

22. Accordingly, the Debtors believe that maintaining the Surety Bonds on a postpetition basis is in the ordinary course of business and, pursuant to section 363(c)(1) of the Bankruptcy Code, does not require notice and a hearing. Nonetheless, out of an abundance of caution, the Debtors are seeking Court approval to continue maintenance of the Surety Bonds and related obligations under sections 105(a) and 363(b) of the Bankruptcy Code. As noted above, the Debtors are required to post surety bonds by certain governmental units and third parties. Based on the foregoing, the Debtors respectfully submit that maintaining the Surety Bonds should be authorized under sections 105(a) and 363(b) of the Bankruptcy Code to the extent such activities are deemed outside the ordinary course of the Debtors’ businesses.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

23. The Debtors have sufficient funds to pay the amounts described in the motion in the ordinary course of business by virtue of expected cash flows from ongoing business

operations, the proposed debtor-in-possession financing, and anticipated access to cash collateral. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Insurance Policies, Brokerage Fees, or Surety Bonds, as applicable. Accordingly, the Debtors believe that checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in the motion.

**The Requirements of Rule 6003 Are Satisfied**

24. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. For the reasons discussed above, authorizing the Debtors to (a) pay their obligations under insurance policies entered into prepetition, (b) renew, supplement, modify, or purchase new insurance coverage, (c) continue to pay Brokerage Fees, and (d) and maintain the Surety Bonds and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases smoothly. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course, preserve the going concern value of the Debtors' operations, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Reservation of Rights**

25. Nothing contained in the motion or any actions taken by the Debtors pursuant to relief granted in the Interim Order and Final Order is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

26. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

27. The Debtors will provide notice of this motion to: (a) the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) Wilmington Savings Fund Society, FSB, in its capacity as successor administrative agent under the Term Loan Credit Agreement, or any of its predecessors or successors (the “Term Loan Agent”); (d) counsel to the Term Loan Agent; (e) counsel to the ad hoc group of the Debtors’ Prepetition Lenders (the “Ad Hoc Group”); (f) the United States Attorney’s Office for the District of Delaware; (g) the Internal Revenue Service; (h) the Food and Drug Administration; (i) the Drug Enforcement Administration; (j) the Securities Exchange Commission; (k) the state attorneys general for all states in which the Debtors conduct business; (l) the Insurance Carriers; (m) the Sureties; (n) the Broker; and (o) any party that requests service pursuant to Local Rule 9013-1(m)(iii).

**No Prior Request**

28. No prior motion for the relief requested herein has been made to this or any other court.

*[Remainder of page left intentionally blank]*

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

Wilmington, Delaware  
May 21, 2020

*/s/ Paul N. Heath*

**RICHARDS, LAYTON & FINGER, P.A.**

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*Proposed Co-Counsel for the  
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**Exhibit A**

**Proposed Interim Order**

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

In re:	)	
	)	Chapter 11
AKORN, INC., <sup>1</sup>	)	
	)	Case No. 20-11177 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No.</b> _____

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) PAY THEIR OBLIGATIONS UNDER INSURANCE POLICIES ENTERED  
INTO PREPETITION, (B) CONTINUE TO PAY BROKERAGE FEES,  
(C) RENEW, SUPPLEMENT, MODIFY, OR PURCHASE INSURANCE COVERAGE,  
AND (D) MAINTAIN THE SURETY BONDS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing, but not directing, the Debtors to (i) continue honoring their obligations under prepetition Insurance Policies and satisfy payment of prepetition obligations related thereto, including the payment of related brokerage fees, (ii) renew, supplement, modify, extend, or purchase insurance coverage in the ordinary course of business on a postpetition basis, and (iii) continue and renew their Surety Bonds on an uninterrupted basis; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from

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

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.



the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion, First Day Declaration, and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2020, and shall be served on: (a) the Debtors, Akorn, Inc., 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045 Attn: Joseph Bonaccorsi; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Patrick J. Nash, Jr., P.C., Gregory F. Pesce, and Christopher M. Hayes, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C.; (c) proposed co-counsel to the Debtors, Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath; (d) the United States Trustee, 844 King Street, Suite 2207,

Lockbox 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy; (e) counsel to any statutory committee appointed in these chapter 11 cases; and (f) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg and Steven A. Domanowski. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, on an interim basis, to make payments on account of the following in an amount not to exceed \$1,937,000 in the aggregate:

- (i) the Insurance Policies identified on **Exhibit C** to the Motion and any undisputed prepetition or postpetition obligations related to the Insurance Policies (including any amounts owed to the Broker) in accordance with and in the amounts consistent with the same practices and procedures as were in effect prior to the commencement of the Debtors' chapter 11 cases; and
- (ii) the Surety Bonds identified on **Exhibit D** to the Motion and any undisputed prepetition or postpetition obligations related to the Surety Bonds in accordance with and in the amounts consistent with the same practices and procedures as were in effect prior to the commencement of the Debtors' chapter 11 cases.

4. The Debtors are authorized, but not directed, to pay, renew, amend, supplement, extend, or purchase insurance policies and surety bonds to the extent that the Debtors determine that such action is in the best interest of their estate.

5. Nothing in this Interim Order authorizes the Debtors or any other party to accelerate any payments or obligations not otherwise due prior to the date of the Final Hearing.

6. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any

particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order or the Motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Insurance Policies, Surety Bonds, or Brokerage Fees.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Proposed Final Order**

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

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In re:	)	
	)	Chapter 11
AKORN, INC., <sup>1</sup>	)	
	)	Case No. 20-11177 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No.</b> _____

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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) PAY THEIR OBLIGATIONS UNDER INSURANCE POLICIES  
ENTERED INTO PREPETITION, (B) CONTINUE TO PAY BROKERAGE FEES,  
(C) RENEW, SUPPLEMENT, MODIFY, OR PURCHASE INSURANCE COVERAGE,  
AND (D) MAINTAIN THE SURETY BONDS, AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing, but not directing, the Debtors to (i) pay their obligations under the Insurance Policies entered into prepetition, (ii) continue to pay certain Brokerage Fees, (iii) renew, supplement, modify, or purchase insurance coverage in the ordinary course, and (iv) continue the Surety Bonds; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

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

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the motion.

District of Delaware, dated February 29, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion and no other notice need be provided; and this Court having reviewed the Motion and First Day Declaration and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion, First Day Declaration, and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, on a final basis to:
  - (i) maintain the Insurance Policies identified on **Exhibit C** to the Motion and any undisputed prepetition or postpetition obligations related to the Insurance Policies (including any amounts owed to the Broker) in accordance with and in the amounts consistent with the same practices and procedures as were in effect prior to the commencement of the Debtors' chapter 11 cases; and
  - (ii) continue the Surety Bonds identified on **Exhibit D** to the Motion and any undisputed prepetition or postpetition obligations related to the Surety Bonds in accordance with and in the amounts consistent with the same practices and procedures as were in effect prior to the commencement of the Debtors' chapter 11 cases.
3. The Debtors are authorized, but not directed, to pay, renew, amend, supplement, extend, or purchase insurance policies and surety bonds to the extent that the Debtors determine that such action is in the best interest of their estate on a final basis.

4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order or the Motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.



6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Insurance Policies, Surety Bonds, or Brokerage Fees.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

10. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT C****Insurance Policies**

<b>Insurance Carrier</b>	<b>Policy Number</b>	<b>Policy Term</b>	<b>Type of Insurance</b>	<b>Approximate Annualized Gross Premium</b>
ACE American Insurance Company	PHFD38416303005	6/1/2019 - 6/1/2020	International Package	\$3,000
Axis Surplus Insurance Company	EAF63857119	6/1/2019 - 6/1/2020	Excess Property - Named Storm Only - \$20M p/o \$75M	\$28,000
Berkshire Hathaway Specialty Insurance Company	47EPC30870301	9/1/2019 - 9/1/2021	Excess Directors & Officers - \$5M xs \$5M	\$3,000,000
BlueCross BlueShield of Illinois	20937	1/1/2020 - 12/31/2020	Stop Loss Coverage Policy – Aggregate Coverage	\$1,300,000
Endurance American Insurance Company	DOX10007587103	9/1/2019 - 9/1/2021	Excess Directors & Officers - \$5M xs \$10M	\$1,200,000
James River Insurance Company	000833362	5/15/2020 - 5/15/2021	Products Liability - \$10M excess \$35M (3rd Excess) <sup>1</sup>	\$216,000
Everest Indemnity Insurance Company	LS8GL00020201	5/15/2020 - 5/15/2021	Products Liability - Primary \$10M limit <sup>1</sup>	\$704,000
Federal Insurance Company (Chubb)	81531429	9/1/2019 - 9/1/2020	Crime and Fiduciary Liability	\$66,000

<sup>1</sup> The following Insurance Policies have been bound, though payment of premiums has not yet occurred as of the Petition Date.

<b>Insurance Carrier</b>	<b>Policy Number</b>	<b>Policy Term</b>	<b>Type of Insurance</b>	<b>Approximate Annualized Gross Premium</b>
Great American Insurance Company	CPP127961603	6/1/2019 - 6/1/2020	Excess Property	\$46,000
Hartford Accident and Indemnity Company	83WEAV5024	6/1/2019 - 6/1/2020	Workers' Compensation	\$1,581,000
Hartford Casualty Insurance Company	83RHUZV8731	6/1/2019 - 6/1/2020	Umbrella	\$24,000
Hartford Fire Insurance Company	83UENZV8795	6/1/2019 - 6/1/2020	General Liability	\$51,000
Illinois National Insurance Company (AIG)	18032861	9/1/2019 - 9/1/2021	Excess Directors & Officers - Side A DIC	\$1,400,000
James River Insurance Company	723383	6/1/2019 - 6/1/2020	Excess Property - Named Storm Only - \$30M p/o \$75M	\$42,000
Lloyd's London	SM0398319	6/1/2019 - 6/1/2020	Stock Throughput	\$203,000
Lloyd's Syndicate 1218 (Newline Underwriting Management Limited)	SYB20890650B47	5/15/2020 - 5/15/2021	Products Liability - \$5M excess \$45M (4th Excess) <sup>1</sup>	\$100,000
Mt Hawley Insurance Company	MCP0167611	6/1/2019 - 6/1/2020	Excess Property - Named Storm Only - \$25M p/o \$75M	\$35,000
TDC Specialty Insurance Company	LSX000472002	5/15/2020 - 5/15/2021	Products Liability - \$15M excess \$10M (1st Excess) <sup>1</sup>	\$516,000
Travelers Excess and Surplus Lines Co.	KTQCMB3H06339219	6/1/2019 - 6/1/2020	Commercial Property	\$555,000

<b>Insurance Carrier</b>	<b>Policy Number</b>	<b>Policy Term</b>	<b>Type of Insurance</b>	<b>Approximate Annualized Gross Premium</b>
Trumbull Insurance Company	83UENZV8795	6/1/2019 - 6/1/2020	Automobile	\$35,000
Underwriters at Lloyd's London, Catlin Insurance Company (UK) Ltd.	LSRXS0051620	5/15/2020 - 5/15/2021	Products Liability - \$10M excess \$25M (2nd Excess) <sup>1</sup>	\$279,000
Wesco Insurance Company	EUW180628000	9/1/2019 - 9/1/2020	Excess Directors & Officers - \$5M xs \$15M	\$2,550,000
XL Insurance America, Inc.	US00075772PR19A	6/1/2019 - 6/1/2020	Equipment Breakdown	\$28,000
XL Specialty Insurance Company	US00075683DO19A	9/1/2019 - 9/1/2020	Primary Directors & Officers	\$3,325,000
XL Specialty Insurance Company	ELU16356819	9/1/2019 - 9/1/2020	Directors & Officers - Side A DIC	\$975,000

**EXHIBIT D****Surety Bonds**

<b>Issuing Carrier</b>	<b>Bond Number</b>	<b>Bond Term</b>	<b>Type of Bond</b>	<b>Approximate Premiums</b>
Philadelphia Indemnity Insurance Company	PB00264800233	2/12/2020 - 2/11/2021	Drug Wholesaler Distributor	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800234	2/12/2020 - 2/11/2021	Drug Wholesaler Distributor	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800235	2/12/2020 - 2/11/2021	Drug Wholesaler Distributor	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800236	2/12/2020 - 2/11/2021	Drug Wholesaler Distributor	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800237	2/12/2020 - 2/11/2021	CA Prescription Drug Wholesaler or Nonresident Wholesaler Surety Bond	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800238	3/13/2020 - 3/12/2021	Wholesale Distribution	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800239	3/13/2020 - 3/12/2021	Oregon Wholesale distributor	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800240	3/13/2020 - 3/12/2021	Wholesale Drug	\$3,000
Philadelphia Indemnity Insurance Company	PB00264800241	3/13/2020 - 3/12/2021	Prescription Drug Wholesale Distributor	\$150
Philadelphia Indemnity Insurance Company	PB00264800242	3/13/2020 - 3/12/2021	Out of State Wholesale Drug Wholesaler	\$3,000
Travelers Casualty and Surety Company of America	106656949	1/5/2017 - 1/4/2021	Mississippi Pharmacy Practice Regulations	\$500
Washington International Insurance Company	9048664	1/1/2020-12/31/2020	CA Prescription Drug Wholesaler or Nonresident Wholesaler Surety Bond	\$2,500
Westchester Fire Insurance Company	200102005 17C001W6T K09558627	2/4/2020 - 2/3/2021	Importer or Broker bond	\$3,000
Western Surety Company	ATF156	7/12/2014 - 7/11/2020	Bond for Drawback Under 26 USC	\$2,000