

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

In re:

AKORN, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 20-11177 (KBO)

(Jointly Administered)

Re: D.I. 18, 181

**LIMITED OBJECTION WITH RESERVATION OF RIGHTS OF HUMANA, INC. AND
HUMANA PHARMACY, INC. TO DEBTORS' NOTICE TO CONTRACT PARTIES TO
POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Humana, Inc. and Humana Pharmacy, Inc. (together, "Humana"), through its undersigned counsel, hereby files this limited objection with reservation of rights (the "Cure Objection") to the proposed cure amount submitted in connection with two *Notices to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (together, the "Assumption Notices") Humana received from the Debtors and, in support hereof, respectfully represents: ²

BACKGROUND

1. On June 23, 2020, Humana has received two Assumption Notices. The first listed Hi-Tech Pharmacal Co., Inc. as the debtor party to that certain settlement agreement dated April 1, 2011 between Akorn, Inc. and Humana Pharmacy, Inc., as amended (the "Pharmaceutical Purchasing Agreement" or "PPA"). The second listed the Pharmaceutical Purchasing Agreement

¹ 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.

² All capitalized terms used herein shall have the meaning as set forth in the Assumption Notices unless otherwise defined in this Objection.



again with Hi-Tech Pharmacal Co. as the debtor party and several amendments to that agreement with all cure amounts listed as \$0. In fact, The Pharmaceutical Purchasing Agreement is one agreement with eleven amendments, including the fifth amendment which amended all previous agreements and amendments to change any references from Hi-Tech Pharmacal, Inc. to Akorn, Inc.

2. As of the date of this Objection, Debtor Akorn, Inc. continues to owe \$336,984.63 under the PPA dating back to Q2 of 2019. Humana has continued to negotiate with the Debtors to accomplish a consensual resolution to the cure amounts. Humana believes that a consensual resolution will be reached but out of an abundance of caution seeks to reserve their rights by filing the Cure Objection.

OBJECTION

3. A debtor who seeks to assume an executory contract under which they have defaulted must cure or provide adequate assurance of a prompt cure, compensate or provide adequate assurance of prompt compensation for any pecuniary loss resulting from the default at the time of assumption. 11 U.S.C. 365(b)(1).

4. Humana objects to the cure amount listed in the Assumption Notices as \$0. To the extent the Debtors seek to assume the PPA, the Debtors are statutorily barred from doing so absent a cure of all related contractual defaults pursuant to 11 U.S.C. § 365(b) and applicable law.

RESERVATION OF RIGHTS

5. Humana hereby reserves all of its rights to payments of any and all other amounts owed to it as and when they become due in accordance with the terms of the PPA. Further, Humana reserves all rights, claims, defenses, and remedies under the Bankruptcy Code and applicable law, including, without limitation, to supplement or amend this Objection, to raise further and other

objections, to introduce evidence prior to any hearing regarding this dispute, or to seek to introduce documents or other evidence in support of its position set forth herein.

CONCLUSION

6. Wherefore, for the foregoing reasons, unless the Debtors and Humana are able to consensually resolve the cure issues, Humana respectfully requests that this Court (a) sustain this Objection; (b) require that any order authorizing the assumption of the PPA affirmatively required the Debtors to pay all amounts accrued at the time of assumption; and (c) grant Humana such further relief it deems just and proper.

Dated: August 27, 2020

KLEIN LLC

/s/ Julia B. Klein
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CERTIFICATE OF SERVICE

I, Julia Klein, hereby certify that, on August 28, 2020, I served a copy of the Limited Objection with Reservation of Rights of Humana, Inc. and Humana Pharmacy, Inc. to Debtors' *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases 1)* via CM/ECF upon those parties registered to receive such electronic notices in these cases; and 2) on the parties on the attached Service List via electronic mail.

Dated: August 27, 2020
Wilmington, Delaware

KLEIN LLC

/s/ Julia B. Klein
Julia B. Klein (Bar No. 5198)
919 North Market Street
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Wilmington, Delaware 19801
Phone: (302) 438-0456

*Attorneys for Humana Inc. and
Humana Pharmacy, Inc.*

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