

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
)	
AKORN, INC., ¹)	Case No. 20-11177 (KBO)
)	
Debtor.)	
)	

**CERTIFICATION OF COUNSEL REGARDING THE
ORDER APPROVING STIPULATION BETWEEN THE DEBTOR AND
CERTAIN HEALTH INSURERS RESOLVING THE ANTITRUST CLAIMS**

The undersigned hereby certifies as follows:

1. On May 20, 2020 (the “Petition Date”), the above-captioned post-effective date debtor (the “Debtor”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, commencing their chapter 11 cases (the “Chapter 11 Cases”).

2. Prior to the Petition Date, Aetna Inc., Anthem Inc. (n/k/a Elevance Health), Usable Mutual Insurance Company d/b/a Arkansas Blue Cross and Blue Shield and HMO Partners, Inc. d/b/a Health Advantage, Blue Cross and Blue Shield of Alabama, Blue Cross and Blue Shield Association, Florida Blue d/b/a Blue Cross and Blue Shield of Florida, Inc., Blue Cross and Blue Shield of Kansas City, Blue Cross and Blue Shield of Massachusetts, Inc. and Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc., BCBSM, Inc. d/b/a Blue Cross and Blue Shield of

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Akorn, Inc. (7400). The Chapter 11 Cases of the following entities, formerly administratively consolidated with the foregoing case, have been closed: 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 Debtor’s service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.



Minnesota, Blue Cross and Blue Shield of North Carolina, Blue Cross and Blue Shield of North Dakota, Blue Cross and Blue Shield of Rhode Island, Blue Cross Blue Shield of South Carolina, Blue Cross Blue Shield of Tennessee, Blue Cross and Blue Shield of Vermont, California Physicians Service d/b/a Blue Shield of California, Caresource Management Group Co., EmblemHealth, Inc., Harvard Pilgrim Health Care, Inc., HealthPartners, Inc., Highmark Inc., Highmark BCBSD Inc., and Highmark West Virginia Inc., Hawaii Medical Service Association, Horizon Healthcare Services, Inc., Humana Pharmacy, Inc., Humana, Inc., Humana Insurance Company, Independent Health Association, Independent Health Benefits Corporation, Medical Mutual of Ohio, Molina Healthcare, Inc., Premera Blue Cross, Priority Health, Tufts Assoc. Health Maintenance Org., Inc. and Wellmark, Inc. (collectively, the “Insurers”),² either (i) filed complaints in federal courts against certain generic drug manufacturers, including Akorn Inc., Akorn Sales, Inc., Hi-Tech Pharmacal Co., Inc. and VersaPharm, Inc., to recover overpayments relating to the manufacturers’ alleged engagement in an alleged industry-wide conspiracy to set and increase the price and/or allocate the market for certain generic drugs, which were consolidated as part of the multi-district litigation, *In re Generic Pharmaceutical Pricing Antitrust Litigation*, MDL 2724 (E.D. Pa.) (the “MDL”), or (ii) commenced action in the Philadelphia Court of Common Pleas (the “State Court Actions,” and with the MDL, the “Antitrust Actions”).

3. Between July 23, 2020 and August 3, 2020, the Insurers each filed proofs of claim, as set forth on Exhibit A to the Stipulation (as defined herein) (the “Antitrust Claims”) asserting claims based on the Antitrust Actions against the Debtors.

² The Insurers and the Debtor are collectively referred to herein as the “Parties.”

4. On September 4, 2020, the Bankruptcy Court entered an order [D.I. 673] confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [D.I. 673-1] (the “Plan”).

5. On October 1, 2020, the Plan became effective pursuant to its terms and DriveTrain LLC was appointed as Plan Administrator pursuant thereto.

6. On August 19, 2024, the Parties, by and through their respective counsel, entered into that certain *Stipulation Between the Debtor and Certain Health Insurers Resolving the Antitrust Claims* (the “Stipulation”),³ settling the Antitrust Claims.

7. A copy of the Stipulation is attached as **Exhibit 1** to the proposed form of order approving the Stipulation (the “Order”), which is attached hereto as **Exhibit A**.

WHEREFORE, the Debtor respectfully requests that the Order, substantially in the form attached hereto as **Exhibit A**, be entered at the earliest convenience of the Bankruptcy Court.

³ Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Stipulation.

Wilmington, Delaware
August 19, 2024

/s/ Emily R. Mathews

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EXHIBIT A

Proposed Order

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

)	
In re:)	Chapter 11
)	
AKORN, INC., ¹)	Case No. 20-11177 (KBO)
)	
Debtor.)	Re: Docket No. ____
)	

**ORDER APPROVING STIPULATION BETWEEN THE DEBTOR AND CERTAIN
HEALTH INSURERS RESOLVING THE ANTITRUST CLAIMS**

Upon consideration of the *Certification of Counsel Regarding the Order Approving Stipulation Between the Debtor and the Insurers Resolving the Antitrust Claims* (the “Stipulation”)², attached hereto as Exhibit 1; it is HEREBY ORDERED THAT:

[Remainder of page intentionally left blank.]

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Akorn, Inc. (7400). The Chapter 11 Cases of the following entities, formerly administratively consolidated with the foregoing case, have been closed: 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 Debtor’s service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

1. The Stipulation is approved.
2. The Parties are authorized to take all actions necessary to effectuate the terms of the Stipulation.

EXHIBIT 1

Stipulation

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

In re:)	
)	Chapter 11
AKORN, INC., ¹)	
)	Case No. 20-11177 (KBO)
Debtor.)	
)	

**STIPULATION BETWEEN THE DEBTOR AND CERTAIN HEALTH INSURERS
RESOLVING THE ANTITRUST CLAIMS**

The above-captioned post-effective date debtor (the “Debtor”) in this chapter 11 case and Aetna Inc.,² Anthem Inc. (n/k/a Elevance Health), Usable Mutual Insurance Company d/b/a Arkansas Blue Cross and Blue Shield and HMO Partners, Inc. d/b/a Health Advantage, Blue Cross and Blue Shield of Alabama, Blue Cross and Blue Shield Association, Florida Blue d/b/a Blue Cross and Blue Shield of Florida, Inc., Blue Cross and Blue Shield of Kansas City, Blue Cross and Blue Shield of Massachusetts, Inc. and Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc., BCBSM, Inc. d/b/a Blue Cross and Blue Shield of Minnesota, Blue Cross and Blue Shield of North Carolina, Blue Cross and Blue Shield of North Dakota, Blue Cross and Blue Shield of Rhode Island, Blue Cross Blue Shield of South Carolina, Blue Cross Blue Shield of Tennessee, Blue Cross and Blue Shield of Vermont, California Physicians Service d/b/a Blue Shield of California,

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Akorn, Inc. (7400). The Chapter 11 Cases of the following entities, formerly administratively consolidated with the foregoing case, have been closed: 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 Debtor’s service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² The Parties agree that Aetna Inc. does not include its affiliate CVS Pharmacy, Inc., and this Stipulation specifically excludes any claims against Debtors that were separately filed by CVS Pharmacy, Inc.

Caresource Management Group Co., EmblemHealth, Inc., Harvard Pilgrim Health Care, Inc., HealthPartners, Inc., Highmark Inc., Highmark BCBSD Inc., and Highmark West Virginia Inc., Hawaii Medical Service Association, Horizon Healthcare Services, Inc., Humana Pharmacy, Inc., Humana, Inc., Humana Insurance Company, Independent Health Association, Independent Health Benefits Corporation, Medical Mutual of Ohio, Molina Healthcare, Inc., Premera Blue Cross, Priority Health, Tufts Assoc. Health Maintenance Org., Inc. and Wellmark, Inc. (collectively, the “Insurers”),³ by and through their respective counsel and/or representatives, hereby enter into this stipulation (the “Stipulation”)⁴ and stipulate and agree as follows:

WHEREAS, on May 20, 2020 (the “Petition Date”), the Debtor and its affiliated debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

WHEREAS, prior to the Petition Date, certain of the Insurers filed complaints in federal courts against certain generic drug manufacturers, including Akorn Inc., Akorn Sales, Inc., Hi-Tech Pharmacal Co., Inc. and VersaPharm, Inc., to recover overpayments relating to the manufacturers’ alleged engagement in an alleged industry-wide conspiracy to set and increase the price and/or allocate the market for certain generic drugs. These complaints were consolidated as part of the multi-district litigation, *In re Generic Pharmaceutical Pricing Antitrust Litigation*, MDL 2724 (E.D. Pa.) (the “MDL”). The remainder of the Insurers commenced action in the

³ The Insurers and the Debtor are collectively referred to herein as the “Parties.”

⁴ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan (as defined herein).

Philadelphia Court of Common Pleas (the “State Court Actions,” and with the MDL, the “Antitrust Actions”). The State Court Actions are stayed pending further development in the MDL.

WHEREAS, between July 23, 2020 and August 3, 2020, the Insurers each filed proofs of claim, as set forth on **Exhibit A** hereto (the “Antitrust Claims”) asserting claims based on the Antitrust Actions against the Debtors.

WHEREAS, on September 4, 2020, the Bankruptcy Court entered an order [D.I. 673] confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [D.I. 673-1] (the “Plan”).

WHEREAS, also on October 1, 2020, the Plan became effective pursuant to its terms and DriveTrain LLC was appointed as Plan Administrator pursuant thereto.

WHEREAS, the Parties engaged in arm’s length and good faith negotiations to settle the Antitrust Claims, which, based upon the limited funds available for distribution in this case, resulted in the resolutions described in the Stipulation below. The amount of the Allowed Claims (as defined herein) is not a concession by any Party hereto as to the actual amount of the Antitrust Claims.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties to this Stipulation that:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Upon the entry of a final order from the Bankruptcy Court approving this

Stipulation:

- a. The Antitrust Claims shall be allowed as general unsecured claims in the aggregate amount of \$411,000,000.00 (the “Allowed Claims”);

b. This Stipulation shall be effective and binding upon the Parties upon their entry into this Stipulation, subject only to the entry of an order by the Court (the date such order is entered, the “Approval Date”) approving the Stipulation. The Parties shall cooperate with one another to seek Court approval of this Stipulation.

3. The Debtor may adjust the claims register consistent with the terms of this Stipulation, and the Debtor shall consult with counsel to the Insurers regarding allocation of the Allowed Claims among the Antitrust Claims.

4. On the Approval Date, the Insurers shall be deemed to have released and discharged the Debtor and the Plan Administrator on behalf of themselves and their current and former affiliates and their respective estates, officers and directors (collectively, the “Debtor Released Parties” and each a “Debtor Released Party”) of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses, and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may hereafter accrue against any of the Debtor Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact event or omission or other matter, cause or thing occurring at any time prior to and including the Effective Date **solely** in any way directly or indirectly arising out of, connected with or relating to the Antitrust Claims and/or the Antitrust Actions; provided, however, that nothing herein shall release any Debtor Released Party from (a) its obligations under this Stipulation or with respect to

the payment of the Allowed Claims, or (b) any act or omission of such Debtor Released Party to the extent that such act or omission is determined in a final, non-appealable order or judgment of this Court or another court of competent jurisdiction to have constituted fraud, gross negligence, or willful misconduct.

5. On the Approval Date, each of the Debtor Released Parties shall be deemed to have released and discharged the Insurers on behalf of themselves and their current and former affiliates and their respective estates, officers and directors (collectively, the “Insurer Released Parties” and each an “Insurer Released Party”) of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses, and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may hereafter accrue against the Insurer Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact event or omission or other matter, cause or thing occurring at any time prior to and including the Effective Date solely in any way directly or indirectly arising out of, connected with or relating to the Antitrust Claims and/or the Antitrust Actions; provided, however, that nothing herein shall release the Insurer Released Parties from (a) their obligations under this Stipulation, or (b) any act or omission of the Insurer Released Parties to the extent that such act or omission is determined in a final, non-appealable order or judgment of this Court or another court of competent jurisdiction to have constituted fraud, gross negligence, or willful misconduct.

6. Each of the Parties understands and agrees that this Stipulation reflects a compromise of disputed claims and does not constitute, nor shall it be construed as, in any way, an admission of liability, fault, violation, responsibility, or wrongdoing by any of the Parties hereto such liability and wrongdoing being expressly denied.

7. This Stipulation is governed by the law of the State of Delaware, exclusive of its choice-of-law provisions. Each Party irrevocably consents to the jurisdiction of the Bankruptcy Court with respect to any action to enforce the terms and provisions of this Stipulation for so long as these bankruptcy cases shall remain open. Each Party waives any right to commence any such action in any other forum, provided that in the event the bankruptcy cases are closed, or the Court declines to exercise jurisdiction for any reason, then the parties may commence any action to enforce the terms and provisions of this Stipulation in the United States District Court for the Eastern District of Pennsylvania presiding over the In Re: Generic Pharmaceuticals Pricing Antitrust Litigation (MDL 2724).

8. The undersigned persons represent and warrant that they have full authority to execute this Stipulation.

9. This Stipulation constitutes the entire agreement between the Parties **solely** with regard to the matters addressed herein and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the matters addressed herein.

10. This Stipulation has been drafted through a cooperative effort of the Parties, and no Party shall be considered the drafter of this Stipulation so as to give rise to any presumption or convention regarding construction of this Stipulation.

11. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

STIPULATED AND AGREED TO:

/s/ Emily R. Mathews

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EXHIBIT A

Antitrust Claims

Insurer	Proofs of Claim Nos.
Aetna Inc.	429 434 436 446
Anthem Inc. (n/k/a Elevance Health)	252 254 255
Usable Mutual Insurance Company d/b/a Arkansas Blue Cross and Blue Shield and HMO Partners, Inc. d/b/a Health Advantage	323 324 330 337
Blue Cross and Blue Shield of Alabama	263 265 269
Blue Cross and Blue Shield Association	248 267 268
Florida Blue d/b/a Blue Cross and Blue Shield of Florida, Inc.	334 339 340
Blue Cross and Blue Shield of Kansas City	270 280 283
Blue Cross and Blue Shield of Massachusetts, Inc. and Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc.	408 410 415 416 417 418 419
BCBSM, Inc. d/b/a Blue Cross and Blue Shield of Minnesota	299 302 308
Blue Cross and Blue Shield of North Carolina	343 347 349

	351
Blue Cross and Blue Shield of North Dakota	362 373 390
Blue Cross and Blue Shield of Rhode Island	377 383 394
Blue Cross Blue Shield of South Carolina	298 305 306
Blue Cross Blue Shield of Tennessee	300 303 304
Blue Cross and Blue Shield of Vermont	322 332 338
California Physicians Service d/b/a Blue Shield of California	341 342 345
Caresource Management Group Co.	353 358 385 395
EmblemHealth, Inc.	361 368 375
Harvard Pilgrim Health Care, Inc.	352 364 371
HealthPartners, Inc.	369 370 381
Highmark Inc.,	423 424 425

Highmark BCBSD Inc.	423 424 425
Highmark West Virginia Inc.	423 424 425
Hawaii Medical Service Association	360 380 386
Horizon Healthcare Services, Inc.	405 406 556
Humana Pharmacy, Inc., Humana Inc., Humana Insurance Company, and Affiliates	441 443 444
Independent Health Association, and Independent Health Benefits Corporation	435 439 450 451
Medical Mutual of Ohio	356 363 391
Molina Healthcare, Inc.	420 533
Premera Blue Cross	407 409 411
Priority Health	388 392 393
Tufts Assoc. Health Maintenance Org., Inc.	355 359 372
Wellmark, Inc.	412

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