# EXHIBIT B

BLACKLINE

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

| | |
|---|---|
| ) | ) Chapter 11 |
| )In re: ) | ) Case No. 04-11278 (MFW) |
| ) | ) |
| WOMEN FIRST HEALTHCARE, INC.; ) | ) **Ref. No. 23** |
| Debtor. ) | ) |
| )) | |

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006 AUTHORIZING THE SALE OF THE DEBTOR'S *VANIQA*® ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS IN CONNECTION THEREWITH**

THIS MATTER having come before the Court upon the motion, dated May ~~1~~3, 2004 (the "Motion"), of Women First HealthCare, Inc. (the "Debtor" or the "Seller") for entry of an order pursuant to sections 105(a), 363(b), (f) and (m), and 365(a), (f) and (k) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004 (a), (c) and (g) and 6006(a) and (d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the sale of certain assets of the Debtor's pharmaceutical business relating to *Vaniqa*® Cream as set forth in the Agreement (as defined below) (the "Acquired Assets"), free and clear of all liens, claims and encumbrances and other interests, and the assumption by the Debtor and assignment to the Purchaser (as defined below) of certain executory contracts pursuant and subject to the terms and conditions of that certain Amended and Restated Asset Purchase Agreement, dated ~~April~~June ~~29,~~24, 2004 (including all exhibits and agreements ancillary thereto, the "Agreement," in the form substantially of that attached hereto as Exhibit A) by and among Women First

HealthCare, Inc., a Delaware corporation, and SkinMedica, Inc., a Delaware corporation, and/or its designee (the "Purchaser"), subject to higher and better offers;

And the Court having held a hearing on May ___18, 2004 and entered an order, dated May ___18, 2004 (the "Bidding Procedures Order"), pursuant to which the Court, *inter alia*:

(i) approved the "Bidding Procedures" specified therein (the "Bidding Procedures") and the form and manner of notice of the proposed sale and bidding procedures;

(ii) established the deadline by which parties may object to the proposed assumption and assignment of executory contracts and assert claims for the payment of cure amounts;

(iii) authorized and scheduled an auction to sell certain assets of the Debtor free and clear of liens, claims and encumbrances;

(iv) established the date and time for the auction to be held by the Debtor for bids on the Acquired Assets (the "Auction");

(v) established the date and time for the hearing on the Motion; and

(vi) approved the Break-Up Fee and Expense Reimbursement.

And the Auction having been held on ~~May~~June ___24, 2004 pursuant to the Bidding Procedures Order, after which Purchaser was determined to have submitted the highest and best offer for the Acquired Assets;

And a hearing having been held before this Court on _____June ___25, 2004 to consider the proposed sale (the "Sale") of the Acquired Assets in connection with the Agreement (the "Sale Hearing"), at which time all parties in interest were afforded an opportunity to be heard;

And the Court having heard testimony and received evidence, including the transcript of the Auction filed with the Court on June 24, 2004 [Docket No. 195], in support of approval of the Sale, the Debtor's ability to assume and assign the Assumed Contracts to Purchaser pursuant to section 365 of the Bankruptcy Code, Purchaser's ability to consummate the Sale, Purchaser's

establishment of adequate assurance of future performance and Purchaser's good faith status pursuant to section 363(m) of the Bankruptcy Code;

And due and sufficient notice of the Motion, the Bidding Procedures, the Sale and the Sale Hearing having been given in accordance with the Bidding Procedures Order, as evidenced by the affidavits of service heretofore filed with the Court;

And objections having been filed by the Official Committee of Unsecured Creditors, Cardinal Healthcare, the Gillette Company, UPS Supply Chain, and CVS/Pharmacy, Inc. (collectively, the "Objections");

NOW, THEREFORE, based upon the Court's review of all of the evidence proffered or adduced at, memoranda and ~~objections, if any,~~Objections filed in connection with, and arguments of counsel made at, the Sale Hearing, and its review of the entire record of the Auction and the Sale Hearing and in this Chapter 11 case;

And after due deliberation thereon; and good cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:[1]

(a) Capitalized terms used herein that are not otherwise defined in this Order shall have the meanings ascribed to such terms in the Agreement.

(b) This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. § 1334.

(c) Venue of this case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409(a).

1 Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

(d) Determination of the Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (N). The statutory predicates for the relief requested herein are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

(e) On April 29, 2004 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in possession and management of its businesses and properties pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor's Chapter 11 case. On ~~_____~~May ~~___~~11, 2004, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee").

(f) As evidenced by the affidavits of service and affidavit of publication previously filed with this Court, proper, timely, adequate and sufficient notice of the Motion, the Bidding Procedures, the Auction, the Sale Hearing and the proposed Sale has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006 and the Bidding Procedures Order, and no other or further notice of the Motion, the Auction, Sale Hearing or of the entry of this order is required.

(g) The Bidding Procedures and the Auction afforded a full, fair and reasonable opportunity for any entity to make a higher and better offer to purchase the Acquired Assets and no higher or better offer has been made. The Bidding Procedures approved in the Bidding Procedures Order have been fully complied with in all respects.

(h) The Debtor may sell the Acquired Assets free and clear of all Liens and Interests (as defined below) (other than the Permitted Liens or Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f)(l)-(5) of the Bankruptcy Code has been

satisfied. Those holders of Liens or Interests (other than the Permitted Liens or Assumed Liabilities) who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens or Interests (other than the Permitted Liens or Assumed Liabilities) who did object are adequately protected by having their Liens or Interests, if any, attach to the proceeds of the Sale.

(i) A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee; (ii) counsel for the Purchaser; (iii) counsel for the Committee; (iv) counsel for the Lenders; (v) all entities known to have expressed a bona fide interest, within the last (6) months, in acquiring the Acquired Assets; (vi) all entities (or counsel therefor) known to have asserted any lien, claim, encumbrance, right of refusal or other interest in or upon the Acquired Assets; (vii) all federal, state, and local regulatory or taxing authorities or recording offices or any other governmental authorities that, as a result of the Sale of the Acquired Assets, may have claims, contingent or otherwise, in connection with the Debtor's ownership of the Acquired Assets or have any reasonably known interest in the relief requested by the Motion; (viii) all parties, if any, who are known to claim interests in any Assumed Contracts; (ix) all Persons who are parties to any litigation threatened against, or pending with, the Debtor; (x) the United States Attorney's office; (xi) The Securities and Exchange Commission; (xii) the Internal Revenue Service; (xiii) the U.S. Food and Drug Administration; (xiv) all state and local environmental agencies in any jurisdiction where the Seller owns or has owned or used real property; ~~and~~ (xv) all parties who have filed a Notice of Appearance or Request for Service of Papers in the Debtor's Chapter 11 case through and including May ~~—~~18, 2004; and (xvi) all other persons entitled to notice under applicable law, ~~2004.~~including

Bankruptcy Rule 2002.

(j) The Assumed Contracts are assignable notwithstanding any provisions contained therein to the contrary and the Purchaser ~~shall have no obligation to provide~~has demonstrated and has provided adequate assurance of its future performance of obligations arising after the Closing under the Assumed Contracts. The Debtor has provided for the cure, or at the Closing of the Agreement will pay such cure amounts from the proceeds of the Sale, of any monetary defaults under the Assumed Contracts, and the Debtor has compensated, or have provided adequate assurance thereof, to the non-debtor parties to Assumed Contracts for the actual pecuniary loss, if any, resulting from a default, if any, under such Assumed Contracts prior to the date hereof. The Cure Costs, if any, are the sole amounts necessary to cure all defaults and to pay all established actual and pecuniary losses that result from such defaults, within the meaning of section 365(b)(1)(A) and (B) of the Bankruptcy Code. No defaults exist in the Debtor's performance under the Assumed Contracts, as of date of this Order, other than as a result of the Debtor's failure to previously pay the aforesaid amounts. The Assumed Contracts being assigned to the Purchaser constitute an integral part of the Acquired Assets and, therefore, the Purchaser's assumption and assignment thereof enhances the value of the Debtor's estate and does not result in unfair discrimination among the Debtor's creditors.

(k) The Debtor has demonstrated that approval of the Agreement and consummation of the Sale at this time is in the best interests of the Debtor, the estate and creditors. The Debtor has advanced good and sufficient business justification supporting the sale of the Acquired Assets to the Purchaser pursuant to ~~section 363(b)~~sections 105, 363, and 365 of the Bankruptcy Code and outside of a plan of reorganization, as set forth in the Motion and at the Sale Hearing, and it is a reasonable exercise of the Debtor's business judgment to consummate a sale of the

Acquired Assets on the terms and conditions set forth in the Agreement, and to execute, deliver and perform its obligations thereunder. Sound business judgment includes, but is not limited to, the fact that (i) there is a risk of immediate and irreparable loss of value of the Acquired Assets if the Sale is not consummated, (ii) there is a substantial risk of further deterioration in the Debtor's relations with key customers, (iii) it is difficult for the Debtor in the bankruptcy environment to establish new customer relationships and maintain normal terms with suppliers and (iv) the consummation of the transaction contemplated under the Agreement presents the best opportunity to realize the value of the Acquired Assets to avoid further decline and devaluation thereof.

(l) The Agreement is not a *sub rosa* Chapter 11 plan for which approval has been sought without the protections a disclosure statement would afford.

[(m) With the consent of the parties thereto, which consent has been received, the Assumed Contracts are assignable notwithstanding the absence of any language on assignability or the existence of any provisions contained therein to the contrary. Regardless of the existence of such consent, the Assumed Contracts are assignable notwithstanding the absence of any language on assignability or the existence of any provisions contained therein to the contrary.]

(n) The Debtor has full corporate power and authority to execute and deliver the Agreement, and documents contemplated thereby and to perform the transactions contemplated thereby; no consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtor to consummate the Sale.

(o) The consideration to be paid by the Purchaser under the Agreement constitutes adequate and fair value for the Acquired Assets and the terms and conditions of the Agreement are fair and reasonable under the Bankruptcy Code and under the laws of the United States, any

state, territory or possession of the United States or the District of Columbia.

(p) The Debtor has good title to the Acquired Assets, and accordingly the transfer of such Acquired Assets, including the assumption and assignment of the Assumed Contracts, to the Purchaser pursuant to the Agreement will be a legal, valid and effective transfer of the Acquired Assets, including the Assumed Contracts.

(q) The Agreement was negotiated, proposed and entered into in good faith, from arm's-length bargaining positions by the Debtor and the Purchaser and constitutes the highest or otherwise best offer for the Assumed Contracts and the Acquired Assets received by the Debtor after a period in which third parties had ample opportunity to seek information and enter into discussions or negotiations with the Debtor and its retained advisors concerning a sale of the Acquired Assets (both before and after the Petition Date). The Purchaser is entitled to the protections of a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code with respect to the transactions approved hereby.

(r) The Purchaser would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, its estate and its creditors, if the sale of the Acquired Assets to the Purchaser and the assignment of the Assumed Contracts and Assumed Liabilities to the Purchaser was not free and clear of all Liens and Interests (other than the Permitted Liens or Assumed Liabilities) of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Liens or Interests (other than the Permitted Liens or Assumed Liabilities), including, without limitation, the Excluded Liabilities.

(s) The Debtor does not have any interest in Purchaser or any party affiliated with Purchaser.

(t) The Purchaser is not an "insider" of the Debtor or any party affiliated with Debtor, as that term is defined in section 101 of the Bankruptcy Code.

(u) The Sale and Auction conducted by the Debtor and its retained advisors was non-collusive, fair and reasonable and conducted in good faith.

(v) With respect to Seller's obligations related to Liability to Customers and Repurchase Liability, the Seller has (i) made commercially reasonable efforts to adequately notify customers or wholesalers and to establish the sum of Liability to Customers and Repurchase Liability, (ii) reasonably informed Purchaser of such efforts and (iii) established reasonable and appropriate deadlines and procedures.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted ~~to the extent provided~~, as more fully described below.

2. Any objections to the Motion or the relief requested therein including, without limitation, the Objections, that have not been withdrawn, waived or settled, and all reservations of rights included therein, are overruled on the merits.

3. The terms and conditions of the Agreement (including all exhibits and schedules thereto) are hereby approved in all respects,[2] and the sale of the Acquired Assets of the Debtor pursuant to the Agreement is hereby authorized under sections 105, 363 (b) and (f) of the Bankruptcy Code and the assumption and assignment of the Assumed Contracts in connection therewith is likewise approved and authorized pursuant to section 365 of the Bankruptcy Code.

4. The Debtor is authorized and directed, pursuant to sections 105(a) and 363(b) and (f) of the Bankruptcy Code, to execute and deliver, and empowered to fully perform under,

[2] The omission in this Order of specific reference to any provision of the Agreement shall not impair or diminish the efficacy, propriety and approval of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

consummate and implement, the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to the Purchaser's possession, any or all of the Acquired Assets. The Debtor's obligations under the Agreement shall constitute administrative expenses of the Debtor's estate under sections 503(b) and 507(a)(1) of the Bankruptcy Code.

5. Neither the purchase of the Acquired Assets by Purchaser nor the transactions contemplated hereby will cause the Purchaser or any of its affiliates to be deemed a successor in any respect to the Debtor's business within the meaning of any federal, state or local revenue, pension, ERISA, tax, labor or environmental law, rule or regulation or under any products liability law or doctrine with respect to Debtor's liability under such law, rules, regulations or doctrines. In addition, except as expressly provided in this Agreement, and, to the greatest extent permitted by law, Purchaser does not acquire or assume any of the Debtor's or any other person's liabilities, including, without limitation, any of the Debtor's obligations under any employment or collective bargaining agreement and in no event shall Purchaser (a) be deemed the successor of the Debtor, (b) have, de facto or otherwise, merged with or into the Debtor or (c) be a mere continuation of the Debtor or the enterprises of the Debtor. To the greatest extent permitted by law, the Purchaser shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 2101 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act or any federal, state or local environmental law by virtue of the Purchaser's purchase of the Acquired Assets.

6. Pursuant to section 363(f) of the Bankruptcy Code, as of the Closing and pursuant to the terms of the Agreement, the transfer of the Acquired Assets to the Purchaser will be a legal, valid, enforceable, and effective transfer of the Acquired Assets, and will vest the Purchaser with all right, title, and interest of the Debtor in the Acquired Assets free and clear of all Liens and all liens, claims, encumbrances and interests (other than the Permitted Liens or Assumed Liabilities), including, but not limited to: (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, tag-along rights, restrictions on sales to competitors, rights based on a change of control as a result of the transactions contemplated in the Agreement, or termination of the Debtor's or the Purchaser's interest in the Acquired Assets, or any similar rights, (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing, (iii) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, options, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, and (iv) all debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtor or any of the Debtor's predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including but not limited to claims otherwise arising under doctrines of successor liability (collectively, the "Interests") on such Acquired Assets, with any Liens or Interests (other

than the Permitted Liens or Assumed Liabilities) in such Acquired Assets to attach to the proceeds of the sale, including without limitation, any and all escrows established in connection therewith, in the order of their priority, with the same validity, force and effect which they now have as against such Acquired Assets. Except as set forth herein, the proceeds of the Sale, including any escrowed amounts established pursuant to this order which are not agreed upon by the parties or determined by the Court in accordance with this order to be payable to such non-Debtor party, shall be applied and distributed in accordance with the Amended final Order (1) Authorizing Post-Petition Financing on a Secured and Super-Priority Basis Pursuant to Sections 364(c) and (d) of the Bankruptcy Code, (2) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code and (3) Granting Adequate Protection Pursuant to Sections 363 and 364 of the Bankruptcy Code [Docket No. 158].

7. Except as may be expressly permitted by the Agreement, all persons and entities holding Liens or Interests (other than the Permitted Liens or Assumed Liabilities) of any kind and nature with respect to the Acquired Assets of the Debtor are hereby barred from asserting such Liens or Interests (other than the Permitted Liens or Assumed Liabilities) against the Purchaser, its successors or assigns, or the Acquired Assets.

8. If any person or entity that has filed financing statements or other documents or agreements evidencing encumbrances on the Acquired Assets of the Debtor shall not have delivered to the Debtor prior to the Closing (in proper form for filing and executed by the appropriate parties), termination statements, instruments of satisfaction, releases of all encumbrances that the person or entity has with respect to such Acquired Assets, the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Acquired Assets.

9. As evidenced by the affidavits of service and affidavit of publication previously filed with this Court, proper, timely, adequate and sufficient notice of the proposed Sale has been provided by the Debtor to all relevant parties, and no other or further notice is required.

10. The foregoing notwithstanding, the provision of this Order authorizing the sale and assignment of the Acquired Assets of the Debtor free and clear of Liens and Interests (other than the Permitted Liens or Assumed Liabilities) shall be self-executing, and notwithstanding the failure of the Debtor, the Purchaser, or any other party to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or the Agreement with respect to the sale and assignment of such Acquired Assets, all Liens and Interests (other than the Permitted Liens or Assumed Liabilities) on such Acquired Assets, if any, shall be deemed released and shall attach to the proceeds of the Sale pursuant to paragraph 6 of this Order, with the same priority, force and validity as existed at the time of sale subject to all defenses, claims and objections. All persons or entities that ~~are~~ presently~~,~~ or at the time of the Closing~~,~~ are in possession of any of the Acquired Assets of the Debtor are hereby directed to surrender possession of such Acquired Assets to the Purchaser, or its designee (a) at the Closing or (b) prior to Closing if requested in writing by the Debtor, and any such person's Lien, if any, with respect to such Acquired Asset(s) shall continue with full force and effect until the Closing with respect to such Acquired Assets only and, thereafter, shall attach to the proceeds of the Sale (except to the extent the Agreement expressly provides otherwise)~~.~~, with the same priority, force and validity as existed at the time of sale subject to all defenses, claims and objections, if any. If, in accordance with this paragraph, Acquired Assets are transferred to the Purchaser prior to the Closing, then the Purchaser shall segregate such Acquired Assets until the Closing and, during such time, Purchaser shall hold

such Acquired Assets in trust for the Debtor. If the Closing does not occur, then the Purchaser shall promptly return any Acquired Assets in its possession or control to the Debtor.

11. With respect to and in resolution of the Objection filed by UPS Supply Chain Solutions ("UPS"): (a) the Debtor is directed to retrieve all of the Debtor's product currently held by UPS, unless otherwise agreed upon by the parties or ordered by the Court, and UPS is directed to cooperate in connection therewith by delivering the inventory by order of its expiration (earlier date first); and (b) the Debtor shall escrow $300,000 at Closing to secure the secured claim(s) alleged by UPS and UPS's alleged liens, if any, in the inventory shall attach to such escrowed amount with the same priority, force, and validity as existed at the time hereof subject to all defenses, claims and objections, if any. The UPS Escrow shall be held by the Debtor subject to (i) an agreement by the parties, with the consent of the Committee, or (ii) subsequent order of this Court regarding the extent, validity and priority of such claims.

12. ~~11.~~ This Order shall be binding upon and govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons or entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report to or insure title or state of title in or to any of the Acquired Assets of the Debtor (including the Assumed Contracts). Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement, including without limitation, documents and instruments for recording in any governmental agency or department

required to transfer to the Purchaser any and all licenses under the Debtor's ownership necessary for the operation associated with the Acquired Assets, and county and state offices wherein termination statements under the Uniform Commercial Code are authorized to be filed.

13. ~~12.~~ Subject to the closing of the transactions contemplated by the Agreement and any amendments to the schedules thereto, the Debtor is authorized to assume the Assumed Contracts to which it is a party, and to thereupon assign the Assumed Contracts to the Purchaser in accordance with the terms of the Agreement, pursuant to sections 365(a), 365(f) and 363(m) of the Bankruptcy Code, and the requirements of section 365(b)(1) with respect thereto are deemed satisfied. As reflected in the Agreement, the Assumed Contracts include all four (4) of the Gillette Agreements described in the Objection filed by the Gillette Company to the Assumption and Assignment of Executory Contracts (the "Gillette Objection") [Docket No. 175]. The Debtor's assumption and assignment of the Gillette Agreements is subject to and in accordance with the Assignment, Assumption and Consent Agreement entered into between the parties, which Consent Agreement is substantially in the form and substance of Exhibit A to the Gillette's Objection, and no cure amounts are due and owing by the Debtor or the Purchaser in connection therewith.

14. ~~13.~~ With respect to the Assumed Contracts: (a) the Assumed Contracts shall be transferred and assigned to, and following the Closing of the Sale remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assumed Contracts after such transfer and

assignment to the Purchaser; (b) that are executory contracts of the Debtor under section 365 of the Bankruptcy Code, the Debtor may assume such Assumed Contracts in accordance with section 365 of the Bankruptcy Code; (c) the Debtor may assign each Assumed Contract in accordance with sections 363 and 365(f) of the Bankruptcy Code, and any provision in any Assumed Contract that prohibits or conditions the assignment of such Assumed Contract or allows the non-debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, shall constitute an unenforceable anti-assignment provision that is void and of no force and effect; (d) all parties to the Assumed Contracts and all relevant Third Parties have consented to the assignment of the Assumed Contracts; (e) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption and assignment by the Debtor to the Purchaser of each Assumed Contract have been satisfied; and (f) upon Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title and interest of each Assumed Contract.

15. ~~14.~~ Upon the closing of the transactions contemplated by the Agreement, the Purchaser shall assume the ~~certain~~Assumed ~~liabilities~~Liabilities in accordance with the express terms of the Agreement, including all responsibilities of the Debtor under the Assumed Contracts that arise from and after the Closing Date as defined and more specifically provided in the Agreement. All monetary defaults of the Debtor under the Assumed Contracts arising or accruing prior to the closing of the transaction contemplated under the Agreement (without giving effect to any acceleration clauses or default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) have been cured or shall promptly be cured by the Debtor from the proceeds of the Sale, such that, other than the Assumed Liabilities, the Purchaser shall

not have any liability for any claims or liabilities, including, without limitation, any cure amounts under section 365(b) of the Bankruptcy Code, against the Debtor or any of the Debtor's predecessors or affiliates of any kind or character, whether known or unknown as of the closing, now existing or hereafter arising, whether fixed or contingent, under the laws of the United States, any state, territory or possession of the United States or the District of Columbia.

16. ~~15.~~ Each non-debtor party to an Assumed Contract is hereby barred from asserting against the Debtor or the Purchaser any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

17. At the Closing, the Purchaser shall tender to the Debtor, to be held in trust for the benefit of the applicable customers, the amount necessary to pay all Repurchase Liability and Liability to Customers as set forth on Exhibit B annexed hereto, whether or not resolved, and the Debtor shall deposit such funds into a segregated, interest-bearing escrow account (the "Customer Claim Escrow Account"). The undisputed amount of each customer's claim constituting Repurchase Liability and Liability to Customers, as set forth on Exhibit B annexed hereto, shall be paid from the Customer Claim Escrow Account within ten (10) days after the Closing; provided, however, that Purchaser may instead pay any undisputed amounts on the Closing Date directly to the applicable customer.

18. In addition to the amounts provided in paragraph 17 hereof, the disputed customer claims of CVS/Pharmacy, Inc., Amerisource Bergen, Cardinal Healthcare and McKesson Corporation constituting Repurchase Liability and Liability to Customers, the amounts of which have not been resolved by agreement of the Debtor and the customer on or before June 25, 2004 (the "Disputed Customer Claims"), as set forth on Exhibit B annexed hereto, shall be held in the

Customer Claim Escrow Account. The funds in the Customer Claim Escrow Account shall be paid on the later of (a) the date such claims are agreed to by the customer and the Debtor (in consultation with the Purchaser), (b) the tenth (10th) day after the Closing Date, and (c) entry of a final, non-appealable order entered by the Bankruptcy Court determining the amount of such claim. Any Disputed Customer Claim not paid within twenty (20) days after the Closing shall receive a pro rata portion of the accrued interest on the Customer Claim Escrow Account to the extent principal is paid to such customer. To the extent that the customer and the Debtor fail to reach an agreement as to the allowed amount of the Disputed Customer Claim by July 15, 2004, then thereafter either party may request that the Bankruptcy Court determine the allowed amount, if any, of the subject Disputed Customer Claim. Such determination shall be made pursuant to a motion in accordance with Bankruptcy Rule 9014. In any event, Amerisource Bergen, Cardinal Healthcare and McKesson Corporation shall provide the Debtor and the Purchaser with all documentation supporting its alleged Disputed Customer Claim on or before July 30, 2004 (which date may be extended by written agreement between the parties without further order of the Court), unless the parties (in consultation with the Purchaser) resolve the relevant Disputed Customer Claim before such date.

19. ~~16.~~ From and after entry of this Order, ~~neither~~none of the Debtor ~~nor~~, the Purchaser, or any creditor or other party in interest shall take or cause to be taken any action that would interfere with the transfer of the Acquired Assets of the Debtor to the Purchaser in accordance with the terms of this order.

20. ~~17.~~ From and after the closing of the transactions contemplated by the Agreement, the Debtor shall be released from any and all obligations, claims and liabilities the Purchaser may incur under the Assumed Contracts; provided, however that the Debtor shall be liable for any

cure costs incurred on account of their assumption and assignment of the Assumed Contracts and determined with the procedures set forth herein or in the Agreement. The Debtor shall have all the benefits and protections provided under section 365(k) of the Bankruptcy Code.

21. ~~18.~~ No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions authorized herein.

22. ~~19.~~ Because the Court finds that Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, in the event that the parties to the Sale consummate the transactions contemplated thereby while an appeal of this order is pending, the Purchaser shall be entitled to rely upon the protections of section 363(m) of the Bankruptcy Code, absent any stay pending appeal granted by a court of competent jurisdiction prior to such consummation.

23. ~~20.~~ The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the respective parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement (i) is not material and adverse to the Debtor and (ii) does not modify the list of Assumed Contracts on Exhibit E to the Agreement to the extent that Shire is a party to such Assumed Contract, provided further that prior notice thereof is provided to counsel to (i) the Committee and (ii) any debtor-in-possession lenders, and any such modification, amendment or supplement shall be filed with the Court.

24. ~~21.~~ As the Sale and Auction conducted by the Debtor and its retained advisors was non-collusive, fair and reasonable and conducted in good faith, and the transactions contemplated by the Agreement have been bargained for and undertaken by the Debtor and

Purchaser at arm's length and without collusion, the Sale approved by this Order is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

25. ~~22.~~ Any amounts that become payable by the Debtor to Purchaser pursuant to the Agreement (and related agreements executed in connection therewith) (a) shall constitute administrative expenses of the Debtor's estate under sections 503(b) and 507(a)(1) of the Bankruptcy Code and (b) shall be paid by the Debtor in the time and manner provided for in the Agreement (and such related agreements) without further Court order.

26. ~~23.~~ The Debtor is authorized to execute such other documents as are necessary or desirable to implement this Order.

27. ~~24.~~ Nothing contained in any plan of reorganization (or liquidation) confirmed in these cases or the order of confirmation confirming any plan of reorganization (or liquidation) shall conflict with or derogate from the provisions of the Agreement or the terms of this Order. Further, the provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered or converting the Debtor's case from Chapter 11 to a case under Chapter 7 of the Bankruptcy Code.

28. ~~25.~~ The terms and provisions of the Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, any trustee appointed in this case (whether in Chapter 7 or Chapter 11), its creditors, the Purchaser and its respective affiliates, successors and assigns, and any affected third parties, including but not limited to, any and all persons asserting a claim against or interest in the Debtor's estate or any of the Acquired Assets. This Order shall also bind affected third parties, including, but not limited to, the non-Debtor parties to the Assumed Contracts and all persons asserting claims in the Bankruptcy Case against the Debtor or its assets.

29. ~~26.~~ As provided by Bankruptcy Rules 6004(g), 6606(d) and 7062, because time is of the essence, this Order shall be effective and enforceable immediately upon entry.

30. ~~27.~~ The provisions of this Order are nonseverable and mutually dependent.

31. ~~28.~~ This Court shall retain jurisdiction (i) to enforce and implement the terms and provisions of the Agreement and all amendments thereto, any waivers and consents thereunder, and of each of the other agreements (including all Assumed Contracts) executed in connection therewith, (ii) to resolve any disputes arising under or related to the Agreement, except as otherwise provided therein, ~~and~~ (iii) to compel payment of the Cure Amounts or the Assumed Liabilities, (iv) to compel delivery of the Acquired Assets directly or indirectly to the Purchaser, (v) to protect the Purchaser against any Liens and Interests against the Debtor or on the Acquired Assets which are not part of the Permitted Liens or the Assumed Liabilities, and (vi) to interpret, implement and enforce the provisions of this Order.

Dated: Wilmington, Delaware
June ___, 2004

MARY F. WALRATH
CHIEF UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**EXHIBIT B**

Document comparison done by DeltaView on Friday, June 25, 2004 12:40:47

| **Input:** | |
|---|---|
| Document 1 | pcdocs://WP3/998328/1 |
| Document 2 | pcdocs://WP3/998328/4 |
| Rendering set | Standard |

| **Legend:** | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| **Statistics:** | |
|---|---|
| | Count |
| Insertions | 104 |
| Deletions | 64 |
| Moved from | 0 |
| Moved to | |
| Format changed | 0 |
| Total changes | |