

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of ACA Assurance  
Docket No. 217-2006-EQ-00380

**VERIFIED MOTION TO APPROVE ALL REMAINING CLAIMS  
DETERMINATIONS, SETTLEMENT AGREEMENTS,  
THE MANDATED RSA 402-C:35 REPORT, THE PROPOSED PLAN OF  
DISTRIBUTION AND THE DISTRIBUTION OF ASSETS**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"), in his capacity as Liquidator (the "Liquidator") of ACA Assurance ("ACA" or "Company" ), hereby moves this Court pursuant to RSA 402-C:44, RSA 402-C:45 and RSA 402-C:46 for an order:

- (i) approving the determination of remaining claims and related settlement agreements;
- (ii) approving the determination of all policyholder assessment claims in full as valid Class IX priority claims pursuant to RSA 402-C;
- (iii) approving the Liquidator's report pursuant to RSA 402-C:35, including the Liquidator's determination that **no** additional assessment is required or appropriate under RSA 402-C:35;
- (iv) approving the distribution of funds that remain available for distribution in Class IX, currently estimated to be approximately \$250,000, to claimants whose policies were assessed at the forty percent (40%) level;
- (v) approving a Proposed Plan of Distribution filed herewith and the distribution of ACA's assets (after establishment of a reserve not to exceed \$52,000 for

the Liquidator's administration costs) to claimants with allowed claims in accordance with such Proposed Plan of Distribution;

On this same day the Liquidator has filed a verified motion to approve notice and objection procedures (the "Notice Motion") related to the relief requested in this Motion (the "Claims Motion"). As described in more detail below, the Liquidator is requesting that this Motion be granted upon the expiration of the objection period described in the Notice Motion if no objection has been filed with the Court by that date.

### **Introduction**

1. This Motion provides a summary recitation of the factual background of this proceeding. More detailed descriptions of the history of both the prior rehabilitation proceedings and the current proceeding can be found in pleadings previously filed with the Court in this docket.

2. ACA is a New Hampshire-domiciled fraternal benefit society, subject to the provisions of RSA Chapter 418. By Order of this Court dated October 10, 2012, which Order was entered by the Clerk on October 22, 2012, ACA was placed in liquidation ("Liquidation Order"), and the Commissioner was appointed Liquidator of ACA. Since the entry of the Liquidation Order, the Liquidator has been determining the proofs of claim and negotiating with certain claimants in order to wind up the affairs of ACA in accordance with the Insurers Rehabilitation and Liquidation Act, RSA Chapter 402-C (the "Act").

3. The Liquidator has made final claim determinations for all but two (2) proofs of claim filed with the estate, as follows: (i) a claim for a policyholder assessment,

for which a proof of claim was filed by one policyholder<sup>1</sup> and which will be addressed in a manner consistent with all other policyholder assessment claims, which is discussed in detail below; and (ii) a claim from ACA's former landlord in Manchester, which is the subject of a settlement agreement for which the Liquidator is seeking court approval as discussed in detail below. Other than the foregoing, the only remaining claims to be determined by the Liquidator are the 24,640 policy assessment claims of former ACA policyholders<sup>2</sup> (the "Assessment Claims"), which pursuant to the terms of the Liquidation Order were deemed to have been filed with the Liquidator without the filing of proofs of claim and are identified in Exhibit A attached herewith.<sup>3</sup> In addition to the resolution of the remaining claims, the Liquidator also seeks approval of a settlement agreement with the Supreme Council of the Royal Arcanum ("Royal Arcanum"), the carrier which assumed nearly all of ACA's U.S. policies, which agreement addresses the administrative expense payments to be made to Royal Arcanum, as well as the distribution to made to certain policyholders of such assumed policies, as further described below. In addition to the foregoing, this Claims Motion seeks the Court's approval of the Liquidator's report pursuant to RSA 402-C:35, a Proposed Plan of Distribution which sets forth the proposed distribution to creditors of ACA's remaining assets and the Liquidator's distribution of ACA's assets to creditors.

### **Background**

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<sup>1</sup> This proof of claim was unnecessary since all of such claims were deemed filed, but it was nonetheless filed by Robert A. Beaumont (the "Beaumont Claim").

<sup>2</sup> This number includes the Beaumont Claim, which was an Assessment Claim at 25% and in the amount of \$3,899.61.

<sup>3</sup> Because Exhibit A is in excess of 700 pages, the Liquidator has filed Exhibit A with the Court on a disk. Exhibit A will also be made available to other interested parties electronically on the Liquidator's website. If the Court or any interested party would prefer a printed copy of Exhibit A, the Liquidator will file or provide it. Exhibit A includes the Beaumont Claim.

4 The Commissioner states that he is the duly appointed and qualified Commissioner of Insurance of the State of New Hampshire.

5. ACA currently has its principal offices at 55 South Commercial Street, Manchester, New Hampshire 03101, was organized in this State, and was licensed and regulated by the New Hampshire Insurance Department (the "Insurance Department"). RSA 418:28 I. ACA was also licensed to do business and conducted an insurance business in several other states, as well as in all provinces in Canada, where ACA operated an extensive Canadian insurance business (the "Canadian Branch") for many years. ACA is not a member of any guaranty fund or association. Therefore, ACA's former policyholders were not entitled to the benefit of proceeds from such funds or associations. RSA 418:22; RSA 418:18 IV.

**The First Rehabilitation Proceeding and the First Assessment (12%)**

6. ACA was the subject of two rehabilitation proceedings before this Court, the first of which was initiated by the Commissioner on October 11, 2006. During February 2007, the board of directors of ACA, in consultation with the Insurance Department and based upon the authority established in RSA 418:18 IV, made a determination that ACA's reserves were impaired and authorized an assessment of twelve percent (12%) exclusively on ACA's pre-need life insurance policies (the "Initial Assessment"). The Initial Assessment permitted ACA to reflect sufficient statutory surplus to exit the initial rehabilitation.

7. ACA's initial rehabilitation was accordingly terminated on July 2, 2007 pursuant to an order of this Court, which left the initial twelve percent (12%) assessment

in place. ACA also remained subject to an Agreement and Order of Supervision (the "Supervision Order") dated July 2, 2007 between the Commissioner and ACA.

**The Second Rehabilitation and the Second Assessment (25%) on all Policies**

8. By filing a verified petition on September 8, 2008, the Commissioner sought to reopen the 2006 rehabilitation proceeding as a result of substantial impairment to ACA's surplus, which was required to be maintained at or above a set level under the Supervision Order. An order granting the petition and appointing the Commissioner as Rehabilitator was issued by this Court on September 8, 2008 (the "Rehabilitation Order"), and Peter A. Bengelsdorf was appointed by the Commissioner and approved by this Court to act as Special Deputy Commissioner for the purpose of rehabilitation.

9. Pursuant to RSA 418:18 IV, the board of directors of ACA had the authority to assess policies in the event of any impairment to ACA's reserves. The board of directors of ACA, in consultation with the Insurance Department, made a determination that ACA's reserves were impaired and voted to authorize a permanent assessment of up to twenty-five percent (25%) of the face amount of each certificate on all outstanding ACA insurance policies issued in the United States and Canada (which, as to the pre-need life insurance policies, replaced the Initial Assessment). This assessment was to be implemented by the Commissioner.

10. Pursuant to the authority granted to the Commissioner by the Rehabilitation Order and the authority delegated by the board of directors of ACA, the Commissioner by order effective as of September 8, 2008, imposed the twenty-five percent (25%) assessment on all in-force ACA policies with certain limited exceptions. Notices of these assessments were mailed to 21,000 policyholders or owners of such

policies in the United States and 9,600 policyholders in Canada. The aggregate value of the 25% assessment was \$56.3 million. By order dated September 9, 2008, the Commissioner also imposed a moratorium on loans and surrenders of in-force ACA policies for an indefinite period of time, pursuant to the Rehabilitation Order and RSA 402-C:17, II and V.

#### **The Union Vie Assumption and the First Royal Arcanum Assumption**

11. Acting pursuant to the Rehabilitation Order and the Order approving the Plan of Rehabilitation, during the second rehabilitation, the Commissioner took all reasonable actions available to preserve the assets of ACA and reorganize it, including: (i) the transfer to and assumption by L'Union –Vie Compagnie Mutuelle D'Assurance ("Union-Vie") of the policies issued by ACA's Canadian Branch, subject to the twenty-five percent (25%) assessment, which was made permanent at the time of assumption; and (ii) the initial transfer to and assumption by the Supreme Council of the Royal Arcanum ("Royal Arcanum") of all ACA U.S. life insurance and annuity policies, except pre-need life insurance policies, again subject to the twenty-five percent (25%) assessment, which was also made permanent at the time of assumption. These two transactions were undertaken in rehabilitation instead of liquidation in large part because a disproportionate portion of ACA's assets were then located in Canada, where they had been "ringfenced" by Canadian financial regulations. The two assumption transactions were thus filed with and approved by this Court as part of the Plan of Rehabilitation.

#### **The Third Assessment (an additional 15 % on remaining policies) and the Pre-Need Assumption Agreement**

12. There were not sufficient assets to transfer the pre-need insurance policies to a more solvent insurance carrier until assets were repatriated from Canada. This

required the successful resolution of various Canadian tax and pension liabilities which took over two years to accomplish.

13. Upon the successful receipt of the repatriated assets from Canada and the closure of the Canadian Branch, on April 13, 2011, the Commissioner filed with this Court an Assented to Petition for Expedited Approval, requesting, in accordance with the approved Plan of Rehabilitation: (i) approval of an Assumption Reinsurance Agreement with Royal Arcanum regarding the assumption of ACA's pre-need life insurance policies (the "Pre-Need Assumption Agreement"), which constituted the last block of ACA's insurance business; (ii) approval of an additional assessment of fifteen percent (15%) on ACA's pre-need life insurance policies (bringing the total assessment on these policies to forty percent (40%)), which would be made permanent at the time of assumption by Royal Arcanum under the Pre-Need Assumption Agreement; and (iii) temporarily lifting the moratorium on surrenders of pre-need life insurance policies in accordance with the Pre-Need Assumption Agreement. This petition was approved by this Court on April 20, 2011 (the "Pre-Need Order").

14. Upon the transfer of the Assumed Policies to Royal Arcanum and Union Vie, each Assumed Policy effectively became a certificate or insurance policy of Royal Arcanum or Union Vie, respectively, and the Assumed Policies ceased to be policies of ACA. Royal Arcanum and Union Vie have, since the dates of assumption, administered the Assumed Policies, collected all premiums and paid all valid claims. As a result of the Assumption Agreements and the transactions that took place during the initial rehabilitation and the period of supervision, ACA had no remaining in-force policies upon the initiation of the liquidation proceeding, except for the handful of policies held

by ACA retirees and members of the board of directors that were not assumed by Royal Arcanum or Union Vie. (These remaining policies were subsequently terminated by operation of law in connection with the liquidation of ACA, which is described below.)

15. Because the Assumed Policies were assumed by either Royal Arcanum or Union Vie, they were thus no longer ACA policies, and such policies were not subject to the continuation provisions of RSA 402-C:22 but instead continued in force in accordance with their terms, notwithstanding the initiation of the liquidation proceeding.

16. Notice of the Pre-Need Assumption Agreement, including the additional, permanent fifteen percent (15%) assessment and the lifting of the moratorium on policy surrenders, was mailed to each ACA pre-need life insurance policyholder on April 22, 2011.

### **The Liquidation Proceeding**

17. The Liquidation Order authorized the Liquidator to take various actions, including the approval of the Liquidator's proposed notice and proof of claim process, specifically: (1) the Liquidator accepted as valid claims in the liquidation proceeding the full amount of all assessments imposed by ACA on the Company's Assumed Policies, without requiring policyholders of Assumed Policies to file proofs of claim with the Liquidator; (2) because the Assessment Claims were accepted without a proof of claim and also because the assessments had been made permanent upon the assumption of the ACA policies by Union Vie and Royal Arcanum, notice of the liquidation proceeding was mailed only to these assuming insurers with respect to such claims and not to individual policyholders; (3) notice of the liquidation and proof of claim forms, including

notice of the requirement to file proofs of claim, was mailed to all other persons known or reasonably expected to have claims against ACA in accordance with RSA 402-C:26, including to approximately thirty-two (32) of ACA's retirees and seven (7) members of its board of directors who retained an ACA insurance policy interest that was not assumed, but were subject to the twenty-five percent (25%) assessment imposed effective as of September 8, 2008; and (4) a claims filing deadline/bar date was imposed for the filing of all proofs of claim (except for Assessment Claims deemed automatically filed) of six (6) months from the date of the liquidation order in accordance with RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II.

18. The handful of policies held by ACA retirees and members of the board of directors were terminated as a consequence of the requirements of RSA 402-C:22, I which provides that:

"I. All insurance policies issued by the insurer shall continue in force:

- (a) For a period of 30 days from the date of entry of the liquidation order;
- (b) Until the normal expiration of the policy coverage;
- (c) Until the insured has replaced the insurance coverage with equivalent coverage in another insurer; or
- (d) Until the liquidator has effected a transfer of the policy obligation pursuant to RSA 402-C:25, VIII; **whichever time is less.**" (emphasis added)

Consistent with this provision, these policies ceased to be in force as of the thirty-first (31<sup>st</sup>) day after entry of the Liquidation Order.

19. The Liquidator mailed notice to approximately 368 potential claimants on or about November 5, 2012 and posted the claims notice on the ACA and New Hampshire Insurance Department websites. Publication notice of the Liquidation Order and the claim filing deadline/bar date, with instructions on how to obtain a proof of claim form, was also made on December 5, 2012 in the *Union Leader*, the *Boston Globe* and the *Chronicle Telegraph* – Quebec. The Liquidator established a claims filing deadline/bar date of April 22, 2013.

#### **First Claims Report in Liquidation**

20. On February 20, 2014, the Liquidator filed a Motion for Approval of Claims Report (the “Claims Report Motion”). The Claims Report Motion included the Liquidator’s first claim report with respect to undisputed claim determinations and sought the Court’s approval of these claim determinations in the amounts and priority classifications identified in a schedule attached thereto (the “Claims Schedule”).

21. The Liquidator issued notices of determination to all claimants identified on the Claims Schedule in accordance with RSA 402-C:41, which provided that any objection from a claimant was required to be filed with the Court within sixty (60) days from the mailing of the notice. In each case, the claimant either accepted the determination or the 60-day notice period expired. Accordingly, all claims identified on the Claims Schedule became undisputed claims, and the claimants may not further object to the determinations with respect to these claims (the “Undisputed Claims”). On March 4, 2014, the Court issued an order approving the Claims Report Motion, including approval of the Claims Schedule and the allowance of the Undisputed Claims in the

amounts and the priority classifications stated in the Claims Schedule (the “Undisputed Claims Order”).

22. As of March 7, 2014, the Liquidator had made final claims determinations for all but three (3) of the proofs of claims, and a fourth claim filed by Tourmed Assistance, Inc. had been withdrawn. Of the (3) three remaining claims to be determined, one was a claim for administrative expenses that had been withdrawn because no proof of claim was required, one was the Beaumont Claim (which the Liquidator proposes be addressed in a manner consistent with all other Assessment Claims (as discussed below<sup>4</sup>)) and the last was a claim from ACA’s former landlord in Manchester (which is the subject of a settlement agreement that is also discussed below).

**Policyholder Assessment Claims:  
Allowance and Classification of Such Claims Under RSA 402-C:44**

**Allowance**

23. As discussed above, the Order of Liquidation approved the Liquidator’s proposed claim procedures which included the “Liquidator’s acceptance of the full amount of all assessments imposed on ACA’s insurance policies as valid claims in the estate, without requiring policyholders to file proofs of claim to that effect with the Liquidator”. In accordance with the Liquidation Order, the Liquidator has thus recognized as valid claims in the liquidation proceeding all 24,640 Assessment Claims of former ACA policyholders in the amount of \$60,822,671, which amount represents the aggregate amount in full of all assessments imposed reducing the face amounts of such

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<sup>4</sup> See paragraphs 23 to 29 and paragraphs 35 to 40.

policies.<sup>5</sup> The Liquidator hereby recommends that the policyholder Assessment Claims be approved in this amount as set forth in the attached Exhibit A which identifies the amount of each assessment imposed by policy number and policyholder (or policy owner). As explained below, however, given the extremely limited assets of the estate, and the Liquidator's desire to address the inequity caused to the pre-need policyholders, notwithstanding the Liquidator's allowance of Assessment Claims of former ACA policyholders in full, if the Court approves the relief sought by the Liquidator herein, the majority of ACA's former policyholders will not receive a distribution.

#### **Classification.**

24. The Rehabilitator in the first and third rehabilitation reports to the Court, and the Liquidator in the Liquidation Petition, indicated his intent to seek the Court's approval to treat the Assessment Claims as Class II claims pursuant to RSA 402-C:44.

25. This stated intent was consistent with the provisions of the First RA Assumption Agreement and the Pre-Need Assumption Agreement. The First RA Assumption Agreement provided, in relevant part, as follows:

**Return of Liquidation Assets.** The Rehabilitator views the twenty-five percent (25%) assessment on ACA's policyholders as constituting policy related funds for purposes of RSA 402-C:44 II. The Rehabilitator does not believe the assessment funds should be treated as preferred ownership claims under RSA 402-C:44 IX. Accordingly, in the event of a subsequent liquidation of ACA under RSA Chapter 402-C, the Rehabilitator intends to seek the Court's approval to treat all excess funds remaining after final provision for necessary costs and expenses of ACA in rehabilitation/liquidation as policy related claims that are distributable to ACA policyholders ("Liquidation Assets"). If the Court orders that the Liquidation Assets should be distributed to ACA policyholders under RSA 402-C:44 II., the Commissioner agrees to transfer the Liquidation Assets attributable to the Assumed Certificates to Royal Arcanum; provided that:

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<sup>5</sup> After payment of all administrative expenses and other higher priority claims, the Liquidator anticipates that the total assets remaining for distribution to the Assessment Claims will be approximately \$250,000, which the Liquidator proposes to allocate exclusively to the pre-need policyholders as described below.

(i) the Liquidation Assets shall be segregated by Royal Arcanum for the sole benefit of the owners of the Assumed Certificates; and (ii) the exclusive use of the Liquidation Assets by Royal Arcanum shall be to restore the reduction of the Assumed Certificates due to the assessments on such Certificates, net of the reasonable expenses of Royal Arcanum directly related to the return of Liquidation Assets to ACA policyholders, in such equitable proportions and subject to such other conditions as determined by the Rehabilitator. This shall include a proportionate increase in benefits paid by Royal Arcanum to all owners of Assumed Certificates that were subject to reduction due to the assessment on or after the Closing as determined by the Rehabilitator. This provision shall survive closing.

The Pre-Need Assumption Agreement provides, in relevant part, as follows:

**Return of Liquidation Assets.** The Liquidation Assets that are attributable to the Assumed Certificates shall be transferred to Royal Arcanum as described in Section 3.4 of the First Assumption Agreement; provided that any Liquidation Assets transferred to Royal Arcanum with respect to the Assumed Certificates under this Agreement or the First Assumption Agreement shall, subject to approval of the Liquidation Court: (i) first be used to pay Royal Arcanum's reasonable, documented, direct transaction costs incurred with respect to its acquisition of the Assumed Certificates under this Agreement; (ii) with any remaining amount then being applied to pre-need life insurance policies that have not been surrendered to ACA or to Royal Arcanum **to restore the reduction of such pre-need life insurance policies due to the Second Assessment on an aliquot basis;** (iii) with any remaining amount after application of (i) and (ii) being used to pay Royal Arcanum's reasonable, documented costs described in Section 3.4 of the First Assumption Agreement; and (iv) finally, with any remaining amount after application of (i), (ii) and (iii) being used to restore the reduction of all Assumed Certificates under the First Assumption Agreement and this Agreement due to the First Assessment on those policies on an aliquot basis. **(emphasis added)**

26. The above provisions from the First RA Assumption Agreement and the Pre-Need Assumption Agreement, as well as the Liquidator's statements in the Liquidation Petition and subsequent reports, were based on the Liquidator's initial determination that the Assessment Claims were most appropriately designated as Class II claims.

27. The return of policyholder assessments in a liquidation proceeding of a fraternal benefit association organized and licensed under RSA Chapter 418 is not an issue that has been addressed under New Hampshire law, nor will it be addressed in the future since ACA is the only New Hampshire domiciled fraternal benefit society that is in existence. To reiterate, because ACA is the only fraternal benefit society domiciled in New Hampshire, this issue will simply not arise again.

28. Based upon the express language of RSA 402-C:44, and in the absence of any case law interpreting this provision, there are arguably two possible priority classifications for the Assessment Claims: (1) Class II – Policy Related Claims, for the reasons set forth in the Liquidation Petition; and (2) Class IX – Preferred Ownership Claims. None of the priority classifications set forth in RSA 402-C:44 expressly refers to policyholder assessment claims and, as a result, there is no classification under the Act that is specifically applicable to the Assessment Claims. While there is a basis within the statutory text of RSA 402-C:44 for including such claims in either Class II or Class IX, for the reasons stated herein, the Liquidator now believes that the more appropriate classification of the Assessment Claims in these proceedings are as Class IX claims.

29. Class IX claims under RSA 402-C:44 consist of “[s]urplus or contribution notes, or similar obligations, and premium refunds on assessable policies.” The several, cumulative policyholder assessments on the ACA policies in this case are not unlike surplus or contribution notes, in that the assessments were levied in each case for the purpose of increasing the capital of ACA to avoid insolvency or to maintain its operational existence. Under RSA 418:18, this result could have been obtained by creating one or more surplus notes, but the Board of Directors of ACA and the

Rehabilitator instead chose in each instance the option of directly reducing the policy liabilities. Accordingly, the designation of Assessment Claims as Class IX priority classification is consistent with the intent, if not the literal wording, of RSA 402-C:44, IX.

30. With respect to the return of policyholder assessments in a liquidation proceeding of a New Hampshire domiciled fraternal benefit society, there is no New Hampshire case law interpreting RSA 402-C:44. Further, we have not been able to find **any** case law in any other state addressing this issue. This is not surprising since ACA is, to the Liquidator's knowledge, the first U.S. fraternal benefit society to be liquidated. Further, because ACA is the only fraternal benefit society domiciled in New Hampshire, this issue is *sui generis* as to New Hampshire domiciled entities in rehabilitation or liquidation under the Act, and thus may properly be decided on the unique facts of this case. This approach would be entirely consistent with the Court's broad authority to issue appropriate relief pursuant to RSA 402-C:5.

31. As described in detail below, the Liquidator has entered into two settlement and release agreements, one with Royal Arcanum and the other with 1750 Elm Street, LLC (ACA's prior, commercial landlord in Manchester), the effectiveness of which are expressly subject to this Court's approval. These settlement and release agreements resolve the proof of claim filed by ACA's former landlord and address the Assessment Claims vis-à-vis the obligations of the Liquidator to Royal Arcanum and the former ACA policyholders whose Assessment Claims constitute the vast majority of all claims in this proceeding. Both of these settlement and release agreements now contemplate the classification of the Assessment Claims as Class IX claims.

32. The classification of the Assessment Claims as Class IX claims maximizes the funds available to pay claimants. This is driven in large part by the administrative expenses that would be incurred if the Assessment Claims were classified as other than Class IX claims. These expenses would arise both in connection with the resolution of disputed claim proceedings with 1750 Elm Street, LLC (again, ACA's former Manchester landlord) and possibly other creditors, as well as with respect to obtaining from the government of the United States a waiver of any potential claims against ACA under the Federal Priority Act (31 U.S.C. Section 3713), which would be required in the event that ACA were determined to be insolvent. Such insolvency would arguably occur in the event that the policy assessments were classified as Class II policyholder liabilities, since this classification would require that all of ACA's remaining funds be distributed to Class II claimants, thereby leaving the Liquidator unable to satisfy any other creditor claims (including those in Class III, claims of the federal government). As noted above, the policyholder assessments were levied in each case for the purpose of increasing the capital of ACA to avoid insolvency or to maintain its operational existence. Therefore, placement of the Assessment Claims in Class IX is both consistent with the form of the original assessments (as effectively a type of surplus or contribution note) and the intent of the original assessments (i.e., to preserve the solvency of ACA). The Liquidator believes that the estate will remain solvent (albeit, upon completion of all distributions, with a zero dollar (\$0) net worth) if the Assessment Claims are placed within Class IX.

33. Finally, the classification of the Assessment Claims as Class IX claims under RSA 402-C:44 not only maximizes the funds available for distribution to policyholders, but is also consistent with the authority of the Liquidator and the Court

pursuant to RSA 402-C:5, I, which provides that the Liquidator may request and the Court may grant “other orders as are deemed necessary and proper to prevent . . . [a]ny other threatened or contemplated action that might lessen the value of the insurer’s assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of the proceeding.” The Liquidator believes that the classification of Assessment Claims as Class IX would best protect the remaining assets of ACA for the benefit of policyholders.

34. In sum, the Liquidator has determined that Class IX is the more appropriate classification for the Assessment Claims for the following reasons:

- (i) neither Class II nor Class IX priority classifications expressly address policyholder assessments under the literal wording of RSA 402-C:44,
- (ii) Class IX includes both “surplus or contribution notes or similar contributions” and “premium refunds on assessable policies”, which are both similar in nature to policyholder assessments which reduce the stated amount of the policy liability under RSA 418:18,
- (iii) there is no case law interpreting RSA 402-C:44 or case law that is otherwise inconsistent with Class IX classification, and
- (iv) the Class IX classification would maximize the amount of the assessments returned to policyholders for all of the reasons set out above.

**Application of Assets to Policyholder Assessment Claims**

35. With respect to the Class IX Assessment Claims, and with the Court’s approval, the Liquidator intends to distribute all of the assets available for distribution in Class IX to reduce the forty percent (40%) assessment imposed on the pre-need policies.

The available funds will likely only reduce the assessment on these policies to thirty-eight percent (38%) or thirty-nine percent (39%). For this reason, the only policies that will receive any credit or cash distribution will be the policies that were subject to the third assessment which increased the aggregate assessment from twenty-five percent (25%) to forty percent (40%). The pre-need policies were the only policies assessed at or near this level. It is anticipated that there will **not** be sufficient funds to reduce the cumulative pre-need assessment to a level that is even close to twenty-five percent (25%), and thus, there will be **no** remaining funds available to reduce the assessment on the other Assumed Policies, which were assessed at twenty-five percent (25%). The Liquidator, therefore, requests the Court's approval of the intended application of the assets of ACA as described herein.

36. The already modest distribution that will be made available to reduce the highest level of assessment on the pre-need policyholders would be dramatically reduced or likely eliminated if equal distributions were made to all assessed policyholders. The total distribution to pre-need policyholders of approximately \$250,000 represents an estimated distribution rate of 5.5 cents for each of the pre-need policyholder allowed claims. If all allowed Assessment Claims were to receive a distribution, the estimated distribution rate would be .004 cents for each of the allowed Assessment Claims, and this calculation does not even take into account the increased administrative costs that would very likely substantially reduce or eliminate the \$250,000 available for distribution, including the risk that the Canadian Branch's closure could be revisited. The Liquidator believes that this likely financial outcome further supports the Liquidator's proposal to allocate these assets only to pre-need policyholders.

37. This modest reduction of the forty percent (40%) assessment also clearly represents an equitable distribution of assets among the former policyholders of ACA. The pre-need policies exclusively bore the disproportionate burden of the additional fifteen percent (15%) assessment and solely because consummation of the Pre-Need Assumption Agreement was delayed until assets could be successfully repatriated from Canada upon the closing of the Canadian Branch. Accordingly, it is just and equitable to apply any remaining funds available from the liquidation estate to mitigate the impact of this higher pre-need policy assessment.

38. Finally, the Liquidator believes that applying the remaining funds to reduce the forty percent (40%) assessment does not violate the prohibition on subclasses in RSA 402-C:44. The Liquidator is not treating the policyholders subject to a forty percent (40%) surcharge as a subclass. Rather, the Liquidator is simply using the remaining available funds in the liquidation estate to reduce the assessments imposed upon policyholders at the highest level. The Liquidator proposes to mitigate this supplemental burden on an aliquot basis, which is consistent with his statutory obligations as well as the equities that favor this outcome.

39. The Liquidator's recommendation to the Court reflects the following facts:

- (i) the Liquidator has recommended herein that all Assessment Claims be allowed in full;
- (ii) all assessed policies were assumed by financially sound carriers during rehabilitation;
- (iii) the assessments were made permanent at the time the policies were assumed;
- (iv) impacted ACA policyholders received individual, mailed notice at the time of assumption that their policies had been assumed and that the assessments on their particular policies had been made permanent;
- (v) the assessments were incrementally imposed over time in

order to maintain the solvency of ACA; (vi) the solvency of ACA has been maintained as a result of these incremental assessments; (vii) the percentage of the assessments imposed on policies increased over time, so that different policyholders have borne different levels of assessment; (viii) the maximum level of assessment on ACA fraternal policyholders increased over time from twelve percent (12%) to forty percent (40%); (ix) the different levels of assessment were reflective of the passage of time, delays in the repatriation of funds from Canada and the worsening of the financial condition of ACA over this time; (x) the different levels of assessment were not reflective of differing levels of losses that were attributable to the financial performance of the respective types of insurance policies or any other factor specific to the type of policy; and (xi) the Liquidator has a very limited pool of resources from which to reduce policy assessments and to pay all creditor and administrative costs.

40. Accordingly, the Liquidator believes that the proposed application of available funds within Class IX claimants is: (i) consistent with the Liquidator's obligations generally under RSA 402-C; (ii) consistent with ACA's contractual obligations under the First RA Assumption Agreement and the Pre-Need Assumption Agreement, which were approved by this Court in the Plan Order and Pre-Need Order; (iii) a reasonable and appropriate allocation pursuant to RSA 402-C:44 that does not constitute the creation of an unlawful subclass; and (iv) the most equitable application of the funds in light of the substantially greater burden borne by those policies subject to the full forty percent (40%) assessment.

### **Assessments Pursuant to RSA 402-C:35**

41 RSA 402-C:35, I provides that within two years of the date of any order of liquidation with respect to an insurer issuing assessable policies, the liquidator must provide a report setting forth:

- (a) The reasonable value of the assets of the insurer;
- (b) The insurer's probable total liabilities;
- (c) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
- (d) A recommendation as to whether an assessment should be made and in what amount.

42. RSA 402-C: 35, II provides that “solely on application by the liquidator” the Court may approve one or more assessments on members of the insurer subject to assessment.

43. The following constitute the Liquidator’s report and recommendations pursuant to RSA 402-C:35. The Liquidator has determined that there are sufficient assets to pay all claims of creditors as determined by the Liquidator and all administrative expenses in full without imposing a further assessment, exclusive of the Assessment Claims, which by definition could not be reduced by further assessment (and which do not represent claims of creditors). ACA will be able to pay all of its liabilities to creditors, so it will remain solvent through the conclusion of the liquidation proceeding. In addition, there will likely be an excess amount that will be available to reduce, on the margin, the policyholder assessments already imposed, through partial payment of some

of the Assessment Claims as Class IX claims (which are classified as ownership claims akin to equity capital).

44. For these reasons, the Liquidator is not recommending to the Court that a further policyholder assessment be imposed. Such an assessment is not needed to pay ACA liabilities, and RSA 402-C:35 contemplates that such an assessment would only be used for this purpose.

45. In the absence of liabilities necessitating an assessment, RSA 402-C:35, by its literal terms, does not otherwise authorize the Commissioner to impose some type of “leveling” assessment so that all ACA policyholders would be assessed at the same level. Further, even if this authority were literally granted, the facts of this case would not support such an initiative for the following reasons. The Assumption Agreements had the effect of transferring all of the assessable policies to other carriers during rehabilitation. Thus, as of the commencement of liquidation, ACA no longer had any outstanding policies subject to being assessed by the Liquidator. The former ACA policies assumed by Royal Arcanum and Union Vie became, at the time of assumption, statutorily and contractually insurance policies of those assuming insurers, and the Liquidator does not believe that he has the authority to impose assessments or to require the assuming insurers to impose assessments on the Assumed Policies.

46. Even if the Liquidator had retained the authority to assess policies transferred to assuming insurers, the Liquidator would not recommend assessments pursuant to RSA 402-C:35 to level out the assessments because such additional assessments: (i) would be both costly and nearly impossible to implement; (ii) would be contrary to the terms of the Assumption Agreements; (iii) would likely require the

opening of the Canadian Branch, including uncertain and costly dealings with Canadian regulators; (iv) would likely raise substantial tax issues which would themselves be very expensive administratively; and (v) would not further the interests of any policyholders. For all of these reasons, the Liquidator is **not** recommending the imposition of any further assessments pursuant to RSA 404-C: 35.

#### **Settlement Agreements with the Landlord and with Royal Arcanum**

47. The Liquidator has entered into and requests that the Court approve a settlement and release agreement with 1750 Elm Street, LLC (the “Landlord”) with respect to the Landlord’s claim for unpaid rent under a long-term lease agreement entered into between ACA and the Landlord for space located at 1750 Elm Street in Manchester, New Hampshire (the “Landlord Settlement Agreement”). This long-term commercial lease agreement was entered into by ACA within 24 months prior to the commencement of the initial rehabilitation, but the lease was never signed by or extended by the Rehabilitator. The effectiveness of the Landlord Settlement Agreement is expressly conditioned upon this Court’s approval. A copy of the Landlord Settlement Agreement is attached as Exhibit B. The Landlord Settlement Agreement represents a proper, but substantial, compromise of the Landlord’s claim pursuant to RSA 402-C:45.

48. The relevant terms of the Landlord Settlement Agreement are as follows:

- The Liquidator acknowledged receipt of the Landlord’s claim of \$376,602.32 and agreed to allow the Landlord’s claim in the amount of \$125,000, as a Class V priority claim pursuant to RSA 402-C:44;
- The Liquidator agreed that he would recommend classification of the Assessment Claims as Class IX claims pursuant to RSA 402-C:44;

- The Liquidator agreed to allow the Landlord to retain the security deposit of ACA in the amount of \$33,760.12, without offset against the allowed amount of the Landlord's claim;
- The parties agreed that the Landlord Settlement Agreement would constitute resolution of all claims between the parties with respect to the prior lease and the Landlord's proof of claim in this Liquidation proceeding; and
- The parties agreed to mutual releases with respect to their respective claims as to the lease or the Landlord's proof of claim.

49. The Liquidator has separately entered into and requests that the Court approve a settlement agreement with Royal Arcanum with respect to the policyholder assessments (the "RA Settlement Agreement"). The effectiveness of the RA Settlement Agreement is also expressly conditioned on this Court's approval. A copy of the RA Settlement Agreement is attached as Exhibit C.

50. The relevant terms of the RA Settlement Agreement are as follows:

- The Liquidator agreed to pay Royal Arcanum \$17,760.30 as a Class I administrative expense for reimbursement of its reasonable, documented direct transaction costs in connection with its acquisition of the pre-need policies under section 3.5(i) of the Second RA Assumption Agreement, without interest, and acknowledged that Royal Arcanum was not obligated to file a claim in the liquidation proceeding for such expenses;

- The parties agreed that Royal Arcanum would not be entitled to receive payment for any of its expenses other than the approved administrative expense claim set forth above, plus the amount of \$3,000 as a Class I expense to defray a portion of the administrative costs undertaken by Royal Arcanum under the RA Settlement Agreement;
- In addition to the payments for expenses described above, and in further exchange for the expenses to be incurred and work to be performed by Royal Arcanum under the RA Settlement Agreement, the Liquidator agreed to assign to Royal Arcanum ACA's interest in ongoing broker commission streams on certain Medicare supplement policies, but only with respect to commissions paid from a date commencing thirty (30) days after the date the Court approves this Motion. The total amount of such commissions totaled \$8,157 during calendar year 2013;
- The parties agreed that the Liquidator would seek approval from this Court to treat the Assessment Claims as Class IX claims, rather than Class II claims, and that as a result, Class V general creditor claims would be paid ahead of the Assessment Claims;
- The Liquidator estimated the amount of assets available for distribution to policyholders with Class IX Assessment Claims (including a holdback by the Liquidator to provide for administrative expenses to be incurred by the Liquidator in connection with the

closure of the liquidation proceeding) at approximately \$250,000, but Royal Arcanum's obligations under the RA Settlement Agreement would in no way be conditioned upon the accuracy of this estimate;

- The Liquidator agreed that upon approval from this Court of the RA Settlement Agreement, the Liquidator's Proposed Plan of Distribution and distributions in accordance with that plan, and upon the Liquidator's payment to creditors of any higher priority distributions and subject to a holdback for the administrative expense reserve, the Liquidator (i) would transfer to Royal Arcanum the amount of the assets available for distribution or crediting to former ACA policyholders for Assessment Claims and (ii) would provide Royal Arcanum with a list of the pre-need policyholders entitled to a distribution or credit, together with a notice to accompany such distribution;
- Royal Arcanum agreed that it would provide credits or distributions to former ACA pre-need policyholders as follows: (i) for pre-need policyholders still alive with in-force policies, Royal Arcanum would provide a credit against their outstanding assessment; and (ii) for pre-need policyholders who have died since the effective date of the Pre-Need Assumption Agreement, Royal Arcanum would distribute to their beneficiary an amount equal to the credit they would have received if their policy were still in force;

- The parties agreed to mutual releases of all claims related to the RA Settlement Agreement, provided that the First RA Assumption Agreement and Pre-Need Assumption Agreement would remain in full force and effect except as expressly provided for in the RA Settlement Agreement.

**Determinations with Respect to Remaining Proofs of Claim and Proposed Plan of Distribution to Creditors**

51. In accordance with the Liquidation Order, the Liquidator accepted all Assessment Claims as valid claims in the estate without requiring the filing of a proof of claim by any such policyholder.

52. The Liquidator has made the following determinations with respect to the Assessment Claims and the Landlord Claim: (a) the Liquidator proposes to approve the Landlord Claim as a Class V general creditor claim pursuant to RSA 402-C:44 in the amount of \$125,000, as described in more detail in the preceding section of this Motion; and (b) the Liquidator proposes to approve 100% of all of the Assessment Claims as Class IX claims pursuant to RSA 402-C:44, and to apply 100% of the assets remaining for distribution to pay the Assessment Claims to reduce the 40% assessment on pre-need policyholders as described in more detail above.

53. The distribution to creditors and former policyholders will be made in accordance with the following proposed plan of distribution (the "Proposed Plan of Distribution") which summarizes the Liquidator's intentions with regard thereto. The Liquidator requests the Court's approval of the Proposed Plan of Distribution as outlined below:

(a) first, payment in full of any and all outstanding administrative expenses associated with the liquidation proceeding as follows: (i) the expenses of the Liquidator and the expenses of any third parties retained by the Liquidator (subject to a holdback by the Liquidator to pay administrative expenses to be incurred by the Liquidator to conclude the liquidation proceeding); (ii) Royal Arcanum's administrative expense claim of \$17,760.30, without the requirement of Royal Arcanum filing a claim; (iii) Royal Arcanum's administrative expense claim of \$3,000 for expenses incurred in connection with the implementation of the RA Settlement Agreement; (iv) the administrative expense claims previously approved by the Court in the Undisputed Claims Order.

(b) next, after payment of all claims in clause (a) in full, payment of all approved and allowed Class V claim amounts as approved by this Court with respect to: (i) the Undisputed Claims, which in the aggregate constitute total allowed amounts of \$659.04; and (ii) the Landlord's Claim in the allowed amount of \$125,000;

(c) next, after payment of all claims in clause (a) and clause (b) in full, payment of all approved and allowed Class VIII claims as approved by this Court in the Undisputed Claim Order, which in the aggregate constitute total allowed amounts of \$30; and

(d) next, after payment of all claims in clause (a), clause (b) and clause (c) in full, transfer to Royal Arcanum of ACA's remaining assets, which are expected to total approximately \$250,000, for distribution or crediting to former ACA policyholders in partial satisfaction of the Assessment Claims as Class IX claims pursuant to RSA 402-C:44; such that the assets available for payment of the Assessment Claims would be applied beginning at the forty percent (40%) assessment level, which will effectively

reduce the forty percent (40%) assessment on the pre-need policyholders on a marginal basis, as discussed in more detail above.

#### **Approval of Distributions Pursuant to Proposed Plan of Distribution**

54. As discussed above, with the Court's approval of the relief sought by this Motion, all remaining claims in the estate will have been concluded, including the 24,640 Assessment Claims which in the aggregate total \$60,822,671. As noted above, the assets of the estate are extremely limited, and as of April 30, 2014 were \$450,606 as reflected in the attached Exhibit D. As a result, to minimize incurring further administrative expense, rather than filing a separate motion, the Liquidator is requesting as part of the relief sought herein the Court's approval to make a distribution of ACA's assets to creditors and policyholders in accordance with the Proposed Plan of Distribution discussed above.

55. The Liquidator estimates that expenses relating to distribution, disposal of records, tax returns, motions and closure of ACA's estate (as well as incurred but unpaid administrative expenses) will total not more than \$52,000. The Liquidator proposes to establish a reserve in this amount. After establishing the Liquidator's administrative expense reserve, the estimated assets of ACA will total approximately \$398,000 and are to be paid out in accordance with RSA 402-C:46, I (which provides that, "Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims"). The proposed distribution as set forth in the Proposed Plan of Distribution is intended to exhaust the remaining assets of the ACA estate (less the

administrative expense reserve), so any cash received before the distribution will be added to the amount to be distributed.

56. The Liquidator submits that the proposed distribution of ACA's assets will assure the proper recognition of priorities and will promote the expeditious completion of the ACA liquidation proceeding and requests that the Court approve and authorize the proposed distributions.

### **Notice Procedures and Objection Deadline**

57. The Liquidator previously provided notice of claim determinations to all claimants with respect to the Undisputed Claims, as described in the Claims Report Motion.

58. The Liquidator's proposed notice and objection procedures with respect to the remaining claims, as well as the legal basis for those procedures, are described in detail in the Notice Motion. In summary: (i) the Liquidator does not propose to provide any further notice to the Landlord apart from notice of this Court's approval of the Landlord Settlement Agreement; (ii) the Liquidator proposes to provide notice to policyholders with respect to the determination of the Assessment Claims principally through mailed notice to Royal Arcanum and Union Vie and by publication; (iii) the Liquidator believes that the proposed notice procedures satisfy the requirements of RSA 402-C, and that mailed notice is not required under RSA 402-C:41 with respect to the Assessment Claims; and (iv) the Liquidator believes that the proposed notice procedures satisfy the constitutional requirements for procedural due process.

59. The Liquidator has proposed, in the Notice Motion, that the Court set an objection deadline at a date forty (40) days from the date of the Court's order approving

the notice procedures as proposed herein so as to allow the Liquidator ten (10) days to complete the publication of the Publication Notice and to allow any interested party thirty (30) days to file an objection. In the event no objections are received by the Court by the objection deadline, the Liquidator requests that this Court enter the attached proposed form of Order Approving the Verified Motion To Approve All Remaining Claims Determinations, Settlement Agreements, Plan of Distribution, Distribution of Assets and RSA 402-C:35 Report ("Order Approving Verified Motion"), without a hearing. If an objection or objections are filed with the Court, the Liquidator requests that the Court schedule a hearing on the approval of this Motion.

#### **Proposed Orders and Path Forward**

60. As described above, a proposed Order Approving Verified Motion is filed herewith (Exhibit E), and a separate proposed order has been filed with the Notice Motion seeking approval of the notice and objections procedures, both of which are consistent with the authority set forth in RSA 402-C. Upon approval of the order in connection with the Notice Motion and the Order Approving Verified Motion, including the resolution of any objections, the Liquidator will proceed with the distribution of ACA's assets to creditors. Once this has been completed, the Liquidator will file a report with the Court, and a motion regarding disposition and destruction of liquidation records, preparation and filing of final tax reports on ACA's behalf, distribution of any remaining funds, discharge of the Liquidator and closure of the ACA estate.

WHEREFORE, the Liquidator, pursuant to the provisions of RSA 402-C:44, RSA 402-C:45 and RSA 402-C:46, prays for the following relief:

A. The Liquidator will file a report with the Court confirming that notice has been made as outlined in the Notice Motion, including the details thereof, whereupon, if no objection has been timely filed with the Court, the Liquidator requests that the Court enter an Order:

- (i) approving the determination of the Landlord Claim as a Class V priority classification in an allowed amount of \$125,000 and approving the Landlord Settlement Agreement;
- (ii) approving the RA Settlement Agreement, including the Liquidator's determinations with respect to the approval of Royal Arcanum's claims for administrative expenses;
- (iii) approving the determination of all Assessment Claims in full as valid Class IX priority claims pursuant to RSA 402-C;
- (iv) approving the proposed application of funds for the payment of the Assessment Claims, such that the funds available for payment of the Assessment Claims would be applied beginning at the forty percent (40%) assessment level, with the effect of partially reducing the assessment on the pre-need policyholders, but without reducing the level of the assessment on the other former ACA policyholders, as described in this Motion;
- (v) approving the Proposed Plan of Distribution and the distribution of ACA's assets (after establishment of a reserve not to exceed \$52,000.00 for the Liquidator's administration costs) to claimants with allowed claims in ACA's estate in accordance with the Proposed Plan of Distribution;

- (vi) approving the Liquidator's report contained in this Motion pursuant to RSA 402-C:35, including the Liquidator's determination that an additional assessment is not required or appropriate under RSA 402-C:35 and accepting the Liquidator's recommendation that no additional assessment be imposed pursuant to RSA 402-C:35;
- (vii) including such further and other relief as this Court may deem just and proper under the circumstances.

B. If an objection to this Motion is timely filed with the Court pursuant to the procedures outlined in the Notice Motion, the Liquidator requests that the Court schedule a hearing on this Motion.

*[Signatures Next Page]*

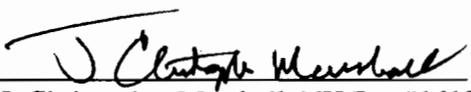
Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF ACA ASSURANCE

By his attorney,

JOSEPH A. FOSTER  
ATTORNEY GENERAL

Dated: July 3, 2014

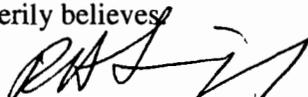
By:   
J. Christopher Marshall, NH Bar #1619  
Assistant Attorney General  
Civil Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397

Of Counsel:  
Steven J. Lauwers, NH Bar # 13079  
Rath, Young & Pignatelli, P.C.  
One Capital Plaza  
Concord, NH 03302-1500  
(603) 226-2600

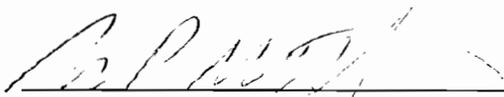
STATE OF NEW HAMPSHIRE  
MERRIMACK, SS.

**CERTIFICATE OF VERIFICATION**

Roger A. Sevigny, being first duly cautioned and sworn according to law, says that he is the duly appointed and qualified Commissioner of Insurance of the State of New Hampshire and Liquidator of ACA Assurance and that the facts and all allegations made in the Petition are all true as he verily believes.

  
\_\_\_\_\_  
Roger A. Sevigny

Sworn to and subscribed to before me this 2<sup>nd</sup> day of July, 2014.

  
\_\_\_\_\_  
Notary Public/~~Justice of the Peace~~

SARAH K. PRESCOTT, Notary Public  
My Commission Expires June 23, 2015

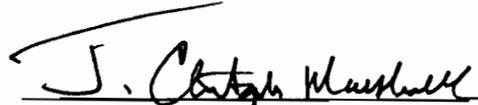
**CERTIFICATE OF SERVICE**

I, J. Christopher Marshall, do hereby certify that on July **3**, 2014, I served a true copy of the foregoing, by first class mail, postage prepaid, to:

Roger A. Sevigny  
NH Commissioner of Insurance  
21 S. Fruit Street, Suite 14  
Concord, NH 03301

Steven J. Lauwers, Esq.  
Rath, Young & Pignatelli, P.C.  
One Capitol Plaza, Second Floor  
P.O. Box 1500  
Concord, NH 03302-1500

Peter A. Bengelsdorf  
Special Deputy Liquidator  
ACA Assurance in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, NY 10006

  
J. Christopher Marshall

1061493

**EXHIBIT A**

to

**VERIFIED MOTION TO APPROVE ALL REMAINING CLAIMS  
DETERMINATIONS, SETTLEMENT AGREEMENTS,  
THE MANDATED RSA 402-C:35 REPORT, THE PROPOSED PLAN OF  
DISTRIBUTION AND THE DISTRIBUTION OF ASSETS**

ACA POLICY LIST FOR COURT FILING

(Policy Assessment Claims of Former ACA Policyholders)

***SEE ATTACHED CD***

Merrimack Superior  
217-2006-EQ-00380

Ex. A  
731 pgs.

In the Matter of the  
Liquidation of  
ACA Assurance

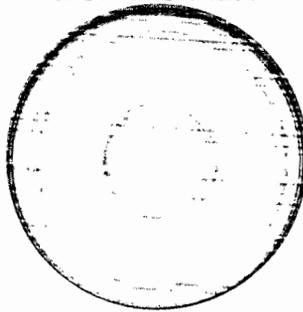


Exhibit A to  
Verified Motion to Approve  
All Remaining Claims  
Determination, ..

ACA Assurance

7/3/14

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS**

This Settlement Agreement and Mutual Release of Claims (the "Agreement") is made by and between 1750 Elm Street, LLC, and/or any or all of its affiliates (collectively referred to herein as, "BSP"), and Roger A. Sevigny, New Hampshire Insurance Commissioner (the "Commissioner"), exclusively in his capacity as Liquidator of ACA Assurance ("ACA") (the "Liquidator") (BSP, together with all of its affiliates, and the Liquidator shall each be referred to individually as a "Party" and collectively as the "Parties").

**RECITALS:**

WHEREAS, ACA and BSP entered into a commercial lease with respect to premises located at the second and ground floor of 1750 Elm Street in Manchester, NH (the "Premises") effective February 1, 2005, as amended (the "Lease");

WHEREAS, the Commissioner petitioned the Merrimack County Superior Court (the "Court") and received an order appointing the Commissioner as Rehabilitator of ACA (the "Rehabilitator") effective September 8, 2008 (the "Rehabilitation");

WHEREAS, in November of 2008, given its extremely limited financial circumstances, ACA moved from the Premises to much smaller and less costly space in Manchester;

WHEREAS, by letter dated August 18, 2009, the Liquidator advised BSP that it would cease making payments under the Lease as of the date of such letter;

WHEREAS, in connection with the Rehabilitation, the Commissioner by order, after approval by ACA's Board of Directors, imposed assessments against ACA policies that amounted to 25% of the value in the aggregate of policies other than pre-need policies and an aggregate of 40% of the value of the pre-need policies (collectively, the "Assessments");

WHEREAS, the Rehabilitator petitioned the Court and received an order per written notice of the Clerk of the Court dated October 22, 2012 appointing the Commissioner as Liquidator of ACA (the "Liquidation Order"), pursuant to which the Liquidator, among other things, provided notice of the Liquidation to potential claimants and established a bar date for the submission of proofs of claim (together with all other actions taken by the Liquidator, the ("Liquidation Proceeding");

WHEREAS, in his petition for the Liquidation Order, and in his First and Third reports to the Court, the Liquidator indicated his intent to classify the claims of policyholders with respect to the Assessments (the "Policyholder Claims") as Class II claims pursuant to RSA 402-C:44, which priority classification is superior to general creditors in Class V;

WHEREAS, the treatment of the Policyholder Claims as Class II claims pursuant to RSA 402-C:44 had also been included as a term of the Assumption Agreement, between the Rehabilitator and The Supreme Council of the Royal Arcanum ("Royal Arcanum") dated on or

about January 31, 2011 (the "Second Assumption Agreement"), which was entered into prior to both the Liquidation Order and this Agreement;

WHEREAS, the Liquidator has reassessed the proposed classification of claims, including the treatment of the Policyholder Claims, which the Liquidator has now determined more properly fall within priority classification IX of RSA 402-C: 44;

WHEREAS, BSP timely filed a proof of claim seeking reimbursement of sums due under the Lease in the amount of \$376,602.38 (the "Proof of Claim");

WHEREAS, the Proof of Claim reflected a reduction from the total claim of \$410,362.50 as a result of BSP's retention of ACA's security deposit in the amount of \$33,760.12 (the "Security Deposit"); and

WHEREAS, the Parties are desirous of resolving all claims that were asserted or could have been asserted in connection with the Lease or otherwise and have agreed to resolve BSP's Proof of Claim on the terms set forth in this Agreement.

#### **AGREEMENTS:**

NOW, THEREFORE, in consideration of the foregoing, the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that the Proof of Claim and any other claims related to the Lease or otherwise that may exist between the Parties shall be resolved as follows:

1. Agreement with Respect to the Proof of Claim.
  - (a) The Liquidator acknowledges receipt of the Proof of Claim in the amount of \$376,602.38 (the "Claimed Amount");
  - (b) The Liquidator shall recommend to the Court, pursuant to RSA 402-C:45, that the Proof of Claim be allowed in the amount of \$125,000 (the "Recommended Amount") as a Class V priority claim;
  - (c) The Liquidator shall seek approval of the classification of the Recommended Amount as a Class V priority claim and the Policyholder Claims as Class IX priority claims under RSA 402-C:44 in its petition to the Court for approval of a plan of liquidation, including approval of this Agreement and payment, shall be made to Class V creditors, or adequate funds retained for such payment, before Class IX creditors or any other lower priority creditors are paid, in each case consistent with the priority distribution set forth in RSA 402-C:44. BSP agrees not to object to this petition and, if requested by the Liquidator, to provide its assent to the petition described in this paragraph 1.(c);

- (d) The Parties agree that this Agreement, upon satisfaction of all conditions set forth herein, including approval by the Court, shall fully and finally resolve the Proof of Claim and any and all claims of whatever nature that the Parties may have with respect to the Lease or otherwise between themselves including, without limitation:
  - (i) any claims that BSP may have with respect to amounts claimed in connection with the Lease, whether for rent, interest or otherwise; and
  - (ii) any claims that the Liquidator or ACA may have with respect to the return of rent under the Lease; and
- (e) Upon approval of this Agreement and the Liquidator's plan of liquidation by the Court and the satisfaction of all conditions set forth in this Agreement, BSP will become a Class V creditor in the Liquidation Proceeding pursuant to RSA 402-C:44, and BSP shall, subject to this Agreement, receive distributions on the Recommended Amount at the same intervals and at the same percentages as other Class V creditors of ACA.

2. Compromise of Claims. This Agreement reflects a compromise of the claims asserted in the Proof of Claim. It is the result of negotiations under the supervision of the Special Deputy Liquidator, and the Liquidator accordingly intends to recommend to the Court approval of this Agreement and allowance of the \$125,000 Recommended Amount as a Class V claim in accordance with RSA 402-C:45 and RSA 402-C:44.

3. Treatment of Recommended Amount as Loss. The Liquidator agrees not to make any determination or to seek a determination from the Court or any other court that the total amount of BSP's loss for tax or other purposes is limited to the Claimed Amount or the Recommended Amount.

4. Security Deposit. BSP shall be entitled to retain the full amount of the Security Deposit, without offset or reduction in the Recommended Amount.

5. Releases.

(a) Release of BSP by the Liquidator. The Liquidator, for himself and on behalf of ACA, and its respective predecessors, beneficiaries, creditors, legal representatives, successors and assigns (the "ACA Releasers"), releases and forever discharges BSP and its affiliates, subsidiaries, trustees, beneficiaries, shareholders, other similar parties, successors, assigns, partners, limited partners, agents, and present and former officers, directors, employees, representatives, and attorneys (collectively, the "BSP Released Parties") from any and all action or actions, cause or causes of action, suits, damages, setoffs, claims, demands, judgments, or executions, whether in contract, tort, or otherwise, whether known or unknown, whether accrued or un-accrued, and whether at law, by statute, or in equity, (collectively, "Claims") which the ACA Releasers now have or ever had against the BSP Released Parties arising out of or relating in any way to the Lease or the Proof of Claim.

(b) Release of Liquidator by BSP. BSP, for itself, and for any and all of its subsidiaries or affiliates, and for its predecessors, beneficiaries, creditors, legal representatives, successors and assigns (the "BSP Releasers"), releases and forever discharges the Liquidator, ACA and

their successors, assigns, partners, limited partners, agents, officers, directors, employees, representatives, and attorneys (collectively, the “ACA Released Parties”) from any and all action or actions, cause or causes of action, suits, damages, setoffs, claims, demands, judgments, or executions, whether in contract, tort, or otherwise, whether known or unknown, whether accrued or un-accrued, and whether at law, by statute, or in equity, which the BSP Releasors now has or ever had against the ACA Released Parties arising out of or relating to the Lease or the Proof of Claim, including, without limitation, any claim for accrued interest that could otherwise be payable as a Class VII cost.

(c) Notwithstanding the releases set out in paragraphs (a) and (b) of this Section 5, each Party agrees that the other shall have the right to enforce the terms of this Agreement against the other Party.

6. Effective Date: Conditions to Obligations of the Parties. This Agreement shall become effective upon written notice by the Liquidator to BSP that all of the conditions set forth in the paragraph below have been fully satisfied (the “Effective Date”):

(a) Approval of this Agreement by order of the Court on petition of the Liquidator (the “Court Approval”);

(b) Approval by order of the Court on petition of the Liquidator of the Settlement Agreement and Mutual Release of Claims between the Liquidator and Royal Arcanum, which settlement agreement shall include, among others provisions: (i) that the Policyholder Claims shall be treated as Class IX claims under RSA 402-C:44; (ii) that Royal Arcanum consents to the treatment of the Policyholder Claims as Class IX, notwithstanding the terms of the Second Assumption Agreement; and (iii) such other terms setting out in detail the administration, reporting and handling of the repayment or crediting against Policyholder Claims from liquidation assets that the Liquidator shall deem advisable; and

(c) Approval by order of the Court on petition of the Liquidator of a plan of liquidation and the procedures related thereto, including, without limitation, notice procedures with respect to the Policyholder Claims.

7. Representations and Warranties. Each Party represents and warrants to the other that: (a) it is the holder of all claims, rights and obligations released hereunder; (b) none of such claims, rights or obligations, or any interest therein has been transferred by such party; (c) it has all necessary authority to execute this Agreement (subject to Court approval); (d) upon the Agreement being executed and delivered, and upon Court Approval being obtained and the conditions set forth herein otherwise satisfied, it will constitute the legally binding obligation of such Party, enforceable against such Party in accordance with its terms; and (e) it has not relied upon any statement, representation or promise, oral or written, of any other Party to this Agreement except as expressly set forth herein. The Liquidator further represents and warrants that he is entering into this Agreement on behalf of himself in his capacity as the legal representative of ACA in accordance with the provisions of RSA 402-C:21, and any predecessors, successors and assigns of ACA, and that (subject to Court Approval) the

Liquidator has all necessary legal authority to execute and perform this Agreement on behalf of ACA and any predecessors, successors and assigns of ACA.

8. No Admission by Any Party. This Agreement is intended solely to expeditiously resolve the matters addressed herein, and it shall not be construed as an admission by any Party to this Agreement, or their heirs, assigns, successors, representatives, agents, officers, directors, or shareholders, of the validity of the claims of any Party to this Agreement.

9. Binding Effect. This Agreement, and all covenants and releases set forth herein, shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, heirs, assigns, partners, representatives, agents, attorneys, officers, directors and shareholders, as the case may be.

10. Entire Agreement. This Agreement constitutes the complete understanding between the Parties and supersedes any and all prior agreements, promises, or inducements, no matter what form, concerning its subject matter. No promises or agreements made subsequent to the execution of this Agreement by the Parties shall be binding unless reduced to writing and signed by authorized representatives of all Parties. Each Party represents that it has carefully read and fully understands all of the provisions of this Agreement, that it has been given the opportunity to fully discuss the contents of this Agreement with independent counsel of its choice and has done so, and that by executing this Agreement, each Party relies entirely on its own judgment and the advice of its respective counsel and not upon any representation, statement or promise, not otherwise set forth or described in this Agreement, of any of the other Parties, their attorneys or other individual or entity, and that it is voluntarily and without duress entering into this Agreement.

11. Interpretation. The language of all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly construed for or against any Party. The Parties agree that this Agreement shall be deemed to have been jointly drafted for purposes of applying any rules of construction.

12. Counterparts. This Agreement may be executed in one or more counterparts and by the Parties hereto on separate counterparts, and each of such counterparts shall be considered an original document, but all of such counterparts together shall constitute one and the same Agreement.

13. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of the Proof of Claim, the Lease or this Agreement shall be the Court.

14. No Third Party Rights. This Agreement is entered into solely for the benefit of the Parties and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

15. Notices. All notices provided for under this Agreement shall be furnished in writing by facsimile and by certified mail, return receipt requested, to the following representatives at the following address:

**For 1750 Elm Street, LLC:**

Arthur W. Sullivan, Manager  
1750 Elm Street, LLC  
670 N. Commercial Street, Suite 303  
Manchester, NH 03101  
Fax: (603) 622-7342

and to:

Marc A. Pinard, General Counsel  
1750 Elm Street, LLC  
670 N. Commercial Street, Suite 303  
Manchester, NH 03101  
Fax: (603) 622-7342

**For ACA and Liquidator:**

Peter A. Bengelsdorf  
Special Deputy Liquidator  
ACA Assurance in Liquidation  
61 Broadway, 6th Floor  
New York, NY 10006  
Fax: (212) 530-6143

and to:

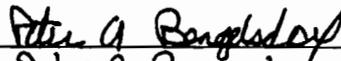
Steven J. Lauwers, Esq.  
Rath Young & Pignatelli, P.C.  
One Capital Plaza  
Concord, NH 03302-1500  
Fax: (603) 225-9774

and to:

J. Christopher Marshall, Esq.  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301  
Fax: (603) 271-2110

In Witness Whereof, the Parties, having read the foregoing Settlement Agreement and Mutual Release of Claims and knowing and understanding its content, have executed the same as of the date indicated.

**Roger A. Sevigny, Insurance Commissioner  
of the State of New Hampshire, in his capacity  
as Liquidator of ACA Assurance**

By:   
Name: Peter A. Bengelsdorf  
Title: Special Deputy Liquidator  
Date: 5-20-14

**1750 Elm Street, LLC**

By:   
Name: Andrew W. Sullivan  
Title: Manager  
Date: 5/23/14

## EXHIBIT C

### EXECUTION VERSION

#### SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (the "Agreement") is made by and between The Supreme Council of the Royal Arcanum ("Royal Arcanum"), and Roger A. Sevigny, New Hampshire Insurance Commissioner (the "Commissioner"), exclusively in his capacity as Liquidator of ACA Assurance ("ACA") (the "Liquidator") (Royal Arcanum and the Liquidator shall each be referred to individually as a "Party" and collectively as the "Parties").

#### RECITALS:

WHEREAS, the Commissioner petitioned the Merrimack County Superior Court (the "Court") and received an order appointing the Commissioner as Rehabilitator of ACA (the "Rehabilitator") effective September 8, 2008 (the "Rehabilitation");

WHEREAS, in connection with the Rehabilitation and pursuant to orders of the Court, the Commissioner by order, after approval by ACA's Board of Directors, imposed assessments against ACA policies that amounted to 25% of the value of policies other than pre-need policies and 40%, in the aggregate, of the value of the pre-need policies (collectively, the "Assessments");

WHEREAS, in connection with the Rehabilitation, the Rehabilitator took a number of actions to recover assets for ACA, to reduce its liabilities, and to seek to protect the insurance interests of its policyholders, including the transfer of ACA's policy obligations to solvent insurers pursuant to assumption reinsurance agreements;

WHEREAS, the Rehabilitator entered into two such assumption reinsurance agreements with Royal Arcanum;

WHEREAS, the first Assumption Reinsurance Agreement between ACA and Royal Arcanum dated on or about March 11, 2009 (the "First Assumption Agreement") provided for the assumption by Royal Arcanum of all the liabilities of all ACA policies other than ACA's pre-need life insurance policies, except for certain excluded liabilities, and the transfer from ACA to Royal Arcanum of the "Transferred Assets" associated with such assumed policies;

WHEREAS, the policies assumed pursuant to the First Assumption Agreement were assumed subject to the applicable 25% Assessments, which were made permanent;

WHEREAS, the First Assumption Agreement provided that the Rehabilitator viewed the Assessments as policyholder related claims pursuant to RSA 402-C:44, II, that the Rehabilitator would seek the Court's approval to classify the Assessments as policyholder related claims in connection with any eventual liquidation proceeding and that if such classification was approved by the Court, the Rehabilitator would transfer the assets related to such Assessments (the

“Liquidation Assets”) to Royal Arcanum, subject to certain limitations, including the use of such assets solely for the purpose of restoring the Assessments on the subject policies;

WHEREAS, the Second Assumption Reinsurance Agreement between ACA and Royal Arcanum dated on or about January 31, 2011 (the “Second Assumption Agreement”) provided for the assumption by Royal Arcanum of all the liabilities of the ACA pre-need life insurance policies (the “Pre-Need Policies”), except for certain excluded liabilities, and the transfer from ACA to Royal Arcanum of the “Transferred Assets” associated with such Pre-Need Policies;

WHEREAS, the Pre-Need Policies assumed pursuant to the Second Assumption Agreement were assumed subject to the applicable Assessments which totaled 40% (constituting an original 25% assessment and then a supplemental 15% assessment);

WHEREAS, the Second Assumption Agreement provided that the Liquidation Assets would be transferred to Royal Arcanum as provided in the First Assumption Agreement; provided that such Liquidation Assets would be applied: (i) first, for Royal Arcanum’s reasonable, documented transaction costs in connection with the its acquisition of the Pre-Need Policies under the Second Assumption Agreement; (ii) second, to reduce the amount of the Assessments on the Pre-Need Policies to the level of the other policies; (iii) third, to pay Royal Arcanum’s expenses described in Section 3.4 of the First Assumption Agreement; and (iv) finally, to reduce the Assessments on all policies on an aliquot basis;

WHEREAS, the Rehabilitator petitioned the Court and received an order per written notice of the Clerk of the Court dated October 22, 2012 appointing the Commissioner as liquidator of ACA (the “Liquidation Order”), pursuant to which the Liquidator, among other things, provided notice of the liquidation to potential claimants and established a bar date for submitting proofs of claim (collectively with all other actions pursuant to the Liquidation Order, the “Liquidation Proceeding”);

WHEREAS, pursuant to the Liquidation Order, the policyholders were not required to submit proofs of claim with respect to their Assessment claims, which claims were deemed to have been filed with the liquidation estate;

WHEREAS, Royal Arcanum has submitted to the Liquidator its reasonable, documented transaction costs incurred with respect to its acquisition of the Pre-Need Policies in the amount of \$17,760.30, which costs the Liquidator has determined constitute Class I administrative expenses of the estate pursuant to RSA 402:C-44 for which a proof of claim need not be filed;

WHEREAS, in his petition for the Liquidation Order, and in his first and third reports to the Court, the Liquidator indicated his intent to classify the claims of policyholders with respect to the Assessments (the “Policyholder Claims”) as Class II claims pursuant to RSA 402-C:44 and consistent with the First Assumption Agreement and Second Assumption Agreement;

WHEREAS, the Liquidator has reassessed the classification of claims, including the priority classification of the Policyholder Claims, and has determined that the more proper

classification of the Policyholder Claims is as Class IX and not Class II pursuant to RSA 402-C:44; and

WHEREAS, the Parties wish to enter into this Agreement to clarify the Parties' rights and obligations under the First Assumption Agreement and the Second Assumption Agreement and to resolve any claims that were asserted or could have been asserted between them concerning the First Assumption Agreement and the Second Assumption Agreement.

#### AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing, the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Agreement with Respect to Royal Arcanum's Administrative Expenses.
  - (a) Royal Arcanum shall receive a distribution from the ACA estate of \$17,760.30 as a Class I administrative expense for reimbursement of its reasonable, documented direct transaction costs in connection with its acquisition of the Pre-Need Policies under section 3.5 (i) of the Second Assumption Agreement and that no interest, including, without limitation, statutory interest, is due on such amount;
  - (b) The Liquidator acknowledges and agrees that because these expenses constitute a Class I administrative expense claim, Royal Arcanum was not required to file a proof of claim with the Liquidator in connection with the distribution described in paragraph (a) of this section;
  - (c) Royal Arcanum agrees that the Liquidator's allowance of the Class I administrative expense reimbursement in the amount of \$17,760.30 as set forth in (a) above constitutes the sum total Royal Arcanum is to receive with respect to any expenses that have been or may be incurred by Royal Arcanum in connection with the First Assumption Agreement, and the Second Assumption Agreement.
  - (d) The Liquidator further agrees to make a distribution to ACA of \$3,000 as a Class I administrative expense for reimbursement of a portion of the expenses Royal Arcanum will incur to carry out its obligations under this Agreement.
2. Agreement with Respect to Treatment of Assessment Claims and Related Assets.
  - (a) The Liquidator shall petition the Court for approval (1) to classify the Policyholder Claims as Class IX priority claims, and not Class II priority claims pursuant to RSA 402-C: 44; and (2) to provide payment to Royal Arcanum of the Liquidation Assets (the amount of which will be determined as provided below) to be distributed by Royal Arcanum in accordance with Section 3.5(ii) of the Second Assumption

Agreement to reduce the Assessments on the Pre-Need Policies until such Assessments are reduced to the level of Assessments on the remaining policies;

- (b) Royal Arcanum, for itself and on behalf of its policyholders, agrees to the treatment of the Policyholder Claims as Class IX priority claims and provision first for the reduction, on an aliquot basis, of the Assessments of the Pre-Need Policies up to the level of Assessments on the remaining policies in accordance with Section 3.5 of the Second Assumption Agreement;
- (c) Royal Arcanum acknowledges, for itself and on behalf of its policyholders, the priority classification of Class V general creditor claims as being superior in priority of payment to the Policyholder Claims, including without limitation, the Class V claim of 1750 Elm Street, LLC, as determined by the Liquidator and as provided for in a separate settlement agreement;
- (d) Royal Arcanum shall assent to the Liquidator's petition seeking the priority classification described in paragraphs 2 (a) through (c) above;
- (e) The Liquidator will transfer the Liquidation Assets to Royal Arcanum via a single check or wire transfer, payable to Royal Arcanum, and identified as "Liquidation Assets for the benefit of pre-need policyholders". The entire amount of such Liquidation Assets shall be credited to the Pre-Need Policies by Royal Arcanum consistent with Section 3.5(ii) of the Second Assumption Agreement;
- (f) The calculation of the Liquidation Assets to be transferred to Royal Arcanum shall be determined after the final distribution amounts of all higher priority claims have been determined and will reflect a holdback by the Liquidator to provide for administrative expenses to be incurred by the Liquidator in connection with the closure of the liquidation proceeding;
- (g) No interest, including, without limitation, statutory interest, shall apply to or be deemed to have accrued upon such amount(s);
- (h) Although it is impossible to determine at this time the value of the Liquidation Assets that will be available for transfer pursuant to this Section, the Liquidator's preliminary estimates suggest that this amount would be approximately \$250,000 based on the assets currently available to the Liquidator;
- (i) Royal Arcanum expressly acknowledges and agrees that its obligations under this Agreement are in no way conditioned upon the amount of the Liquidation Assets which are ultimately calculated by the Liquidator, approved by the Court and transferred to Royal Arcanum for the benefit of the Pre-Need Policyholders, and that the estimate provided in paragraph (g) is in no way binding upon the Liquidator or ACA.

### 3. Application of Liquidation Assets.

(a) The Liquidator shall prepare a list of those Pre-Need Policyholders who will receive, as a result of the transfer of Liquidation Assets to Royal Arcanum, either a credit or a distribution, as described below, from the Liquidation Assets (the "Distribution List"). The Distribution List shall be based on the list attached to the Second Assumption Agreement, and it shall be reviewed and amended by Royal Arcanum to reflect the deletion of those pre-need policyholders whose policies were surrendered or whose policies lapsed since the policies were assumed by Royal Arcanum pursuant to the Second Assumption Agreement. The Liquidator will also provide to Royal Arcanum a notice from the Liquidator advising the Pre-Need Policyholders of the basis for the credits or the distributions (the "Joint Notice") which shall be in a form acceptable to both parties hereto. Upon receipt of the Liquidation Assets, the Distribution List and the Joint Notice, Royal Arcanum shall for in force policies: (i) provide a credit to each affected Pre-Need Policyholder as described below; (ii) deliver by mail to each affected Pre-Need Policyholder a copy of the Joint Notice; and (iii) handle any other required tasks, including tax reporting. Royal Arcanum shall provide credits or distributions as follows: (i) except as provided in clause (ii) of this sentence, Royal Arcanum shall apply a credit against the benefit reduction associated with the Assessment for each Pre-Need Policyholder identified on the Distribution List equal to the Pre-Need Policyholder's aliquot share of the Liquidation Assets which is calculated by dividing the assessment value of the pre-need policy by the Liquidation Assets; or (ii) exclusively in the event that Royal Arcanum has received and paid a death claim for a Pre-Need Policyholder identified on the Distribution List since the Closing Date of the Second Assumption Agreement, Royal Arcanum shall make a distribution to such Pre-Need beneficiary equal to the amount that would have otherwise been credited to that Pre-Need Policyholder under clause (i). Royal Arcanum shall be solely responsible for these tasks and shall make reasonable efforts to complete this process within 60 days of receipt of the Liquidation Assets, the Distribution List and the Joint Notice. No distribution shall be made to surrendered policies, whether such policies were lapsed for non-payment of premium or cashed-in. Upon completion, Royal Arcanum shall provide the Liquidator with written confirmation that the Liquidation Assets have been credited or distributed to the Pre-Need Policyholders, as applicable, and that notices have been sent. Royal Arcanum shall also be solely responsible for any tax reporting associated with making distributions, as applicable, including without limitation, the issuance of 1099 forms. Royal Arcanum shall notify the Liquidator of any distribution that is not claimed by the Pre-Need Policyholder or his/her/its representative within 45 days of such distribution ("Unclaimed Funds"). Such Unclaimed Funds shall, at the direction of the Liquidator, be paid by Royal Arcanum to the New Hampshire State Treasurer, without interest, in accordance with RSA 402-C:47, I. In all of these matters, Royal Arcanum shall be acting pursuant to the delegated authority of the Liquidator.

(b) In exchange for the work and costs (e.g. mailing costs) undertaken by Royal Arcanum and described in this section, the Liquidator hereby assigns all of the estate's right, title and interest in, to and under the stream of commissions that the estate is receiving on a certain Medicare supplement policies; provided that: (i) such assignment will be solely with respect to future commissions received on or after the effective date of this provision; (ii) such assignment shall be evidenced exclusively by this Agreement; (iii) the Liquidator is not making any representation with respect to the amount of such commissions or whether such commissions will continue to

be paid in the future; (iv) Royal Arcanum shall conduct whatever investigation that it deems advisable and is not relying upon any information provided by the Liquidator; (v) such commission payments are being assigned to Royal Arcanum subject to any future, present or past rights of or obligations to third parties, which shall be Royal Arcanum's exclusive obligation to satisfy, although the Liquidator is not aware of any past rights of or obligations to third parties except as described in pleadings to the Court; and (vi) the effective date of such transfer shall occur 30 days after the Court's approval of this Agreement, the Plan of Distribution and the distribution of ACA's assets, as noted in Section 4 below..

4. Non-Objection/Assent to Petition. The Liquidator intends to seek the Court's approval for, among other things, a Plan of Distribution for ACA and the distribution of ACA's assets that includes (i) the classification and distribution of assets as provided in Section 2 and 3 of this Agreement and (ii) the provision of notice to policyholders of the Plan of Distribution and the distribution of ACA's assets by publication, rather than by individual mailing. Royal Arcanum hereby agrees not to object to this petition and, if requested by the Liquidator, to provide its assent to the petition.

5. Releases.

(a) Release of Royal Arcanum by the Liquidator. The Liquidator, for himself and on behalf of ACA, and its respective predecessors, beneficiaries, creditors, legal representatives, successors and assigns (the "ACA Releasers"), releases and forever discharges Royal Arcanum and its affiliates, subsidiaries, trustees, beneficiaries, shareholders, other similar parties, successors, assigns, partners, limited partners, agents, and present and former officers, directors, employees, representatives, and attorneys (collectively, the "Royal Arcanum Released Parties") from any and all action or actions, cause or causes of action, suits, damages, setoffs, claims, demands, judgments, or executions, whether in contract, tort, or otherwise, whether known or unknown, whether accrued or un-accrued, and whether at law, by statute, or in equity, (collectively, "Claims") which the ACA Releasers now have or ever had against the Royal Arcanum Released Parties arising out of or relating in any way to the matters expressly set forth in this Agreement.

(b) Release of Liquidator by Royal Arcanum. Royal Arcanum, for itself, and for any and all of its subsidiaries or affiliates, and for its predecessors, beneficiaries, policyholders, creditors, legal representatives, successors and assigns (the "Royal Arcanum Releasers"), releases and forever discharges the Liquidator, ACA and their successors, assigns, partners, limited partners, agents, officers, directors, employees, representatives, and attorneys (collectively, the "ACA Released Parties") from any and all action or actions, cause or causes of action, suits, damages, setoffs, claims, demands, judgments, or executions, whether in contract, tort, or otherwise, whether known or unknown, whether accrued or un-accrued, and whether at law, by statute, or in equity, which the Royal Arcanum Releasers now has or ever had against the ACA Released Parties arising out of or relating in any way to the matters expressly set forth in this Agreement.

(c) Notwithstanding the releases set out in paragraphs (a) and (b) of this Section, each Party agrees that: (i) the other shall have the right to enforce the terms of this Agreement against the other Party; (ii) except as expressly provided in this Agreement, the releases shall in no way

limit the rights or obligations of either Party pursuant to the First Assumption Agreement or the Second Assumption Agreement and those agreements shall remain in full force and effect; and (iii) except as expressly provided in this Agreement, the releases shall in no way limit the Liquidator's authority to take or refrain from taking any action in connection with the Liquidation Proceeding.

6. Effective Date: Conditions to Obligations of the Parties. This Agreement shall become effective on the date that all of the conditions set forth in the paragraphs below have been fully satisfied (the "Effective Date"):

- (a) Court approval of this Agreement by order of the Court on petition of the Liquidator (the "Petition");
- (b) Court approval of the Settlement Agreement and Mutual Release of Claims between the Liquidator and 1750 Elm Street, LLC and its affiliates by order of the Court on petition of the Liquidator; and
- (c) Court approval of a Plan of Distribution, the distribution of ACA's assets and the procedures related thereto, including, without limitation, notice procedures with respect to the Policyholder Claims.

7. Representations and Warranties. Each Party represents and warrants to the other that: (a) it is the holder of all claims, rights and obligations released hereunder; (b) none of the claims, rights or obligations, or any interest therein of each Party has been transferred by such Party; (c) it has all necessary authority to execute this Agreement (subject to Court approval); (d) upon the Agreement being executed and delivered, and upon Court approval being obtained and the conditions set forth in Section 6 herein otherwise satisfied, it will constitute the legally binding obligation of such Party, enforceable against such Party in accordance with its terms; and (e) it has not relied upon any statement, representation or promise, oral or written, of any other Party to this Agreement except as expressly set forth herein. The Liquidator further represents and warrants that he is entering into this Agreement on behalf of himself and in his capacity as the legal representative of ACA in accordance with the provisions of RSA 402-C:21, and any predecessors, successors and assigns of ACA, and that (subject to Court approval) the Liquidator has all necessary legal authority to execute and perform this Agreement on behalf of ACA and any predecessors, successors and assigns of ACA.

8. No Admission by Any Party. This Agreement is intended solely to expeditiously resolve the matters addressed herein, and it shall not be construed as an admission by any Party to this Agreement, or its heirs, assigns, successors, representatives, agents, officers, directors, or shareholders, of the validity of the claims of any other Party to this Agreement.

9. Binding Effect. This Agreement, and all covenants and releases set forth herein, shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, heirs, assigns, partners, representatives, agents, attorneys, officers, directors and shareholders, as the case may be.

10. Entire Agreement. This Agreement constitutes the complete understanding between the Parties and supersedes any and all prior agreements, promises, or inducements, no

matter what form, concerning its subject matter. No promises or agreements made subsequent to the execution of this Agreement by the Parties shall be binding unless reduced to writing and signed by authorized representatives of all Parties. Each Party represents that it has carefully read and fully understands all of the provisions of this Agreement, that it has been given the opportunity to fully discuss the contents of this Agreement with independent counsel of its choice and has done so, and that by executing this Agreement, each Party relies entirely on its own judgment and the advice of its respective counsel and not upon any representation, statement or promise, not otherwise set forth or described in this Agreement, of any of the other Parties, their attorneys or other individual or entity, and that it is voluntarily and without duress entering into this Agreement.

11. Interpretation. The language of all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly construed for or against any Party. The Parties agree that this Agreement shall be deemed to have been jointly drafted for purposes of applying any rules of construction.

12. Counterparts. This Agreement may be executed in one or more counterparts and by the Parties hereto on separate counterparts, and each of such counterparts shall be considered an original document, but all of such counterparts together shall constitute one and the same Agreement.

13. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of this Agreement shall be the Court.

14. No Third Party Rights. This Agreement is entered into solely for the benefit of the Parties and is not intended to, and does not give or create any rights to or in any person or entity other than the parties.

15. Notices. All notices provided for under this Agreement shall be furnished in writing to the following representatives at the following address:

For The Supreme Council of the Royal Arcanum:

Mr. Nicholas Benoit  
Director of Operations  
Supreme Council of the Royal Arcanum  
Boston, MA 02110

and to;

Paul F. D'Emilio, Esq.  
905 W; Sproul Road Suite 105  
Springfield PA 19064

For ACA and Liquidator:

Peter A. Bengelsdorf  
Special Deputy Liquidator  
ACA Assurance in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, NY 10006

and to:

Steven J. Lauwers, Esq.  
Rath, Young & Pignatelli  
One Capital Plaza  
Concord, NH03302-1500

and to:

J. Christopher Marshall, Esq.  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301

In Witness Whereof, the Parties, having read the foregoing Settlement Agreement and Mutual Release of Claims and knowing and understanding its content, have executed the same as of the date(s) indicated below.

Roger A. Seigny, Insurance Commissioner of the State of New Hampshire, in his capacity as Liquidator of ACA Assurance.

By: Peter A. Bengelsdorf  
Name and Title: Peter A. Bengelsdorf  
Special Deputy Liquidator ACA Assurance  
Date: 6/2/14

Supreme Council of the Royal Arcanum

By: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For ACA and Liquidator:

Peter A. Bengelsdorf  
Special Deputy Liquidator  
ACA Assurance in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, NY 10006

and to:

Steven J. Lauwers, Esq.  
Rath, Young & Pignatelli  
One Capital Plaza  
Concord, NH03302-1500

and to:

J. Christopher Marshall, Esq.  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301

In Witness Whereof, the Parties, having read the foregoing Settlement Agreement and Mutual Release of Claims and knowing and understanding its content, have executed the same as of the date indicated.

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, in his capacity as Liquidator of ACA Assurance.

By: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

Supreme Council of the Royal Arcanum

By: James E. O'Neill

Name and Title: James E. O'Neill

Grand Master \_\_\_\_\_

Date: 6/3/2014

**ACA Assurance In Liquidation**  
**Statement of Cash Receipts and Disbursements**

	January 1, 2014 to April 30, 2014	October 1, 2013 to December 31, 2013
<b>Beginning Cash</b>	\$ <u>486,110</u>	\$ <u>486,468</u>
<b>Cash Receipts:</b>		
Commission Income	3,818	1,355
Misc Income	-	-
<b>Total Cash Receipts</b>	\$ <u>3,818</u>	\$ <u>1,355</u>
<b>Cash Disbursements:</b>		
Legal Expenses	19,023	-
Consultant and Outside Service Expenses	18,404	259
Bank Fees	889	583
Other Expenses	970	871
<b>Total Cash Disbursements</b>	\$ <u>39,285</u>	\$ <u>1,713</u>
 Excess of Receipts Over (Disbursements)	 <u>(35,468)</u>	 <u>(358)</u>
 <b>Ending Cash</b>	 <u>\$ <u>450,643</u></u>	 <u>\$ <u>486,110</u></u>

**Note - Basis of Accounting**

This financial statement is prepared using the cash basis of accounting which differs from accounting principles generally accepted in the United States. Only those assets that are within the possession of the Liquidator are recorded; cash was the only asset as of the dates of the statements above. Certain administrative expenses have accrued during the period of the Liquidation and these expenses are not reflected as liabilities in the foregoing.

**EXHIBIT E**

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of ACA Assurance  
Docket No. 06-E-380

**[PROPOSED]**

**ORDER APPROVING ALL REMAINING CLAIMS DETERMINATIONS,  
SETTLEMENT AGREEMENTS, THE MANDATED RSA 402-C:35 REPORT,  
THE PROPOSED PLAN OF DISTRIBUTION AND THE DISTRIBUTION OF  
ASSETS**

This proceeding was commenced on October 11, 2006, upon the Verified Petition for Rehabilitation of Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition pursuant to RSA 402-C:15, seeking appointment as Rehabilitator of ACA Assurance ("ACA"). On October 11, 2006, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of ACA. On July 2, 2007, the Commissioner made a Motion to terminate the initial rehabilitation; provided that ACA remain subject to a Supervision Order requiring it to maintain a minimum level of surplus. This Court granted the Motion to terminate the initial rehabilitation on July 2, 2007. On September 8, 2008, the Commissioner filed a Verified Petition to Re-open Rehabilitation, due to the deterioration of the financial position of ACA, which was granted by this Court on the same day. On September 28, 2012, the Commissioner filed a verified, assented to petition seeking to be appointed as liquidator for ACA and for certain other relief. An order granting the petition and appointing the Commissioner as Liquidator was issued by this Court on October 10, 2012. The Commissioner filed a motion seeking approval of notice and publication requirements on July 3, 2014. An

Order approving the notice and publication requirements was issued by this Court on \_\_\_\_\_, 2014 (the "Notice Order"). The Commissioner has filed a report with the Court confirming that he has complied with the terms of the Notice Order. No objection was filed with this Court by any person during the forty (40) days following the Court's issuance of the Notice Order. The Commissioner now seeks an order approving all remaining claims determinations, certain settlement agreements, the plan of distribution and distributions, and the Commissioner's determinations made pursuant to RSA 402-C:35.

WHEREFORE, no objection having been received within the forty (40) day period set forth in the Notice Order, the Verified Motion to Approve all Remaining Claims Determinations, Settlement Agreements, the Mandated RSA 402-C:35 Report, Proposed Plan of Distribution and Distribution of Assets is GRANTED, and it is hereby ordered, adjudged and decreed that:

- (a) the determination of the Landlord Claim as a Class V priority classification in an allowed amount of \$125,000 and the Landlord Settlement Agreement are hereby approved;
- (b) the RA Settlement Agreement, including the Liquidator's determinations with respect to the approval of Royal Arcanum's claims for administrative expenses, is hereby approved;
- (c) the Liquidator's determination of all Assessment Claims in full as Class IX priority claims pursuant to RSA 402-C:44 is approved;
- (d) the Liquidator's proposed application of funds for the payment of the Assessment Claims is approved, such that the funds available for payment of

the Assessment Claims shall be applied beginning at the 40% assessment, with the effect of partially reducing the assessment on ACA's former pre-need policyholders, but without reducing the level of the assessment on ACA's other former policyholders;

(e) the Proposed Plan of Distribution and the distribution of ACA's assets (after establishment of a reserve not to exceed \$52,000.00 for the Liquidator's administration costs) to claimants with allowed claims in ACA's estate in accordance with the Proposed Plan of Distribution are hereby approved;

(f) the Liquidator's report pursuant to RSA 402-C:35, including the Liquidator's determination that an additional assessment is not appropriate or authorized under RSA 402-C:35 and the Liquidator's recommendation that no additional assessment be imposed pursuant to RSA 402-C:35, is hereby approved.

Date: \_\_\_\_\_  
Time: \_\_\_\_\_

By: \_\_\_\_\_  
Presiding Justice