

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

**VERIFIED MOTION TO APPROVE
NOTICE AND OBJECTION PROCEDURES**

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 Liquidator’s proposed notice procedures, including the method, manner and form of notice to be given substantially by means of publication rather than by individual mailing; and (ii) establishing a deadline for the filing and service of any objections to the Claims Motion (as defined below) or this motion forty (40) days from the date of the Court’s order approving this Motion (the “Notice Motion”).

On this same day, the Liquidator of ACA has also filed a verified motion to approve all remaining claims determinations, settlement agreements, the mandatory RSA 402-C:35 report, as well as the proposed plan of distribution and distribution of assets (the “Claims Motion”). As described in more detail in the Claims Motion, the Liquidator is requesting that the Court grant the Claims Motion only upon expiration of the objection period described in this Notice Motion.

If an objection pursuant to this Notice Motion or the separate Claims Motion is timely filed with the Court, the Liquidator requests that the Court schedule a hearing to consider such objection.

Introduction

1. This Motion provides a brief recitation of the factual background of this 8 year long proceeding. More detailed descriptions of the history of both the prior rehabilitation proceedings and the current proceeding are contained in pleadings previously filed with the Court in this docket.

2. ACA was 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 into liquidation (“Liquidation Order”), and the Commissioner was appointed Liquidator of ACA. The Liquidation Order established a final deadline/bar date for the filing of claims of six months from the date of the Order of Liquidation and provided further that any new claims postmarked after that date would be considered unexcused late filed and would not be considered.

3. The Liquidator has now made final claim determinations for all but two (2) proofs of claim filed with the ACA liquidation estate. One remaining claim is for an individual policyholder assessment that was made by filing a proof of claim¹ which the Liquidator proposes to address substantively in a manner consistent with all other assessment claims of former policyholders (the “Assessment Claims”). The other is a claim from ACA’s former landlord in Manchester, New Hampshire. Other than the foregoing, the only remaining claims to be determined by the Liquidator are the 24,640 Assessment Claims of former ACA policyholders², which, pursuant to the terms of the Liquidation Order, were deemed to have been filed with the Liquidator without the necessity of filing proofs of claim. The Liquidator’s proposals for resolving the Assessment Claims and the claim of ACA’s former landlord, which are the only

¹ This claim, which would have been deemed filed in any event, was filed by Robert A. Beaumont with respect to a 25% assessment claim in the amount of \$3,899.61 (the “Beaumont Claim”).

² The Assessment Claims include the Beaumont Claim.

remaining non-administrative claims, are described in detail in the Claims Motion. The purpose of this Notice Motion is to seek the Court's approval for the notice and objection procedures related to the relief requested in the Claims Motion, specifically final claims determinations with respect to the Assessment Claims, the related Plan of Distribution, the Distribution of Assets and the report required pursuant to RSA 402-C:35.³

Background

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

5. ACA, which has its principal offices at 55 South Commercial Street, Manchester, New Hampshire 03101, was organized in this State and was licensed by, and subject to regulation 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, and its policyholders are, as a result, not entitled to the benefit of proceeds from such funds or associations either in New Hampshire or in any other jurisdiction. See, e.g., 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 the first rehabilitation, the board of directors of ACA, in consultation with the Insurance Department and based upon the

³ As described in more detail in the Claims Motion, RSA 402-C:35 requires the Liquidator to report on the assets and liabilities of the insurer in liquidation, any deficiency in assets relative to liabilities, whether an assessment is necessary, and whether an assessment is being recommended by the Liquidator, in the event that there is a deficiency. For the reasons discussed in the Claims Motion, the Liquidator is not recommending an assessment pursuant to RSA 402-C:35.

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 first rehabilitation.

7. ACA's initial rehabilitation was accordingly terminated on July 2, 2007 pursuant to an order of this Court, which left the Initial 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 Proceeding and the
Second Assessment (25%) On All Policies**

8. By filing with this Court a verified petition on September 8, 2008, the Commissioner sought to reopen the 2006 rehabilitation proceeding as a result of further substantial impairment to ACA's surplus, which was required to be maintained at a specified dollar 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 this second rehabilitation.

9. The board of directors of ACA, in consultation with the Insurance Department, made a determination that ACA's reserves were further 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) to be implemented by the Commissioner.

10. Pursuant to express authority granted 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 a twenty-five percent (25%) assessment on all in-force ACA policies with certain limited exceptions. Notice of these assessments was mailed at that time to 21,000 policyholders or owners of such policies⁴ in the United States and 9,600 policyholders in Canada. 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 permanent twenty-five percent (25%) assessment; 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 permanent twenty-five percent (25%) assessment. These steps were taken in rehabilitation rather than in liquidation because a disproportionate percentage of the Company's assets were located in Canada, where they had been "ring-fenced" by Canadian financial regulators. Many of the steps in rehabilitation were

⁴ With respect to pre-need policies owned by funeral homes, notice was provided in this instance to both the funeral home as policyholder and owner and the individual whose life was insured and who had assigned the policy to the funeral home. Subsequent notices with respect to pre-need policies owned by funeral homes were provided exclusively to the funeral home, in recognition of the fact that the individual insured had transferred all of its rights to the policy and was thus not an appropriate party to receive notice.

designed to permit the repatriation to the United States of these excess funds without triggering an ancillary proceeding in Canada.

The Third Assessment (an Additional 15% on Remaining Policies) and the Pre-Need Assumption Agreement

12. Once almost all of the excess funds had been repatriated from Canada, 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 the Supreme Council of the 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, supplemental assessment of fifteen percent (15%) on ACA's pre-need life insurance policies (bringing the total assessment on these policies to forty percent (40%); and (iii) a temporary lifting of 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") (the ACA policies assumed by Royal Arcanum and Union Vie are collectively referred to as the "Assumed Policies" and the three (3) reinsurance agreements are collectively referred to herein as the "Assumption Agreements" and each individually as an "Assumption Agreement").

13. Notice of the Pre-Need Assumption Agreement, including the additional fifteen percent (15%) assessment and the lifting of the moratorium on policy surrenders, was mailed to each of the approximately 1,600 ACA pre-need life insurance policyholders on April 22, 2011. Notice in this instance was provided to the approximately 200 funeral homes who were policyholders and owners by virtue of assignment of policies from individual insureds, as well as approximately 1,400 individual policyholders who continued to own their ACA policies.

14. Upon the transfer of the Assumed Policies to Union Vie and Royal Arcanum, each Assumed Policy effectively became a certificate or insurance policy of Union Vie and Royal Arcanum, respectively, and the Assumed Policies ceased, in each case, to be policies of ACA. Union Vie and Royal Arcanum have, since the respective dates of assumption, administered the Assumed Policies, collected all premiums, answered any questions from policyholders and paid all 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 this 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 pursuant to RSA 402-C:22, I in connection with the liquidation of ACA.)

15. Because the Assumed Policies were assumed by either Royal Arcanum or Union Vie, they were 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 and as policy obligations of Union Vie or Royal Arcanum, notwithstanding the initiation of the liquidation proceeding as to ACA.

The Liquidation Proceeding

16. The Liquidation Order authorized the Liquidator to take various actions, including the approval of the Liquidator's proposed notice and proof of claim process. Pursuant to this approval: (1) in order to save on administrative expenses, the Liquidator accepted as valid claims in the ACA liquidation proceeding the full amount of all policy assessments imposed 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 requiring the filing of a proof of claim, notice of the liquidation proceeding was mailed only to the assuming insurers (i.e., Union Vie and Royal Arcanum) with respect to such claims and not to former ACA 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; 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.

17. 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

18. 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”).

19. 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. No objections were received; instead, as to each claim, the claimant either accepted the determination or the 60-day notice period expired. Accordingly, all claims identified on the Claims Schedule are 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”).

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

20. 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 recognized as valid claims in the liquidation proceeding all 24,640 Assessment Claims in the amount of \$60,822,671, representing the aggregate amount in full of all assessments imposed reducing the face amounts of all such policies.⁵ As explained below however, due to the extremely limited assets that remain in the estate, the Liquidator seeks in the Claim Motion the Court’s approval to distribute the available dollars to the pre-need policyholders who were subjected to the highest percentage assessment, notwithstanding the Liquidator’s allowance of the Assessment Claims in full. If the Court approves the relief sought by the Liquidator in the Claims Motion, the majority of ACA’s former policyholders will **not**

⁵ These figures include the Beaumont Claim.

receive a distribution and **no former ACA policyholder** will receive a distribution that amounts to more than a few cents on each dollar of allowed claim.

Classification

21. The Liquidator in the Liquidation Petition, stated his intent to seek the Court's approval to treat the Assessment Claims of former policyholders as Class II claims pursuant to RSA 402-C:44.

22. This stated intent was consistent with the provisions of the First RA Assumption Agreement and the Pre-Need Assumption Agreement, which provided that: (i) the Rehabilitator viewed the assessments on ACA's policyholders as constituting policy related funds for purposes of RSA 402-C:44 II; (ii) the Liquidator would seek approval from the Court in liquidation to transfer the assets available for this purpose to Royal Arcanum for distribution to former policyholders who had been assessed by ACA; and (iii) these assets would be applied first to reduce the 40% assessment on the pre-need policyholders to the same level as the other assessed policyholders.

23. The provisions from the First RA Assumption Agreement and the Pre-Need Assumption Agreement, as well as the Liquidator's statement in the Liquidation Petition, were based on the Liquidator's initial determination that the Assessment Claims of former policyholders were most appropriately designated as Class II claims.

24. As discussed in detail in the Claims Motion, the Liquidator now believes that the most appropriate classification for the Assessment Claims of former policyholders is Class IX.

Distribution of Assets to Policyholder Assessment Claimants

25. 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 percentage amount of the full 40% assessment imposed. As a practical matter, this means that only former pre-need policyholders of ACA will receive a distribution to reduce the forty percent (40%) assessment on their assessed policies. The available funds will likely only reduce the assessment on these policies to thirty-eight percent (38%) or thirty-nine percent (39%).

Notice Procedures and Objection Deadline

26. The Liquidator does not believe that there are any remaining claim determinations for which notice by mail is required pursuant to RSA 402-C:41, as described in more detail below. With respect to the Assessment Claims of former policyholders, the Liquidator proposes to provide notice principally by publication and providing the opportunity to object and be heard. The Liquidator believes that notice by publication is appropriate because: (i) it is not inconsistent with the requirements of RSA 402-C; and (ii) it satisfies the requirements of due process under the facts and circumstances here, both because of the nature of the claims at issue and the practical limitations on the Liquidator.⁶

Notice Requirements of RSA 402-C

27. RSA 402-C:41 provides for notice in the case of disputed claims as follows:

When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant and his attorney by first class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his objections with the court. If no such filing is made, the claimant may not further object to the determination.

28. The Liquidator does not believe that this provision requires that notice be mailed to former policyholders of ACA who hold Assessment Claims, because the Assessment Claims

⁶ Since Robert Beaumont filed a proof of claim, he will as a courtesy also be mailed a copy of the Notice of Motion and Objection Procedures (“Publication Notice”) attached as Exhibit A by first class mail.

do not constitute disputed claims. Nor does RSA 402-C otherwise expressly require notice in these circumstances.

29. The Liquidator, with the Court's approval, has accepted the Assessment Claims of former policyholders in full without requiring the submission of proofs of claim. The Liquidator has not disputed the validity or the amount of any Assessment Claim, but has accepted each claim in full as a valid claim in the estate. The Liquidator has outlined his proposal for the classification of such claims as Class IX claims and for the distribution of the assets available to such Class IX claimants in the Claims Motion. Specifically, the Liquidator has proposed to apply these limited funds beginning at the highest percentage assessment level (i.e., 40%), such that the forty percent (40%) assessment on former ACA pre-need policyholders would be reduced to the level of the assessment on ACA's other former policyholders. Although the effect of this allocation is to limit distributions to only those Assessment Claims associated with pre-need policies, this is solely a decision related to the proper distribution of limited assets, not a determination by the Liquidator to allow or disallow any portion of an Assessment Claim. In this regard, it is quite common in liquidation proceedings for claims to be approved in a particular amount, even though no distribution will be made with respect to those claims (because there are insufficient assets to pay the claims). For these reasons, the Liquidator has not "denied in whole or in part" any of the Assessment Claims, and the Assessment Claims do not constitute disputed claims for purposes of RSA 402-C:41.

30. Apart from RSA 402-C:41, which does not require individual notice to policyholders with respect to the classification or payment of the Assessment Claims, the Liquidator does not believe that any other provision of RSA 402-C requires mailed notices to ACA's former policyholders with respect to the determination of the Assessment Claims.

Due Process Notice Requirements

31. As a threshold matter, the requirements of procedural due process are only implicated where there is a deprivation of life, liberty or property by adjudication. *See Abrams v. Abrams*, 131 N.H. 522, 525 (1989) (finding that due process arguments were unavailing where there had been no deprivation of property); *see also Kakris v. Montbleau*, 133 N.H. 166, 173 (1990).

32. Under the present circumstances, the Liquidator is not proposing to deprive any of ACA's former policyholders of their property. Instead, the deprivation, if any, is properly viewed as having occurred at the time that the original assessments were imposed and made permanent, which occurred at the respective times the policies were assumed by Union-Vie and Royal Arcanum. Similarly, at that time, such policies ceased to be policies of ACA. All policyholders affected by the applicable assessments received individual, mailed notices of such assessments at the time they were imposed, including notice of the permanent nature of the assessments at the time the policies were assumed by other carriers. The distributions now being proposed will have the effect of refunding a portion of the assessments imposed on certain of ACA's former policies. Accordingly, the Liquidator does not believe that the requirements of due process are implicated by the proposed distribution.

33. However, even if the requirements of procedural due process were implicated, notice by publication (rather than mailing) wholly satisfies the standards of due process. The essential meaning of procedural due process is that: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *In re School Administrative Unit #44*, 162 N.H. 79, 87 (2011) (quoting *Petition of Kilton*, 156 N.H. 632, 638 (2007)). Under this standard, notice "must be of such nature as reasonably to convey

the required information and must be more than a mere gesture.” *Id.* Perfect notice is not required, “only notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (quoting *Kilton* 156 N.H. at 638-39).

34. In certain instances, the New Hampshire Supreme Court has determined that due process does require individual notice by mail. Most notably, in the context of a criminal proceeding, the Supreme Court has concluded that “[w]hen the name and address of a party is known, due process requires at least that notification be attempted by mail addressed personally to the party.” *State v. Hess*, 118 N.H. 491, 492 (1978). As noted above, the Liquidator does not believe that the former policyholders here will be deprived of any property interest pursuant to this proceeding, much less the type of fundamental liberty and property interests typically at issue in a criminal proceeding.

35. In most instances, however, even where mailed notice versus publication is typically preferred, whether a particular form of notice is appropriate is dependent on the facts and circumstances of the case. *See In re School Administrative Unit #44*, 162 N.H. at 87 (relevant inquiry is whether notice was fair and reasonable under particular facts and circumstances); *see also In re City of Concord*, 161 N.H. 169, 174 (2010) (“[i]t is settled law that while actual notice should be the goal, . . . it is not required in every case”) (citations omitted). Thus, where “actual notice is a *reasonable, viable option*, the use of the less reliable publication form of notice is constitutionally inadequate.” *Kakris*, 133 N.H. at 174 (1990) (emphasis added) (citing *Menonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983)). But where it is not “reasonably possible or practicable” to provide mailed notice, substitutes for individual notice

such as publication will satisfy constitutional due process standards. *See id.* at 175 (citing *Mullane vs. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950)).

36. Requiring the Liquidator to provide individual notice to each former ACA policyholder would be neither reasonable nor practicable here. Notice by mailing would not be the “inexpensive and efficient mechanism” that it may be in other cases. *See White v. Lee*, 124 N.H. 69, 75 (quoting *Menonite*, 462 U.S. at 799). Instead, notice by mail would impose a very substantial administrative expense that would significantly reduce, dollar for dollar, and perhaps, exceed the assets available for distribution to the Assessment Claims. In fact, the printing, mailing and related costs associated with providing such notices could very well eliminate any distribution that might otherwise be available. Furthermore, under the best of circumstances, policyholders are likely to receive very small distributions, such that the claim amounts in question would not justify this substantial administrative expense. Therefore, the Liquidator believes that in order to maximize the assets available for distribution it is ultimately in the best interests of the policyholders not to send them individually mailed notice.

37. Further, ACA’s Canadian Branch is fully closed and is in a position of repose with all obligations of ACA fulfilled. Providing individual, mailed notice to Canadian policyholders could effectively reopen those elements of the proceeding related to the Canadian branch. To the extent that the administrative costs directly associated with such a mailing did not entirely deplete the remaining assets of ACA, it is quite likely that “reopening” the Canadian Branch of ACA in any form would.

38. Finally, all of the policies that are the subject of the Assessment Claims have been assumed by other, more solvent insurers who will receive actual notice of the determination of

the Assessment Claims. In the case of the U.S. policies, Royal Arcanum has agreed to the notice procedures described herein pursuant to the terms of the RA Settlement Agreement.

Proposal for Notice

39. Thus, instead of individual, mailed notices to all policyholders, the Liquidator proposes to provide notice of the classification and proposed distribution of ACA's assets with respect to the Assessment Claims as follows: (a) with respect to all former policyholders of ACA and other interested persons, exclusively by publication, except as described in clause (b) or (c); (b) with respect to Royal Arcanum and Union Vie, by notice to each by regular mail of the Publication Notice; and (c) with respect to the handful of policies held by ACA directors and retirees that were not assumed, but were instead terminated by operation of law, by regular mail of the Publication Notice. Pursuant to the terms of the Settlement Agreement with Royal Arcanum, which is described in detail in the Claims Motion, Royal Arcanum has agreed not to object to the Liquidator's determination of the Assessment Claims as provided in this Motion.

40. In summary, the Liquidator believes that notice of classification and distribution of funds to policyholders of Assumed Policies exclusively by publication and by regular mail to Royal Arcanum and Union Vie is appropriate because: (i) it is consistent with the requirements of RSA 402-C:41; and (ii) it satisfies the constitutional requirements for due process because individual, mailed notice is neither reasonable nor practicable under the particular circumstances, but instead would be a very costly form of notice that would not ultimately serve the interests of the policyholders that notice is intended to protect. Specifically, notice by publication: (a) reduces the administrative expenses associated with notice and thus preserves the assets available to former policyholders for distribution; (b) avoids the need for the Liquidator to reopen ACA's Canadian Branch as a result of individual notices; (c) is consistent with the assumption of almost

all of the U.S. policies by Royal Arcanum and Union Vie; (d) reflects the circumstances that individual mailed notice to each policyholder occurred at the time their policy was assumed and the assessment was made permanent; and (e) is consistent with the Liquidator's decision set forth in the Claims Motion not to recommend additional assessments under RSA 402-C:35.⁷

41. The Liquidator proposes to provide notice by publication with regard to the determination of the Assessment Claims, including the proposed classification with respect to the Assessment Claims and the distribution to creditors of ACA's assets as follows: (a) notice would be published in the following three (3) newspapers: *The Union Leader*, *The Boston Globe*, and the *Chronicle Telegraph-Quebec*; and (b) notice would be published on 2 occasions, once on a weekday and once on the weekend, except as to the *Chronicle Telegraph-Quebec* which is a weekly publication. A form of the proposed publication notice is attached as Exhibit A ("Publication Notice"). The Publication Notice as well as copies of this Motion and the Claims Motion will be posted on both the New Hampshire Insurance Department's website, www.state.nh.us/insurance, and ACA's website, www.aca-assurance.org.

42. As stated in the Publication Notice, the Liquidator proposes 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 thereafter to file an objection. A proposed form of Order Approving Notice and Objection Procedures ("Order Approving Notice") is attached hereto as Exhibit B. The Liquidator also proposes that any such objection be required to be filed with the Clerk of this Court and served upon the Liquidator's counsel and other counsel of record so that they are actually received by all of the foregoing parties on or before the objection deadline.

⁷ As noted earlier, the Liquidator would mail the publication notice to Robert Beaumont as a courtesy.

43. In the event no objections are received by the Court by the objection deadline, the Liquidator has requested in the Claims Motion that this Court order the relief requested in the Claims Motion without further action by the Liquidator or with the requirement of 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 the Claims Motion.

Proposed Order

44. A proposed Order Approving Notice is filed herewith, and a separate proposed order has been filed with the Claims Motion seeking the substantive relief on the matters described therein, which are both consistent with the authority set forth in RSA 402-C and the requirements of New Hampshire law.

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. Entry of an Order approving the Liquidator's proposed notice and objection procedures and making findings with respect to such procedures, including, but not limited to:
- (i) finding that the proposed notice procedures, the form of the notice set forth in Exhibit A, and the manner of its publication provides adequate and sufficient notice to all interested persons of the relief sought by the Liquidator in the Claims Motion which was filed contemporaneously with the Notice Motion and the deadline for filing objections thereto;
 - (ii) finding that the proposed notice procedures, the form of the notice set forth in Exhibit A, and the manner of its publication are reasonable as a matter of law;

- (iii) finding that the proposed notice procedures, the form of the notice set forth in Exhibit A, and the manner of its publication are in the best interests of the ACA estate, the former policyholders and creditors of ACA;
- (iv) approving the provision of notice to policyholders who formerly had an ACA policy and who hold an Assessment Claim by first class mailed notice of the Publication Notice to Royal Arcanum and Union Vie and by publication of the Publication Notice as described in this Notice Motion, except for retiree policies and policies held by ACA directors which were not assumed by either carrier and who shall receive a first class mailed copy of the Publication Notice;
- (v) approving the proposed notice set forth in Exhibit A;
- (vi) authorizing and directing the Liquidator to implement the notice procedures described herein, including publication of the proposed notice set forth in Exhibit A within ten (10) days of the date of the Order set forth in Exhibit B;
- (vii) setting a deadline for the filing and service of any objections to this Notice Motion and/or the Claims Motion forty (40) days from the date of the Court's order approving the notice to be published as set forth in Exhibit B.

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

[Signatures Next Page]

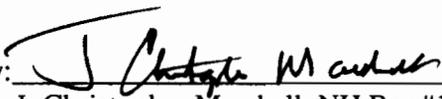
Respectfully submitted,

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

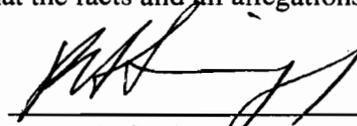
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STATE OF NEW HAMPSHIRE
MERRIMACK, SS

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 2nd day of July, 2014.



Notary Public/~~Justice of the Peace~~

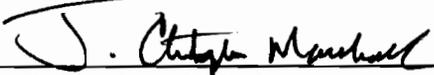
CERTIFICATE OF SERVICE

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, 6th Floor
New York, NY 10006


J. Christopher Marshall

1061680

The assets of the estate are extremely limited, and presently stand at approximately \$450,000. If the Notice Motion and Claims Motion are approved, the Liquidator will distribute these remaining assets in accordance with the priority classifications set forth in New Hampshire law and the Plan of Distribution as described in the Claims Motion. After taking into account administrative expenses (which fall within Class I, the highest priority class) and all other higher priority classifications, the Liquidator anticipates that there will be approximately \$250,000 remaining in the estate to pay policyholder assessment claims in Class IX (which is the lowest priority classification here). The Liquidator has proposed to distribute this \$250,000 beginning at the 40% level of assessment.. Because only the pre-need policyholders were assessed at 40%, and because of the very limited assets available for distribution, **the effect of this proposal is that only former pre-need policyholders of ACA will receive a distribution from the estate** (and that distribution will only reduce the assessments on these policies to 39% or 38%).

A copy of the Claims Motion and the Notice Motion, including their exhibits, may be obtained from the New Hampshire Insurance Department's website: www.state.nh.us/insurance, or ACA's Website www.aca-assurance.org or by calling 1-800-347-0014 during regular business hours (Monday-Friday, 8:00 a.m. - 4:30 p.m., EDT), or by writing to:

ACA Assurance in Liquidation
55 South Commercial Street
Manchester, New Hampshire 03101

Objections to the Claims Motion or Notice Motion, if any, must be filed with the Clerk of Court at the address below, and served upon (i) counsel for the Liquidator at their respective addresses shown below, and (ii) all other counsel of record (whose names and addresses may be obtained from the office of the Clerk), such that the Clerk of Court and all such counsel actually receive the objection on or before _____, 2014 at 4:00 PM, prevailing Eastern time.

If an objection to the Motion is timely filed with the Court, a hearing will be scheduled by the Court. Notice of any such hearing will be provided to the objecting party(ies) and counsel for the Liquidator and other counsel of record by mail. If no objection is timely filed with the Court, the Liquidator has requested that the Court issue an order approving the relief sought as reflected in the proposed order included as part of the Claims Motion.

Clerk of Court:

William McGraw, Clerk
Merrimack Superior Court
163 North Main Street
P.O. Box 2880
Concord, NH 03302-2880

Counsel to Liquidator:

Steven J. Lauwers, Esq.
Rath Young & Pignatelli
One Capital Plaza
Concord, NH 03302-1500
sjl@rathlaw.com

J. Christopher Marshall, Esq.
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
christopher.marshall@doj.nh.gov

THIS NOTICE IS HEREBY PROVIDED BY ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF THE STATE OF NEW HAMPSHIRE, AS LIQUIDATOR OF ACA ASSURANCE, AS OF THE DATE INDICATED BELOW.

Dated: _____, 2014

EXHIBIT B

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
NOTICE AND OBJECTION PROCEDURES**

After having considered the Verified Motion to Approve Notice and Objection Procedures (“Notice Motion”) filed by the Commissioner of Insurance as Liquidator of ACA Assurance, the Court hereby finds and orders as follows:

WHEREFORE, the Verified Motion to Approve Notice and Objection Procedures is GRANTED and the Court finds and orders as follows:

(i) the proposed notice procedures, the form of the notice set forth in Exhibit A, and the manner of its publication provides adequate and sufficient notice to all interested persons of the relief sought by the Liquidator in the Claims Motion which was filed contemporaneously with the Notice Motion and the deadline for filing objections thereto;

(ii) the proposed notice procedures, the form of the notice set forth in Exhibit A, and the manner of its publication are reasonable as a matter of law;

(iii) the proposed notice procedures, the form of the notice set forth in Exhibit A, and the manner of its publication are in the best interests of the ACA estate, the former policyholders and creditors of ACA;

(iv) the provision of notice to policyholders who formerly had an ACA policy and who hold an Assessment Claim by mailing by first class mail Exhibit A to Royal Arcanum and Union Vie and by publication as described in this Notice Motion, except for retiree policies and policies held by ACA directors which were not assumed by either carrier and who shall receive Exhibit A by first class mail is hereby approved;

(v) the proposed notice as set forth in Exhibit A to the Notice Motion is hereby approved;

(vi) the Liquidator is hereby authorized and directed to implement the notice procedures approved herein, including publication of the proposed notice set forth in Exhibit A within ten (10) days of the date of this Order;

(vii) a deadline is hereby set for the filing and service of any objections to this Notice Motion and the Verified Motion to Approve All Remaining Claims Determinations, Settlement Agreements, The Mandated RSA 402-C:35 Report, The Proposed Plan of Liquidation and The Distribution of Assets forty (40) days from the date of this Order;

(viii) if any objection is timely filed with the Court within such 40-day period, the Court shall schedule a hearing to consider such objection.

SO ORDERED,

Date: _____
Time: _____

By: _____
Presiding Justice