

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of ACA Assurance

Docket No. 217-2006-EQ-00380

**MOTION FOR DISPOSAL OF RECORDS, DISCHARGE OF LIQUIDATOR  
AND TERMINATION OF PROCEEDING**

Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire (the “Commissioner”), in his capacity as Liquidator (the “Liquidator”) of ACA Assurance (“ACA” or “Company”), hereby moves that the Court enter an order (a) approving the disposal of records of ACA; and (b) discharging the Liquidator and terminating this proceeding. As reasons therefore, the Liquidator states as follows:

1. ACA is a New Hampshire domiciled fraternal benefit society, subject to the provisions of RSA Chapter 418. Following two rehabilitation proceedings the first of which started on October 11, 2006, this Court placed ACA into liquidation by Order dated October 12, 2012, which Order was entered by the Clerk on October 22, 2012, ACA (the “Liquidation Order”), and appointed the Commissioner Liquidator of ACA. Since that time, the Liquidator has been liquidating the Company in accordance with the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (the “Act”).

2. On July 3, 2014, the Liquidator filed with the Court an omnibus motion which included a recitation of the factual background of this eight year - long proceeding. The motion sought an order from the Court for the approval, inter alia, of (i) the remaining claims and related

settlement agreements with respect to ACA's estate; and (ii) the Proposed Plan of Distribution and the distribution of ACA's assets to claimants with allowed claims in ACA's estate after establishment of a reserve not to exceed \$52,000 for the Liquidator's administration costs (the "Claims Motion"). Simultaneous with the filing of the Claims Motion, the Liquidator also filed with the Court a verified motion to approve notice and objection procedures (the "Notice Motion") related to the relief requested in the Claims Motion. By orders dated July 10, 2014 and September 9, 2014 (as to the "Notice Order" and the "Claims Order", respectively), the Court approved the Notice Motion and, thereafter, the Claims Motion. Since that time, the Liquidator has completed the distribution of ACA's assets in accordance with the Plan of Distribution. Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed in the Claims Motion.

3. As outlined in the Claims Order, the distribution to creditors entailed first the payment in full by the Liquidator of all outstanding administrative expenses, subject to a holdback by the Liquidator of \$52,000 to pay administrative expenses incurred to conclude the liquidation proceeding. After payment of the outstanding administrative expenses, including approved administrative expenses of Royal Arcanum, the Liquidator paid all Class V allowed claims in full, including payment of the claim of the Company's former landlord in the allowed amount of \$125,000. Thereafter, the Liquidator paid in full all approved Class VIII claims which totaled \$30. All claims of a higher priority classification having been paid in full, payment in the amount of \$250,000 reflecting the remainder of ACA's assets (excluding the holdback) was transmitted by the Liquidator to Royal Arcanum for distribution or crediting to former ACA policyholders in partial satisfaction of the Class IX Assessment Claims of such policyholders. Royal Arcanum has represented that it has distributed the 250,000 by check or crediting to

former ACA policyholders in partial satisfaction of the Class IX Assessment Claims. A total of 287 checks were issued on or about November 5, 2014 to 1,381 payees totaling \$64,331.34 representing 1.56% of the death benefit post the 40% assessment of \$4,113,758.41. In addition a total of \$185,668.66 was electronically credited to 4,157 active policies with a death benefit post the 40% assessment of \$11,868,741.68. In anticipation of the closure of ACA's estate, the checks all contained a legend which stated that the checks would need to be cashed within forty-five days.

4. The Act provides that unclaimed funds remaining at the time the Liquidator is ready to apply for discharge shall be deposited with the state treasurer. RSA 402-C: 47, I. As discussed in the Claims Motion, in connection with the RA Agreement, Royal Arcanum assumed responsibility for the distribution of ACA's liquidation assets to former ACA pre-need policyholders via a credit against their outstanding assessment for those policyholders still alive with in-force policies, and for pre-need policyholders who had died, a distribution by check to their beneficiary in an amount equal to the credit the policyholder would have received if still living. The RA Agreement also provided that Royal Arcanum (i) would notify the Liquidator of any distribution that was not claimed within 45 days of such distribution; (ii) would pay any such unclaimed funds to the New Hampshire State Treasurer, in accordance with RSA 402-C:47; and (iii) would act in this capacity pursuant to the delegated authority of the Liquidator. As of December 15, 2014, Royal Arcanum reported to the Liquidator that the total amount of unclaimed funds is \$692.56 which is comprised of 30 un-cashed checks. Royal Arcanum has committed to transmit to the State Treasurer on December 31, 2014 any funds that remain unclaimed by that date.

5. Attached as Exhibit A is a closing Statement of Assets and Liabilities and Cash Receipts and Disbursements for the liquidation estate of ACA Assurance. The right column sets out the period of time from May 1, 2014 (which picks up from the last cash statement filed with the Court with the Claims Motion on July 3, 2014) through September 8, 2014 (the last date before the Court's issuance of the Claims Motion Order). The left column sets out the period from the date of the Court's Claims Motion Order (September 9, 2014) through the projected termination of the liquidation proceeding. The total amount of all claims and administrative expenses for the period from September 9, 2014 through the termination of the proceeding, including accruals for such administrative expenses for activities to be conducted, will equal the amount of the remaining assets of ACA. This will leave the remaining assets of the liquidation estate at zero dollars (\$0.00) after satisfaction of all obligations, including administration costs, which includes the services of the staff of The Home Insurance Company in Liquidation.

6. The Liquidator will file ACA's Form 990 for 2014 with the Internal Revenue Service. The Form 990 is a federal informational return filed by an organization exempt from tax and provides information about receipts, disbursements and ACA's activities since 2013, including final disposition of ACA's assets. The 2014 Form 990 is expected to be the final such return to be filed on behalf of the Company.

7. As the claims against ACA have all been determined and the assets of ACA have all been distributed to creditors of the estate except for the remainder of the aforementioned administrative expense reserve, the Liquidator now seeks approval for the disposal of ACA's records, the discharge of the Liquidator, the dissolution of the Company and the termination of this proceeding in accordance with the Act

8. With the approval of the Court, the Liquidator may dispose of records of an insurer in liquidation that are no longer useful. The applicable section of the Act, RSA 402-C:50, provides:

Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court what records should be retained for future reference and what should be disposed of. Until further order of the court, the commissioner shall keep all records the court orders preserved and shall destroy the remainder whether or not the records have been photographed or otherwise reproduced.

ACA's records concerning policies and any related claims were transferred to The Supreme Council of the Royal Arcanum ("Royal Arcanum") and to L'Union- Vie Compagnie Mutuelle D'Assurance ("L'Union Vie") in connection with their assumption of ACA's business. The records which remain are contained in approximately 460 boxes which are held in offsite storage, along with approximately 158 boxes which are stored on site at ACA's office. The boxes include files dating from 1909 to present which include various accounting and accounts payable files, processed checks, annual statements, reinsurance contract files, employee pension and benefit files, fraternal chapter activity files, cash surrender records, files containing board of directors meeting minutes, agency commission files, various files relating to ACA's Canadian operations, including files regarding Tour Med, and files regarding legal matters, including files concerning the sale of ACA's business. The only paper records concerning ACA that are currently being used are the financial, tax and corporate records supporting ACA's final, 2014 Form 990 tax return to be filed in 2015. The Liquidator also has imaged records of ACA's liquidation, including records of pleadings and orders in the liquidation proceeding, lists of the allowed claims, proofs of claim and notices of determination, and records of the distribution.

9. Now that the claims have been determined and the assets collected and distributed, the records of ACA are generally no longer useful. The only exceptions are financial, tax and corporate records supporting ACA's tax return, which records will be maintained for the indeterminate period they may be needed. Documents that the Liquidator identifies as confidential or commercially sensitive will be shredded.

10. The Liquidator also recommends pursuant to RSA 402-C:50 that the imaged records of ACA be disposed of or deleted except for (1) an imaged record of the filings and orders in the liquidation proceeding itself, which will continue to be posted on the New Hampshire Insurance Department's ("NHID") website and will be retained at the NHID, and (2) an imaged record of the allowed claims and the distribution, which will be retained at the NHID in the event it is needed by the state treasurer to address unclaimed funds, as set forth in paragraph 4 above.

11. The Act authorizes dissolution of the corporate existence of the insurer in liquidation by order at any time during the liquidation or, by operation of law, upon discharge of the liquidator. RSA 402-C:23. The Liquidator recommends that ACA's corporate existence be dissolved at the time the Liquidator is discharged. A provision to that effect is included in the proposed form of order submitted herewith.

12. Discharge of Liquidator and termination of proceeding. The Act provides for the discharge of the Liquidator and termination of the proceeding when assets have been collected and distributed, as follows:

When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for a discharge. The court may grant the discharge and make any other orders deemed appropriate, including an order to transfer to the state treasury for the credit of the insurance department any remaining funds that are uneconomic to distribute. RSA 402-C: 48.

As previously described, the assets of the estate have been collected and distributed, and the Liquidator has taken the remaining steps necessary to bring this proceeding to a close. The Liquidator accordingly request that the Court grant this motion, discharge the Liquidator and the Special Deputy Liquidator, and issue an order terminating this proceeding in the form submitted herewith.

WHEREFORE, the Liquidator respectfully requests that this Court enter an order in the form submitted herewith:

- A. Granting this motion;
- B. Authorizing the disposal of the records of ACA and the liquidation, with those records identified by the Liquidator as confidential or commercially sensitive being shredded and specified records to be turned over to the Liquidator of ACA or imaged and provided to the NHID;
- C. Providing for the dissolution of ACA's corporate existence;
- D. Providing for the discharge of the Liquidator and termination of this proceeding; and
- E. Granting such other and further relief as justice may require.

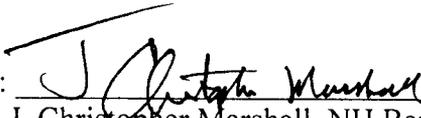
Respectfully submitted,

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

By his attorney,

JOSEPH A. FOSTER  
ATTORNEY GENERAL

December 23, 2014

By:   
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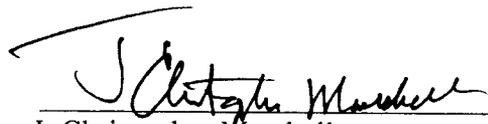
**CERTIFICATE OF SERVICE**

I, J. Christopher Marshall, do hereby certify that on December 23, 2014, I served a true copy of the foregoing, by first class mail, postage prepaid, to:

Roger A. Sevigny  
NH Commissioner of Insurance  
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ACA Assurance in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, NY 10006

  
J. Christopher Marshall

1135304

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

	<u>September 9, 2014 (1)</u> to Projected Termination of the Proceeding	<u>May 1, 2014</u> to <u>September 8, 2014</u>
<b>Beginning Cash</b>	<b>\$408,665</b>	<b>450,643</b>
<b>Cash Receipts:</b>		
Commission Income	1,550	2,779
<b>Total Cash Receipts</b>	<u>1,550</u>	<u>2,779</u>
<b>Cash Disbursements - Administrative Expenses</b>		
Legal Expenses	-	25,476
Consultant and Outside Service Expenses	977	11,897
Bank Fees	6	232
Publication Costs	-	6,028
Other Expenses	656	1,124
<b>Cash Disbursements - Administrative Expenses</b>	<u>1,638</u>	<u>44,757</u>
<b>Excess of Receipts Over (Disbursements) before Distribution to Creditors and Accruals for Administrative Expenses</b>	<u>(88)</u>	<u>(41,978)</u>
<b>Distribution to Creditors:</b>		
Class I Administrative Expense Claims	22,884	-
Amount to be Distributed to Class V Claimants	124,950	-
Amount to be Distributed to Class VIII Claimants	30	-
Amount to be Distributed to Class IX Claimants	250,000	-
<b>Total Distribution to Creditors</b>	<u>397,864</u>	<u>-</u>
<b>Accruals for Administrative Expenses</b>		
Legal Expenses	4,000	-
File Storage and Destruction	2,292	-
Record Storage/IT	0	-
Consultant and Outside Service Expenses	4,421	-
<b>Total Accruals for Administrative Expenses:</b>	<u>10,713</u>	<u>-</u>
<b>Ending Cash - Termination of the Proceeding</b>	<u><u>0</u></u>	<u><u>\$408,665</u></u>

(1) September 9, 2014 is the date of Court approval of the Plan of Distribution.

**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. Incurred but unpaid Class I (Administrative Expense) liabilities, which are in a creditor class superior to all other classes, are presented in this financial statement.

THE STATE OF NEW HAMPSHIRE

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SUPERIOR COURT

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Docket No. 217-2006-EQ-00380

**[PROPOSED]**

**ORDER FOR DISPOSAL OF RECORDS, DISCHARGE OF LIQUIDATOR  
AND TERMINATION OF PROCEEDING**

Upon consideration of the Motion for Disposal of Records, Discharge of Liquidator and Termination of Proceeding, filed by Roger A. Sevigny, Commissioner of Insurance of the State of New Hampshire, in his capacity as Liquidator (“Liquidator”) of ACA Assurance (“ACA”), it is hereby FOUND AND ORDERED as follows:

- A. The Liquidator’s Motion for Order for Disposal of Records, Discharge of Liquidator and Termination of Proceeding is granted;
- B. The Liquidator is authorized to dispose of the records of ACA and of the liquidation, with those records identified by the Liquidator as confidential or commercially sensitive being shredded and specified records to be turned over to the Liquidator or ACA or imaged and provided to the Insurance Department as described in the Motion;
- C. ACA Assurance is dissolved;
- D. The Liquidator is discharged;
- E. This proceeding is terminated.

SO ORDERED

Dated: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice