THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

In the Matter of the Rehabilitation of ACA Assurance
06-E-380

MOTION FOR APPROVAL OF PLAN OF REORGANIZATION AND ASSUMPTION REINSURANCE AGREEMENTS

The Rehabilitator submits this Motion for approval of its Plan of Reorganization (the "Plan") and two assumption reinsurance agreements pursuant to RSA 402-C:17, V with respect to the Rehabilitation of ACA Assurance (the "Rehabilitation").

RSA 402-C:17, V authorizes the Rehabilitator to prepare a plan "for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer." The Rehabilitator is seeking the Court's approval of the Plan.

The Plan outlines generally the reorganization actions that the Rehabilitator is proposing to take. Where actions are well defined or well known, the Plan includes substantial detail. Future actions that are less well defined at this time are described in a more general or open-ended fashion.

One very important aspect of the Plan is the assumption reinsurance of almost all of ACA Assurance's Canadian policies and the transfer of approximately one-half of ACA Assurance's U.S. policies pursuant to two agreements with two different assuming insurers. Agreements have been reached with these assuming insurers, but they are both conditioned, among other things, upon this Court's approval of the Plan and of the

agreements themselves. In addition, the final language of the Canadian agreement remains subject to amendment based upon final comments from Canadian insurance regulators.

The Rehabilitator believes that implementing these assumption reinsurance agreements in the context of a court-approved plan of rehabilitation is in the best interests of the Company and its policyholders.

I. BACKGROUND

1. Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire (the "Commissioner") was appointed Rehabilitator of ACA Assurance ("ACA" or the "Company") pursuant to an Order of this Court dated September 8, 2008 (the "Rehabilitation Order"). This Court has jurisdiction over this matter pursuant to RSA 402-C:4, 5 and 15.

2. ACA is a fraternal benefit society, subject to the provisions of RSA Chapter 418 and chartered under the laws of the State of New Hampshire with its principal offices at 55 South Commercial Street, Manchester, NH 03101. ACA is licensed by, and subject to regulation by, the New Hampshire Insurance Department (the "Department"). ACA conducts business both in the United States and Canada.

3. The Plan is authorized pursuant to RSA 402-C:17, V. The Plan is appropriate given the broad authority granted to the Rehabilitator under the statute and the current financial condition and circumstances of ACA. The Rehabilitator believes that the Plan, including each of the transactions contemplated by the Plan, is in the best interests of the Company and its policyholders. The Rehabilitator intends to notify the public of this Motion by posting a copy of the Motion on the Department's website.

4. The goals of the Rehabilitator, as stated in the Rehabilitator's first report filed on October 17, 2008, remain as follows: (i) to place the U.S. and the Canadian policyholders of ACA with financially stronger, more stable insurance companies; (ii) to repatriate to the United States a significant amount of excess assets of the Company that are being held in Canada so that U.S. policyholders of ACA can be treated substantially the same as Canadian policyholders; and (iii) to reduce dramatically the continuing operating expenses of the Company.

5. In light of these goals, the Plan contemplates the transfer of large blocks of the U.S. and Canadian insurance policies issued by the Company to more financially stable insurance companies and the reduction of expenses through cuts in staff, renegotiation or termination of leases and other agreements and measures.

6. The Plan also reflects the implementation of the assessment on ACA policies and the moratorium on policy loans and surrenders authorized in each case by this Court in the Rehabilitation Order. The reinsurance agreements with the assuming insurance companies both require that the twenty-five percent (25%) assessment become permanent with respect to the policies being assumed thereunder. The moratorium on policy loans and surrenders with respect to these assumed policies will also be lifted at the time these reinsurance transactions are closed.

7. Pursuant to RSA 418:18 IV and the Constitution and By-Laws of ACA, the board of directors of ACA has the authority to assess policies in the event of any impairment to ACA's reserves. As a not-for-profit fraternal benefit society formed pursuant to RSA 418:1, ACA is not a member of any guaranty fund or association in the State of New Hampshire nor, to the Rehabilitator's knowledge, the guaranty fund or

association of any other state or Canadian province. See generally, RSA 404-B:3, RSA 404-D:3 II (c) and RSA 408-B:4 VIII (c). As a result, ACA's policyholders/insureds are not entitled to the benefits of proceeds from such funds or associations. ACA instead relies upon its ability to assess policyholders in the event its reserves are impaired.

8. In September 2008, the board of directors of ACA, in consultation with the Department, made a determination that ACA's reserves were impaired and authorized an assessment of up to twenty-five percent (25%) on the face amount of all ACA life and annuity policies in the U.S. and Canada. At the request of the Department, the board of directors delegated to the Commissioner the authority to establish the final amount of the assessment, to apply the assessment to various types of ACA insurance policies in the United States and Canada, and to notify policyholders accordingly. The Rehabilitation Order authorized the Rehabilitator to implement this assessment on behalf of the board of directors of the Company. The Rehabilitator by order effective as of September 8, 2008, then imposed a 25% assessment on all ACA policies, with the exception of: (i) U.S. annuities that were tax-qualified annuities; (ii) certain Canadian annuities that were more in the nature of investment contracts; and (iii) certain Canadian life, accident and disability policies that were so heavily reinsured that the benefit of the assessment would almost exclusively have been conferred upon reinsurers. The reinsurance agreements with the assuming insurance companies require in each case that the twenty-five percent (25%) assessment become permanent at the time the policies are assumed.

9. The Rehabilitation Order also authorized the Commissioner pursuant to RSA 402-C:17 II and V to impose a moratorium upon loan and cash surrender rights under all of ACA's policies, for such period and to such extent as the Commissioner deemed

necessary. The Commissioner imposed a moratorium on loans and surrenders of ACA policies for an indefinite period of time by order dated September 9, 2008. This moratorium remains in effect, although hardship surrenders are being considered and periodically granted on a case-by-case basis. It is anticipated that the moratorium on policy loans and surrenders will be lifted at the time ACA policies are assumed by other insurers, including under the agreements identified above.

II. THE PLAN OF REORGANIZATION

10. The Plan is set forth in detail in Exhibit A. The Plan is being filed with the Court **under seal** since it contains confidential and proprietary information, the public knowledge of which is likely to cause substantial and irreparable harm to the rehabilitation. Summary information from the Plan has been included in this Motion. As noted above, the Rehabilitator intends to notify the public of this Motion by posting a copy of the Motion on the Department's website.

III. TRANSFER OF U.S. AND CANADIAN POLICIES

A. Canadian Policies – L'Union-Vie

11. The key elements of the definitive agreement between L'Union-Vie and the Rehabilitator (the "Union Vie Agreement"), a copy of which is attached hereto as Exhibit B, are as follows:[1]

- **Assumption and Consideration** – Union Vie agrees to assume the Policy Liabilities under certain policies issued by the Canadian branch of ACA in exchange for Consideration of approximately C$6.15 million from ACA. The

[1] Capitalized terms used with respect to the Union Vie Agreement and not otherwise defined in this Motion shall have the meanings attributed to such terms in the Union Vie Agreement.

policies that Union Vie is assuming are described in Exhibit B of the Union Vie Agreement.

- **Consideration Adjustments** – The Consideration is: (A) subject to upward adjustments by the amount of (i) premiums received by ACA with respect to the policies between September 30, 2008 (the Effective Date) and the Closing Date, (ii) unpaid dividends on deposits, unearned and advance premiums and unpaid commissions equal to C$45,942, (iii) C$250,448 for the purpose of paying incurred but unpaid claims, and (iv) reinsurance recoveries received on or after the Effective Date and prior to the Closing Date for claim payments made by ACA on or after the Effective Date and prior to the Closing Date; and (B) subject to downward adjustments by the amount of (i) annuity and death claim payments (gross of reinsurance) and surrenders made by ACA to policyholders or claimants between the Effective Date and the Closing Date, (ii) policy loans carried on ACA's books with respect to the policies as of the Closing Date, (iii) any renewal commissions owed or paid by ACA that are associated with premiums received between the Effective Date and the Closing Date, (iv) reinsurance premium payments made to reinsurers with respect to periods on or after the Effective Date, and (v) payments under the Impartition Agreement from the Effective Date through the Closing Date.
- **Excluded Liabilities** – Union Vie will not assume Excluded Liabilities. Such Excluded Liabilities include, but are not limited to, noncompliance by ACA or the Rehabilitator, taxes on ACA (except premium taxes incurred after the Union Vie Agreement takes effect), litigation, contracts, employment and

pension plan-related liabilities of ACA,and any other liability not expressly assumed by Union Vie.

- **Assessments** – The policies assumed under the Union Vie Agreement will be transferred subject to, and net of, all assessments in place as of the Effective Date, and the assessments will become permanent on the Effective Date of the Union Vie Agreement.

- **Liabilities/Litigation** – On the Closing Date, Union Vie will assume all Policy Liabilities.. ACA will remain a party to all outstanding litigation with respect to the assumed policies. Except for litigation relating to Excluded Liabilities, Union Vie will assume responsibility for the handling of all outstanding and new litigation relating to the assumed ACA policies, will succeed to all defenses of ACA and be liable for legal and other costs. Union Vie will keep the Rehabilitator and ACA advised of the status of any such litigation. ACA and the Rehabilitator will retain any defenses in connection with the Excluded Liabilities.

- **Assumption Certificates** – After the closing, Union Vie will issue an assumption certificate to each policyholder, notifying the policyholder of its assumption of the policy and directing any future correspondence to Union Vie.

- **Impartition Agreement** – The Impartition Agreement currently in effect between ACA and Union Vie for the administration of certain ACA policies by Union Vie will be terminated as of September 30, 2008, the Effective Date of the Union Vie Agreement. ACA will pay for the services provided from the Effective Date until the Closing Date, but will receive a corresponding credit

with respect to the consideration to be paid to Union Vie under the Union Vie Agreement.

- **Court and Commissioner Orders as to Union Vie** – The Union Vie Agreement requires as closing conditions that certain orders of this Court and of the Commissioner be issued, as follows: (i) an order of this Court approving the Union Vie Agreement and all transactions contemplated by the Union Vie Agreement and explicitly barring all claims against Union Vie for Excluded Liabilities; and (ii) an order of the Commissioner making permanent all assessments on the policies to be assumed by Union Vie under the Union Vie Agreement, the issuance of such order being conditioned upon the approval by this Court of the Union Vie Agreement. Because the Union Vie Agreement contains such conditions to closing, the Rehabilitator requests that, as part of this Court's Order approving the Union Vie Agreement, this Court bar claims against Union Vie for the Excluded Liabilities identified in the Union Vie Agreement.

- **Remaining Regulatory Comments and Approvals** – Because the Union Vie Agreement provides for the assumption reinsurance of Canadian insurance policies, the prior approval of the Superintendent of Financial Institutions of Canada ("OSFI") and the Canadian Minister of Finance are required. An executed version of the Union Vie Agreement was filed with OSFI, and OSFI has provided a series of comments. The Union Vie Agreement attached to this Motion as Exhibit B is the current version reflecting OSFI's comments. It is possible that OSFI will have further comments, but these comments are not

likely to be substantive. The Rehabilitator is seeking the Court's approval of the attached draft, together with an authorization for the Rehabilitator to make additional changes to the Union Vie Agreement that are: (i) required by OSFI, and (ii) in the judgment of the Rehabilitator, not material. To the extent the Rehabilitator determines that OSFI's further changes to the Union Vie Agreement are material, the Rehabilitator intends to return to this Court for further approval of such changes.

- **Closing** – The Closing of the Union Vie Agreement is scheduled to occur 3 business days after the satisfaction of the last closing condition. Closing is subject to the following conditions: (i) approval by the Rehabilitator; (ii) approval of the board of directors of Union Vie and non-objection by the board of directors of ACA; (iii) approval of this Court, including a Court approved bar on all claims against Union Vie for the Excluded Liabilities identified in the Union Vie Agreement; (iv) obtaining any other required regulatory consents, including OSFI approval; (v) the performance of all obligations by each party and (vi) confirmation of no material or adverse change from any reinsurers of ACA with respect to the policies being assumed.

- **Termination** – The Agreement may be terminated by ACA prior to the Closing Date if the Rehabilitator determines that ACA will not be able to obtain any of the approvals required for closing, or by either party because of a failure to satisfy a closing condition or a material breach that would prevent the satisfaction of a closing condition.

The Rehabilitator believes that the Union Vie Agreement is in the best interests of the Company and its policyholders.

B. Certain U.S. Policies – Royal Arcanum

12. The key elements of the definitive agreement between the Supreme Council of the Royal Arcanum and the Rehabilitator (the "Royal Arcanum Agreement"), a copy of which is attached hereto as Exhibit C, are as follows[2]:

- **Assumption** – Royal Arcanum agrees to assume the liabilities under all of ACA's U.S. policies, except for pre-need life insurance policies, in return for receiving payment of the Net Statutory Reserves of approximately $22.7 million associated with such assumed policies and certain other adjustments described below.
- **Consideration** – Net Statutory Reserves are equal to the statutory loss reserves of ACA on a U.S. statutory accounting basis with respect to the ACA policies to be assumed, net of reinsurance, policy loans and assessments; plus unearned premium reserves as of the Closing Date less unearned commission expenses. The Net Statutory Reserves amount will be: (A) increased (i) by $125,000 on the Closing Date due to additional information regarding the impact of the Asset Adequacy Test on the calculation, (ii) by IBNR of $58,000, (iii) by $76,055 of advance premiums, (iv) by the amount of premiums received by ACA between the Calculation Date and the Closing Date, (v) by the amount of interest accrued on annuities, dividends and life insurance policies from the

[2] Capitalized terms used with respect to the Royal Arcanum Agreement, but not defined in this Motion, shall have the meanings ascribed in the Royal Arcanum Agreement.

Calculation Date to the Closing Date, and (vi) by the increase on reserves on paid up policies of $1,298; and (B) reduced (i) by the amount of Net Statutory Reserves associated with all payments made by ACA to certificate holders/owners/beneficiaries between the Calculation Date and Closing Date, (ii) dollar for dollar for all policy loans made by ACA to certificate owners between the Calculation Date and Closing Date, (iii) by the full amount of the reserve applicable to any certificates that are surrendered to ACA between the Calculation Date and Closing Date, (iv) dollar for dollar by any amount owed or paid by ACA with respect to any renewal commissions accrued prior to the Closing Date on the certificates (which will be ACA's responsibility to pay) and (v) by $355,935, the amount of the actuarially determined deferred premiums as of the Calculation Date with respect to the certificates to be assumed.

- **Excluded Liabilities** – Royal Arcanum will not assume certain liabilities under the Royal Arcanum Agreement, such as noncompliance by ACA or the Rehabilitator, taxes on ACA (except premium taxes incurred after the Royal Arcanum Agreement takes effect), litigation, contracts, employment and pension plan-related liabilities of ACA, and any other liability not expressly assumed.

- **Assessments** – The policies assumed under the Royal Arcanum Agreement will be transferred subject to the assessments imposed by ACA and the assessments will become permanent on the effective date of the Agreement. The Rehabilitator is of the view that the assessments should be treated as policy

related claims and not preferred ownership claims pursuant to RSA 402-C:44. In the Royal Arcanum Agreement, the Rehabilitator has stated his intention, in the event of a future liquidation of ACA, to seek this Court's approval to treat the remaining assets of ACA after costs and expenses as policy related claims under RSA 402-C:44, II. If the Court agreed, at that time and in such event, to treat the remaining assets of ACA as such, the Commissioner has agreed in the Royal Arcanum Agreement to transfer such assets to Royal Arcanum, provided that (i) such assets shall be segregated by Royal Arcanum for the sole benefit of owners of the Assumed Certificates and (ii) the exclusive use of such assets shall be to restore the reduction of the Assumed Certificates resulting from the assessment.

- **Liabilities/Litigation** – Effective on the Closing Date, Royal Arcanum will assume all liabilities on the Assumed Certificates, except for Excluded Liabilities. ACA will remain a party to all outstanding litigation with respect to Assumed Certificates. Except for litigation relating to Excluded Liabilities, Royal Arcanum will assume responsibility for the handling and outcome of all outstanding and new litigation relating to the Assumed Certificates, will succeed to all defenses of ACA and be liable for judgments and costs. Royal Arcanum agrees to keep the Rehabilitator and ACA advised of the status of any such litigation. ACA and the Rehabilitator will retain any defenses in connection with the Excluded Liabilities.

- **Assumption Certificates** – After the Closing, Royal Arcanum will issue an Assumption Certificate to each policyholder, notifying the policyholder of

Royal Arcanum's assumption of the policy and directing any future correspondence to Royal Arcanum.

- **Excess Premiums** – Royal Arcanum agrees to apply material "Excess Premiums" to the benefit of the owners of the Assumed Certificates through any combination of premium reductions, increased benefits, surplus refunds or other methods as determined by Royal Arcanum in its discretion. "Excess Premiums" are defined as the amount by which aggregate premiums for the 60 months following the Closing Date exceed direct expenses, benefits and contributions to maintain statutory reserves incurred by Royal Arcanum related to the Assumed Certificates and the transactions pursuant to the Royal Arcanum Agreement.
- **Sublease** – Royal Arcanum has agreed to sublease ACA's space at 55 South Commercial Street in Manchester, NH for an initial term and optional renewal term to run concurrent with the master lease.
- **ACA Membership** – All ACA Chapters in the United States will be chartered as Royal Arcanum Councils and the assets of these Chapters transferred to Councils effective on the Closing Date. All ACA Chapter members in the United States shall become members of the corresponding Royal Arcanum Council as of the Closing Date. The ACA Board shall select one individual to serve in an advisory capacity to the Royal Arcanum Executive Committee until the Royal Arcanum convention next following the Closing Date.

- **Closing** – The Closing is scheduled to occur no later than April 30, 2009. Closing is subject to the following conditions: (i) approval of the transactions by the Commissioner and receipt by Royal Arcanum of a license to do business in New Hampshire from the Commissioner; (ii) approval of the Agreement and transactions by the Executive Committee of Royal Arcanum; (iii) non-objection to the Agreement and transactions by the ACA Board of Directors; (iv) approval of this Court, which approval bars claims against Royal Arcanum for the Excluded Liabilities identified in the Royal Arcanum Agreement; (v) receipt of other consents and approvals from regulatory authorities in form and substance reasonably acceptable to the Rehabilitator and Royal Arcanum; (vi) all obligations and covenants of the parties to be performed before Closing will have been performed; and (vii) receipt of confirmation by reinsurers that no material and adverse change will have occurred or be imminent with respect to current reinsurance treaties applicable to the policies being assumed by Royal Arcanum.

- **Pre-Need Life Policies** – The Royal Arcanum Agreement also provides that within twelve (12) months of the Closing Date, ACA and Royal Arcanum may enter into a further agreement to transfer to Royal Arcanum all pre-need life insurance policies of ACA that were previously excluded from the Royal Arcanum Agreement upon the same terms and conditions as are set forth in the Royal Arcanum Agreement; provided that the subsequent transfer of the pre-need life insurance policies to Royal Arcanum will be subject to ACA having sufficient liquid assets to transfer the policies and provided further that this

transfer shall occur no later than eighteen (18) months after the initial Closing Date. The parties also agree that the Rehabilitator may lift the moratorium on the pre-need life insurance policies at any time, such that there may be fewer policies at the time of transfer due to surrender, lapse or other action.

- **Termination** – The Royal Arcanum Agreement may be terminated by ACA prior to Closing if the Rehabilitator determines that ACA will not be able to obtain any of the approvals required for Closing, or by either party because of a failure to satisfy a closing condition or a material breach that would prevent the satisfaction of a Closing condition.

The Rehabilitator believes that the Royal Arcanum Agreement is in the best interests of the Company and its policyholders.

IV. REPATRIATION OF CANADIAN ASSETS

13. As noted above, the Rehabilitator is in the process of seeking the repatriation of substantial assets of ACA from Canada, the transfer of which necessitate the resolution of several issues with Canadian regulators.

14. Because these assets are largely held to secure Canadian policy liabilities, the first step towards repatriation is the successful closing of the assumption of certain policies issued by the Canadian branch of ACA by L'Union-Vie. The Rehabilitator and Union Vie reached and executed a definitive agreement. In the process of seeking the necessary approvals (including from this Court), OSFI has requested certain changes that are included in the version of the Union Vie Agreement submitted to this Court in Exhibit B.

15. ACA is also in the process of addressing substantial Canadian tax issues related to (i) the assessment and transfer of ACA's Canadian policies, and (ii) unresolved tax issues from prior periods in the amount of approximately $2 million. The Rehabilitator's goal is to minimize or eliminate any additional Canadian taxes owed by ACA. However, resolution of these tax issues is necessary before repatriation of these remaining funds can occur.

16. ACA must also address concerns expressed by the Quebec Pension Board regarding the participation of certain of ACA's Canadian employees in ACA's U.S. pension plan.

17. Finally, ACA is currently in the process of selling an office building in Canada.

18. Because of the various approvals required from and issues that need to be addressed with Canadian regulators, repatriation of ACA's remaining Canadian assets is expected to be a lengthy and complicated process taking place over a period of months. The Rehabilitator has, however, now generally invested those funds currently held in Canada, but that are expected to be repatriated to the United States, in U.S. dollar denominated investments in order to substantially reduce future currency fluctuation risk.

V. REDUCTION OF EXPENSES

19. The Rehabilitator has dramatically reduced ACA's operating expenses in both the U.S. and Canada. These efforts have helped preserve much-needed assets. These efforts include the reduction of U.S. and Canadian staff, relocation of ACA's Manchester, NH offices and the run-off of certain policies and business lines.

VI. CONCLUSION

20. Wherefore, based on the foregoing, the Commissioner of Insurance of the State of New Hampshire as Rehabilitator for ACA Assurance respectfully requests that this Honorable Court:

(i) approve the Plan of Rehabilitation attached hereto as Exhibit A;

(ii) approve the agreement between ACA Assurance and L'Union-Vie for the transfer of certain ACA Assurance policies issued by the Canadian branch of ACA identified in and subject to the terms of the Union Vie Agreement, attached hereto as Exhibit B;

(iii) bar claims against Union Vie with respect to the Excluded Liabilities described in the Union Vie Agreement;

(iv) authorize the Rehabilitator to make such further changes to the Union Vie Agreement that are (i) required by OSFI, and (ii) in the judgment of the Rehabilitator, not material;

(v) approve the agreement between ACA Assurance and Supreme Council of the Royal Arcanum for the transfer of certain ACA Assurance U.S. policies identified in and subject to the terms of the Royal Arcanum Agreement, attached hereto as Exhibit C;

(vi) bar claims against Royal Arcanum with respect to the Excluded Liabilities described in the Royal Arcanum Agreement; and

(vii) grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A SEVIGNY, COMMISSIONER
THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF INSURANCE

By his attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL

Dated: April 15, 2009

By: _____
Glenn A. Perlow, #13085
Assistant Attorney General
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33 Capitol Street
Concord, New Hampshire 03301-6397

CERTIFICATE OF SERVICE

I, Glenn A. Perlow, hereby certify that on this 15th day of April, 2009 a true and correct copy of the foregoing document was sent via first class mail, postage paid to all parties on the service list.

_____
Glenn A. Perlow

STATEMENT OF ACA ASSURANCE IN CONNECTION WITH REHABILITATOR'S MOTION FOR APPROVAL OF PLAN OF REORGANIZATION AND ASSUMPTION REINSURANCE AGREEMENTS

ACA Assurance, pursuant to resolutions duly adopted by its Board of Directors, states that it has no objection to the entry of an Order granting the Rehabilitator's Motion for Approval of Plan of Reorganization and Assumption Reinsurance Agreements, to which this Statement is attached.

ACA ASSURANCE

By Its Attorneys,

SHEEHAN PHINNEY BASS + GREEN
PROFESSIONAL ASSOCATION

Date: April __, 2009

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