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Insurance Commissioner of the State of California
13 in his Capacity as Conservator of CastlePoint
National Insurance Company

**EXEMPT from filing fees per Govt.
Code § 6103**

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 CITY AND COUNTY OF SAN FRANCISCO
17

18 DAVE JONES, INSURANCE
19 COMMISSIONER OF THE STATE OF
CALIFORNIA,

20 Applicant,

21 v.

22 CASTLEPOINT NATIONAL INSURANCE
23 COMPANY, and DOES 1-50, inclusive,

24 Respondents.
25
26
27
28

Case No. CPF-16-515183

**SUPPLEMENTAL DECLARATION
OF DAVID E. WILSON IN SUPPORT
OF MOTION FOR ORDER
APPROVING CONSERVATION AND
LIQUIDATION PLAN FOR
CASTLEPOINT NATIONAL
INSURANCE COMPANY**

Date: September 13, 2016
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Harold E. Kahn

1 I, David Wilson, declare as follows:

2 1. I am the Chief Executive Officer of the State of California's Conservation and
3 Liquidation Office ("CLO") and am a Special Deputy Insurance Commissioner. I make this
4 declaration in support of Insurance Commissioner Dave Jones' Motion For Order Approving
5 Conservation And Liquidation Plan For CastlePoint National Insurance Company (the "Motion").
6 I have personal knowledge of the matters set forth herein and if called upon as a witness, I would
7 testify as set forth below.

8 2. I have been the Chief Executive Officer and Special Deputy Insurance
9 Commissioner since March 1, 2005. Previously, from 1991 through 2005, I was the owner of a
10 national insurance consulting firm, D.E. Wilson & Associates, Inc., which provided services to
11 the insurance industry, state insurance departments, and the National Organization of Life &
12 Health Insurance Guaranty Associations on general insurance matters, work-outs, rehabilitation,
13 and insolvency. I have been licensed as a Certified Public Accountant since 1974 and was a
14 partner at the public accounting firm of Ernst & Young.

15 3. As Chief Executive Officer of the CLO, I am responsible for management of all
16 insolvencies for which the Insurance Commissioner has been appointed as conservator,
17 rehabilitator, and/or liquidator, including CastlePoint National Insurance Company
18 ("CastlePoint"). When I was appointed as Chief Executive Officer of the CLO, the CLO was
19 managing 31 insolvencies with \$4.5 billion of assets under management. The CLO now manages
20 18 insolvencies. Since 2005, the CLO has distributed approximately \$4 billion to injured
21 policyholders and claimants. As Chief Executive Officer of the CLO, I am responsible for the
22 oversight of each insolvency, including the handling of policyholder claims, general creditor
23 claims, reinsurance (billing, collection, and arbitration), collection and disposition of assets, and
24 litigation.

25 4. Now that the court has entered its July 28, 2016 Order Appointing Conservator
26 and Restraining Orders ("Conservation Order"), I am serving as the Commissioner's Deputy
27 Conservator of CastlePoint.

28 5. CastlePoint and its predecessors were owned by a publicly traded insurance

1 holding company group known as Tower Group International, Ltd. (“Tower Group”). The Tower
2 Group was formed and then grew over time through a series of acquisitions of smaller property
3 and casualty insurers. Collectively, the Tower Insurance Companies (defined below in ¶ 6) were
4 admitted in all 50 states and wrote a variety of multi-line property & casualty insurance, with an
5 emphasis on workers’ compensation and commercial multi-peril, as well as a significant personal
6 lines business.

7 6. CastlePoint is the successor by merger with nine other affiliated insurance
8 company members of the Tower Group that were domiciled in five other states (collectively, the
9 “Tower Insurance Companies”). The nine other insurers that merged with and into CastlePoint
10 are: Tower Insurance Company of New York, Tower National Insurance Company, Hermitage
11 Insurance Company, CastlePoint Florida Insurance Company, North East Insurance Company,
12 Massachusetts Homeland Insurance Company, Preserver Insurance Company, York Insurance
13 Company of Maine, and CastlePoint Insurance Company. A tenth company, Kodiak Insurance
14 Company, was dissolved several years ago, but its residual insurance liabilities were assumed by
15 CastlePoint.

16 7. The Tower Insurance Companies had been operated on a consolidated basis, with
17 all of their insurance liabilities and premiums “pooled” and reallocated pursuant to an
18 intercompany reinsurance pooling program. In addition, substantially all of the companies’
19 policy and claims administration work was performed on a consolidated basis. As a result of this
20 pooling arrangement and the thoroughly integrated manner in which the Tower Insurance
21 Companies were operated, the deterioration of the financial condition of the companies over the
22 past several years adversely impacted all ten companies. The financial impairment of the Tower
23 Insurance Companies gave rise to the distinct possibility that insurance regulators in six states
24 would be required to commence ten individual receivership proceedings to protect policyholders.
25 During the past seven months, the Conservator has worked closely with fellow regulators in the
26 other states and with company management to develop a more efficient and orderly alternative.

27 8. The Conservator, working with the management of CastlePoint, AmTrust
28 Financial Services, Inc. (“AmTrust”), and National General Holdings Corp (“National General”),

1 has proposed a Conservation and Liquidation Plan (“Plan”) for CastlePoint, a true and correct
2 copy of which is attached as Exhibit A to my Declaration in Support of Motion for Order
3 Approving Conservation and Liquidation Plan for CastlePoint National Insurance Company,
4 which was filed on July 29, 2016. The merger of the Tower Insurance Companies with and into
5 CastlePoint occurred with the approval of state regulators in the Tower Insurance Companies’
6 other states of domicile.

7 9. The Plan contemplates a four-step process for the efficient and orderly runoff and
8 eventual liquidation of the Tower Insurance Companies:

- 9 a. Consolidation by Merger and Conservation: The first step, which was
10 undertaken prior to and in anticipation of conservation, was to consolidate
11 the ten insurance companies into a single company – CastlePoint – and
12 then place that insurer into conservation. By consolidating the Tower
13 Insurance Companies, the regulators avoided the delay, confusion and
14 potential waste that would have resulted from ten separate legal
15 proceedings in six states.
- 16 b. Restructuring of CastlePoint Under Internal Revenue Code section
17 382(1)(5): In an attempt to preserve CastlePoint’s tax attributes, including
18 hundreds of millions of dollars in net operating loss carryforwards (also
19 known as “NOLs”), to protect CastlePoint from exposure to any future tax
20 liabilities of the non-insurance company members of the consolidated
21 taxpayer group in which CastlePoint is currently a member, and to
22 facilitate the valuable Conservation Agreement transactions described in
23 the third step described immediately below, the Plan provides for the
24 restructuring of CastlePoint’s equity ownership in a way that is intended to
25 conform to federal tax law, specifically Internal Revenue Code section
26 382(1)(5). The tax restructuring provisions of the Plan are intended to
27 ensure that CastlePoint’s NOLs are preserved and that the CastlePoint
28 estate is not inappropriately subjected to federal income tax liabilities

1 during its conservation and liquidation, and so that policyholder and other
2 creditor recoveries may be maximized to every extent possible.

3 c. Conservation Agreement Transactions: Following the tax deconsolidation,
4 the Plan provides for CastlePoint to close on a series of integrated
5 transactions and agreements set forth in the *CastlePoint National Insurance*
6 *Company Conservation Agreement* (the “Conservation Agreement”)¹
7 entered into by the Conservator with a group of aligned parties that
8 participated in an earlier effort in September 2014 to salvage the Tower
9 Insurance Companies. Under the Conservation Agreement, \$200 million
10 (net of certain advances already made, as more specifically described in
11 section 5.2 of the Conservation Agreement) will be injected into
12 CastlePoint by several parties to the Conservation Agreement. This
13 infusion will provide CastlePoint with much needed liquidity to ensure that
14 policy claims and benefits will continue to be paid during the conservation
15 period while we prepare for the eventual liquidation of CastlePoint and the
16 resulting transfer of all claims to the appropriate state insurance guaranty
17 associations (“IGAs”). In consideration for the injection of this \$200
18 million, (a) the Conservator will cause CastlePoint to commute (terminate)
19 several existing reinsurance agreements between and among several Parties
20 to the Conservation Agreement, and (b) all insurance policies issued by
21 CastlePoint after September 15, 2014, which were already 100% quota-
22 share reinsured (the “Fronted Policies”), will be assigned and assumed by
23 two solvent insurers so that to every extent possible these policyholders are
24 not disadvantaged by CastlePoint’s conservation and liquidation. The
25 Conservation Agreement also provides for CastlePoint to receive run-off
26 administration services (policy administration and claims administration)

27
28 ¹ A copy of the Conservation Agreement, including its ancillary agreements, is attached as Exhibit B to my Declaration dated July 29, 2016.

1 free of charge for up to two years, at an estimated value to CastlePoint of
2 as much as \$40 million.

3 d. Orderly Liquidation and Transition of Claims to IGAs: Finally, the Plan
4 anticipates that at such time as the Conservator determines is appropriate
5 and in the best interests of policyholders, he will apply to the Court for
6 entry of an Order of Liquidation for CastlePoint and a finding that
7 CastlePoint is legally insolvent. Those two events, a liquidation order and
8 a finding of insolvency, will trigger the statutory duties of the IGAs to step
9 in and assume the administration and payment of CastlePoint's remaining
10 claims. During the conservation period prior to entry of a liquidation
11 order, I will work closely with the IGAs to facilitate a smooth transition of
12 claims administration and payment responsibilities in order to reduce
13 disruption and inconvenience to policyholders and claimants. I will also
14 work to assign the right to receive any remaining free run-off
15 administration services to be provided under the Conservation Agreement
16 to any of the IGAs that are willing and authorized to use those free
17 services.

18 10. Although the ultimate causes of the Tower Group and Tower Insurance
19 Companies' eventual failure has not yet been fully investigated, the problems appear to have
20 arisen from a combination of factors, including management instability, poorly executed
21 integration of the insurers acquired by the Tower Group, poor underwriting practices that resulted
22 in bad risk selection and inadequate premiums, and inferior and poorly integrated data systems.
23 As a result of these and other factors, financial problems started to emerge for the Tower
24 Insurance Companies during 2013.

25 11. On October 7, 2013, Tower Group announced that the Tower Insurance
26 Companies' aggregate loss reserves for incurred policyholder liabilities and unearned premiums
27 as of June 30, 2013, were strengthened (increased) by approximately \$365 million and Tower
28 Group was also recording a \$215 million goodwill impairment. On November 14, 2013, Tower

1 Group announced that it would be restating its previously filed audited annual consolidated
2 financial statements for 2011 and 2012, which included financial results for the Tower Insurance
3 Companies, and the prior statements “should no longer be relied upon.” These events resulted in
4 a rating downgrade by both AM Best and Fitch Ratings, and Tower Group’s stock price declined
5 from over \$21 per share to under \$4 in just three months. Facing a significant drop in its stock
6 price, material weaknesses in its accounting systems and controls, and ongoing doubt as to the
7 sufficiency of the loss reserves for the Tower Insurance Companies, Tower International began
8 considering options for a sale.

9 12. On September 15, 2014, Tower Group and its subsidiaries, including the Tower
10 Insurance Companies, were acquired by ACP Re, Ltd (“ACP Re”), a privately owned Bermuda-
11 domiciled reinsurer that is beneficially owned by the Michael Karfunkel Family 2005 Trust
12 (“Karfunkel Family Trust”). Pursuant to this transaction, ACP Re immediately entered into
13 several related post-closing transactions with AmTrust, a publicly traded Delaware insurance
14 holding company; and National General, a publicly traded Delaware insurance holding company,
15 under which certain operating assets of the Tower Insurance Companies were sold to AmTrust
16 (commercial lines insurance assets) and to National General (personal lines insurance assets).
17 Also as part of the purchase transaction, the Tower Insurance Companies’ aggregate policyholder
18 loss reserves and unearned premium reserves as of September 15, 2014 were ceded to an
19 affiliated Bermuda-domiciled reinsurer, CastlePoint Reinsurance Company, Ltd (“CP Re”), and
20 operating subsidiaries of AmTrust and National General took over claims administration for all
21 claims and liabilities that were assumed by CP Re. Finally, affiliates of AmTrust and National
22 General entered into a \$250 million aggregate stop loss reinsurance agreement with CP Re, under
23 which these reinsurers would (in exchange for a reinsurance premium of \$56 million payable in
24 September 2019) agree to pay up to \$250 million in additional policyholder claims that remained
25 unpaid after CP Re’s payment of claims equal to the Tower Insurance Companies’ loss reserves
26 and unearned premium reserves as of September 15, 2014. In turn, such reinsurers retroceded
27 100% of their liability under the stop loss reinsurance agreement to ACP Re pursuant to a stop
28 loss retrocession agreement. All of the foregoing transactions closed on September 15, 2014.

1 13. During the 15 months following the closing date, the distressed financial condition
2 of the Tower Insurance Companies became increasingly apparent. As of the closing date, the
3 Tower Insurance Companies' aggregate loss reserves for insurance liabilities were, subject to
4 further evaluation, recorded at approximately \$1.383 billion. This amount already included
5 approximately \$568 million of adverse development on accident years 2013 and prior.

6 14. I am informed and believe that during 2015, the Tower Insurance Companies'
7 consulting actuaries determined that such loss reserves should be increased again by more than
8 \$400 million. After further review, CastlePoint later increased its estimate of carried reserves by
9 more than \$500 million as of year-end 2015. This volatility and uncertainty surrounding the
10 adequacy of the loss reserves, together with cash flow challenges, seriously impaired the efforts
11 of ACP Re to oversee a solvent run-off of the Tower Insurance Companies.

12 15. Early in 2016, the Tower Insurance Companies, along with Tower Group, ACP
13 Re, and its affiliates, began working with the six domiciliary insurance regulators of the Tower
14 Insurance Companies (in the states of California, Maine, Florida, New Jersey, New York and
15 Massachusetts) to develop a plan to address the increasingly distressed financial condition of the
16 Tower Insurance Companies in a manner that would best protect policyholders and other
17 creditors. After extensive discussions and the consideration and evaluation of alternative
18 structures, the Plan was developed and all interested parties began working on documenting and
19 implementing the Plan.

20 16. CastlePoint is currently a member of a consolidated taxpayer group that includes a
21 number of non-insurance company affiliates. Having joined the tax group, pursuant to federal tax
22 law, CastlePoint is jointly and severally liable for any tax liabilities of any member of the
23 taxpayer group. In addition, CastlePoint's individual tax attributes such as the NOLs that have
24 been generated from the loss reserve increases described in the Motion can be adversely affected
25 by the actions of other members of the group and the upstream owners of the Tower Group.

26 17. During the negotiation of the transactions described in the Conservation
27 Agreement, ACP Re notified the Commissioner of its need to either transfer its stock in Tower
28 Group or claim a worthless tax deduction on its 2016 U.S. federal income tax return with respect

1 to the stock. ACP Re stated that this tax treatment of its Tower Group stock was an essential
2 prerequisite to its willingness to enter into the Conservation Agreement and perform its portions
3 of the transactions and agreements that will ultimately deliver \$90 and \$150 million in net new
4 value into CastlePoint for the benefit of policyholders. I have been advised that unless the Plan is
5 properly structured to include a deconsolidation of CastlePoint that is designed to meet the
6 requirements of Internal Revenue Code section 382(1)(5), either of ACP Re's proposed actions
7 with respect to its Tower Group stock will significantly reduce and potentially eliminate
8 CastlePoint's sizable NOL asset.

9 18. I have also been advised and believe that based on the adverse developments of
10 CastlePoint's loss reserves described above, CastlePoint's NOLs will have grown to
11 approximately \$500 million as of year-end 2015, and that a sale, transfer, or worthless stock
12 deduction by ACP Re with respect to its Tower Group stock might completely eliminate the
13 carryforward value of CastlePoint's accrued NOLs and potentially subject CastlePoint to future
14 avoidable tax liability, the payment of which would come directly at the expense of CastlePoint's
15 policyholders. As a result, it became essential to the viability of the Plan that the Plan include
16 deconsolidation provisions that would affirmatively protect CastlePoint's extensive tax related
17 assets.

18 19. Accordingly, to protect CastlePoint's policyholders and creditors, the Conservator
19 has proposed the tax deconsolidation procedure set forth in the Plan. This tax deconsolidation
20 procedure is intended to mitigate and manage CastlePoint's exposure to potentially significant
21 federal income tax liabilities in the future by preserving the NOLs in compliance with federal tax
22 law. The Plan establishes a procedure to ensure that CastlePoint's deconsolidation from the
23 Tower Tax Group occurs on terms that are intended to preserve CastlePoint's NOLs for
24 utilization on separate, stand-alone tax returns.

25 20. Specifically, the Plan provides for the transfer of the CastlePoint stock on terms
26 that the Conservator intends to be consistent with the requirements of Internal Revenue Code
27 section 382(1)(5). As part of this section 382(1)(5) process, CastlePoint's immediate parent
28 company, Specialty Underwriters Alliance, Inc. ("SUAI"), will surrender possession of all stock

1 certificates issued by CastlePoint to the Conservator for cancellation and reissuance to a
2 shareholder trust, which will hold the “New CastlePoint Stock” for the benefit of CastlePoint’s
3 historical shareholders and creditors. The express intent of the Plan is to effectuate the stock
4 transfer in a manner that will qualify under section 382(l)(5) of the Internal Revenue Code so that
5 such transfer will not jeopardize CastlePoint’s existing NOLs, which I am advised might
6 otherwise be extinguished and rendered valueless.

7 21. The core components of the proposed Plan include (1) restructuring CastlePoint’s
8 ownership in an attempt to preserve CastlePoint’s NOLs for use to offset potential future tax
9 liabilities, particularly those that may arise from adjustments to its reserves; and (2) enhancing the
10 value of the CastlePoint estate by executing on the transactions described in the Conservation
11 Agreement.

12 22. The tax deconsolidation features of the proposed Plan will occur in the following
13 steps:

- 14 a. Deconsolidation of CastlePoint from the Tax Group. First, upon approval of
15 the Plan, the Conservator will restructure CastlePoint’s ownership to effect a
16 deconsolidation of CastlePoint from the Tower Tax Group. As a member of
17 the Tower Tax Group, CastlePoint presently shares joint and several liability
18 for any tax liabilities incurred by another member of the group.
19 Deconsolidating from the Tower Tax Group allows CastlePoint to eliminate
20 this risk of potential future liability during the course of the conservation
21 proceedings by removing CastlePoint from the Tower Tax Group. Moreover,
22 the deconsolidation will permit CastlePoint to file stand-alone tax returns from
23 2016 forward.
- 24 b. Termination of Existing Stock of CastlePoint. Second, on the Effective Date
25 (the date on which a final order is entered granting the Conservator’s Motion
26 and approving the Plan), or as soon thereafter as is practicable but not later
27 than October 15, 2016, ACP Re will cause SUAI to deliver its stock in
28 CastlePoint to the Conservator for cancellation. The Conservator will cancel

1 the existing stock and ownership of CastlePoint and transfer it to CastlePoint's
2 historical creditors by way of re-issuance of new CastlePoint stock to the
3 Commissioner, as trustee for the benefit of historical shareholders and creditors
4 of CastlePoint. The Plan allows for the transfer or sale of the capital stock of
5 CastlePoint to occur in a way that is intended to preserve, pursuant to Internal
6 Revenue Code Section 382(l)(5), CastlePoint's sizable portfolio of NOLs
7 generated by CastlePoint's operations. These provisions of the Plan are
8 intended to satisfy ACP Re's desire to divest its ownership of the Tower Group
9 through a process that will comply with the requirements of Internal Revenue
10 Code section 382(l)(5) by providing for the newly issued stock to be held by or
11 for the sole benefit of historical shareholders and creditors of CastlePoint.

12 c. Establishment of a Trust. Third, as part of the termination of existing
13 CastlePoint stock, upon the Effective Date, the Conservator will execute the
14 Trust Agreement to create the Trust that will hold the new CastlePoint stock.
15 The Trust will hold the reissued CastlePoint stock for the sole benefit of
16 CastlePoint's historical shareholders and creditors, together with any other
17 assets of CastlePoint that the Conservator determines can or should be
18 managed in the Trust to ensure that maximum value is realized for the benefit
19 of CastlePoint's policyholders and creditors.

20 d. Administration of the Trust. Finally, the Plan provides that the Conservator
21 will administer the Trust and distribute its assets in a manner that effectuates
22 the priorities of payment set forth in Insurance Code section 1033(a).

23 23. The proposed Conservation Agreement with the Karfunkel Family, AmTrust and
24 related or affiliated parties, will generate substantial new value for CastlePoint by providing for
25 the following beneficial transactions:

26 a. Injection of \$200 Million in Additional Liquidity. The Karfunkel Family Trust
27 will transfer or cause to be transferred \$200 million, net of advances already
28 made, into the CastlePoint estate to be used in the payment of policyholder

1 claims and other estate liabilities. This injection of additional liquidity will
2 allow for uninterrupted claim payments during the conservation period while
3 the Conservator prepares for liquidation and the transfer of claims files to the
4 IGAs. The additional liquidity will enable a smooth transition of CastlePoint's
5 remaining liabilities to the appropriate IGAs upon the ultimate liquidation of
6 the CastlePoint estate.

7 b. Run-Off Administration Services. The Conservation Agreement provides for
8 affiliates of AmTrust and National General to enter into *Runoff Administration*
9 *Services Agreements*, pursuant to which the administration of the runoff will be
10 handled by those parties without charge to CastlePoint for up to two years.
11 AmTrust will administer the runoff of CastlePoint's commercial lines business,
12 while National General will administer the runoff of CastlePoint's personal
13 lines business. The benefit of these administration agreements is assignable to
14 the IGAs at liquidation.

15 c. Transfer of Liability on Fronted Policies. The Conservation Agreement
16 provides for the transfer and assumption of all of CastlePoint's obligations on
17 the Fronted Policies to the reinsurers that are already providing 100% quota
18 share reinsurance for all claims under the Fronted Policies. Given that
19 assumption by those reinsurers, any claims under the Fronted Policies will
20 therefore not be transferred to the IGAs upon the liquidation of CastlePoint so
21 long as the reinsurers are administering and paying those claims.

22 d. Commutation Of Existing LPT and Stop Loss Reinsurance Agreements. Also
23 in exchange for the \$200 million infusion, administration services, and other
24 consideration being provided by the Parties, the Plan provides for the
25 commutation of the existing loss portfolio transfer ("LPT") between
26 CastlePoint and CP Re and the \$250 million aggregate stop loss reinsurance
27 and retrocession contracts. The stop loss reinsurance contract provided \$250
28 million in aggregate stop loss protection, but that protection only attaches and

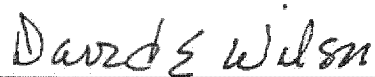
1 begins to pay after \$1.383 billion or more in CastlePoint claims have been
2 paid. That milestone was not expected to be reached until 2018 at the earliest,
3 and perhaps much later. Moreover, absent a commutation CastlePoint has a
4 \$56 million reinsurance premium obligation payable in September 2019 under
5 the stop loss agreement. Accordingly, the Conservator is informed and
6 believes that an immediate injection of \$200 million into the estate, in addition
7 to the administrative services and other valuable consideration provided by
8 these parties under the Conservation Agreement, is substantially more valuable
9 to the CastlePoint estate than the future net benefits available under the
10 aggregate stop loss agreement.

11 24. Based on the Conservator's analysis and evaluation of the proposed Conservation
12 and Liquidation Plan, the Conservator has concluded that the Plan, the Conservation Agreement
13 and the Conservation Transaction Agreements, are fair and reasonable, and provide significantly
14 greater benefits to policyholders than they would obtain under a statutory liquidation of
15 CastlePoint.

16 25. The proposed Plan provides several benefits to the CastlePoint estate, its
17 policyholders, and creditors, including the immediate injection of an additional \$200 million in
18 liquidity and continuity in the claims administration process prior to liquidation. Based on these
19 benefits, and having considered the alternatives, the Conservator has determined that the Plan is
20 superior to an immediate liquidation and provides the best chance of maximizing the assets
21 available to pay creditor claims.

22 This declaration was executed this 5th day of August, 2016, in New York, New York.

23 I declare under penalty of perjury according to the laws of the State of California that the
24 foregoing is true and correct.

25 

26 _____
27 David E. Wilson
28