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Insurance Commissioner of the State of California
11 in his Capacity as Liquidator of
CastlePoint National Insurance Company

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

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 CITY AND COUNTY OF SAN FRANCISCO

16 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

17 Applicant,

18 v.

19 CASTLEPOINT NATIONAL INSURANCE
20 COMPANY, and DOES 1-50, inclusive,

21 Respondents.

Case No. CPF-16-515183

Reservation No. [N/A]

**INSURANCE COMMISSIONER'S
NOTICE OF APPLICATION AND
APPLICATION FOR ORDER
APPROVING FINANCIAL REPORT
AND EXPENSES OF
ADMINISTRATION; FINANCIAL
REPORT ON STATUS OF
CASTLEPOINT NATIONAL
INSURANCE COMPANY IN
LIQUIDATION; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: December 30, 2021

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Ethan P. Schulman

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**12/03/2021
Clerk of the Court**

**BY: EDNALEEN ALEGRE
Deputy Clerk**

1 (“Holloway Decl.”) and exhibits, any statements or arguments that may be made in support of the
2 Application at the hearing on this matter, and the pleadings, records and files in this proceeding.

3 Dated: December 3, 2021

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10 Attorneys for Applicant Ricardo Lara,
11 Insurance Commissioner of the State of
12 California in his capacity as Liquidator of
13 CastlePoint National Insurance Company

1 on July 18, 2017. The Commissioner subsequently sought and received approval by Order dated
2 June 7, 2018 for the financial report and expenses of administration for the 2017 Liquidation
3 Period (which covered the Liquidation Date through the end of 2017).

4 In June 2019, the Commissioner filed an *Application for Order Approving Financial*
5 *Report, Expenses of Administration, and Estate Administration Matters* (“2018 Application”),
6 which sought approval for the financial report and expenses incurred by the Commissioner in
7 2018, along with the request for approval of certain routine estate administration matters for the
8 efficient and orderly handling of the estate. The 2018 Application was granted by Order of this
9 Court on August 13, 2019.

10 In June 2020, the Commissioner filed his Amended Application for Order Approving
11 Financial Report and Expenses of Administration (“2019 Application”), which sought approval
12 for the financial report and expenses incurred by the Commissioner in 2019 as well as certain
13 estate administration matters to enhance the efficiency and orderly handling of the estate. The
14 2019 Application was approved by Order of the Court on June 17, 2020.

15 The Commissioner now seeks an order approving his current Application concerning 2020
16 matters for the reasons set forth in detail below.

17 **II. SUMMARY OF COMMISSIONER’S APPLICATION**

18 **Commissioner’s Request for an Order Approving Financial Report and** 19 **Expenses of Administration**

20 **A. 2020 Status Report**

21 **1. Overview & Financial Report**

22 By early 2019, all remaining liquidation activities were transferred to and assigned to the
23 staff of the Commissioner’s Conservation and Liquidation Office in San Francisco (“CLO”) and,
24 as of March 31, 2019, the CastlePoint home office in New Jersey was closed. (Holloway Decl.,
25 ¶ 5.)

26 The CLO accomplished the following tasks in 2020, among others:

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1. Continued to open and/or re-open claim files for the Guaranty Associations, now totaling over 2,966 claim files since the Liquidation Date through December 31, 2020;
2. Billed \$7.8 million of reinsurance recoverables;
3. Collected reinsurance balances of approximately \$6.0 million;
4. Collected miscellaneous recoveries of approximately \$1,101,060;
5. Filed the tax return for the 2020 tax year and finalized the 2020 audit;
6. Secured an additional addendum to the administrative services agreements with AmTrust and National General thru December 31, 2021; and
7. Handled the specific matters described further herein below.

(Holloway Decl., ¶ 6.)

A true and correct copy of the 2020 Financial Report for the CastlePoint estate is attached hereto as Exhibit A and a true and correct copy of the 2020 Income and Expenses Statement for the CastlePoint estate is attached hereto as Exhibit B. Both exhibits were prepared under my direction. (Holloway Decl., ¶ 6, Ex. A; ¶ 6, Ex. B.)

2. Issues Pertaining to the Claims of Eita Pruss Involving the Commissioner and AmTrust

As part of the Commissioner’s claims handling functions on behalf of CastlePoint, during 2020 the CLO also continued to handle, and direct its attorneys at Orrick, on matters regarding the proof of claim filed by Claimant Eita Pruss (“Pruss POC”) for \$5 million in 2017. (Holloway Decl., ¶ 7.)³

On June 27, 2018, the Commissioner, acting through the CLO, issued his determination formally allowing the Pruss POC as a Class 2 (policyholder priority) claim under California Insurance Code Section 1033(a) for \$4 million, representing the full \$5 million policy limits of the CastlePoint policy less credit for \$1 million that was paid to Ms. Pruss by the New York

³ The \$5 million was claimed by Ms. Pruss from CastlePoint pursuant to a settlement in her underlying personal injury action against certain CastlePoint insureds. (*Id.*)

1 Liquidation Bureau (“Commissioner’s Determination”). The Commissioner rejected the claims
2 of Ms. Pruss that she was entitled to have the \$4 million paid in cash on a priority or preferential
3 basis because of alleged misrepresentations made regarding the availability of the \$5 million in
4 cash at the time of the underlying settlement by counsel for CastlePoint and CastlePoint’s
5 insureds. Since the Commissioner rejected Ms. Pruss’ request for a preferential or priority
6 payment in his Determination, the Commissioner provided notice to Ms. Pruss of her rights to
7 apply to the San Francisco Superior Court (Liquidation Court) for an order to show cause
8 pursuant to Insurance Code section 1032 as her exclusive judicial remedy to challenge the
9 Commissioner’s Determination. (Holloway Decl., ¶ 8.)

10 On July 26, 2018, counsel for Ms. Pruss submitted for filing an application for an OSC
11 (“OSC Application”) and accompanying declaration to challenge the Commissioner’s rejection of
12 the payment of the Pruss POC on a priority or preferential basis as sought. The parties engaged in
13 related discovery and briefing stemming from a January 16, 2019 Order of the San Francisco
14 Superior Court, as modified by a March 26, 2019 Order, and the matter was heard before Judge
15 Kahn on June 4, 2019. In the meantime, Ms. Pruss had filed two lawsuits in New York against
16 AmTrust and others seeking to recover amounts in connection with the unpaid settlement. The
17 first of which (referred to as “Pruss II”) was stayed by the presiding Judge in New York, thereby
18 prompting Ms. Pruss to also file with the San Francisco Superior Court an *Application for Leave*
19 *to Pursue Action in New York* (“Application for Leave”) to authorize her to continue to pursue the
20 lawsuits pending in New York. The second was a plenary action for breach of the settlement
21 agreement (from the Pruss I litigation) against AmTrust and others in New York (referred to as
22 “Pruss III”), which was stayed pursuant to the January 2019 Order of this Court referenced above.
23 (Holloway Decl., ¶ 9.)

24 Following the June 4, 2019 hearing, Judge Kahn issued Orders dated July 1, 2019 denying
25 the OSC Application of Ms. Pruss and granting in part and deferring in part her Application for
26 Leave. Pursuant to the Order on the Application for Leave, the Court would address at a later
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1 hearing whether the claims of Ms. Pruss against AmTrust in Pruss II and III, and against counsel
2 named in Pruss II, would be permitted to proceed in New York, or whether they would be
3 required to proceed before the Liquidation Court in California. (Holloway Decl., ¶ 10.)

4 AmTrust and the Commissioner both appealed the July 1, 2019 Order on the Application
5 for Leave. Judge Kahn subsequently requested briefing regarding whether the pending appeals
6 by the Commissioner and AmTrust effect a stay of proceedings in the Liquidation Court
7 regarding Ms. Pruss' request to pursue claims asserted in Pruss II and Pruss III, and if so, the
8 scope of the stay. A hearing was held on February 6, 2020 before Judge Kahn on this issue. In
9 an Order dated March 5, 2020, the Court denied an automatic stay of proceedings pending appeal
10 but indicated that he would consider whether to grant a discretionary stay of proceedings pending
11 appeal after he issued a ruling on the proper venue for Ms. Pruss' claims against AmTrust and the
12 procedures applicable to the proceedings on those claims in light of the CastlePoint conservation
13 and liquidation proceedings. Judge Kahn held a hearing on April 1, 2020, in which he set a
14 schedule for briefing on the foregoing issues and related matters, under which briefing will be
15 completed in May 2020, with a hearing thereon to be held June 9, 2020. (Holloway Decl., ¶ 11.)

16 Additionally, on June 11, 2019, Judge Kahn issued an Order requiring the participation of
17 Ms. Pruss, AmTrust, and the Commissioner in a mandatory settlement conference with Judge
18 Ross. Judge Ross engaged the foregoing parties in settlement discussions over a several month
19 period. Ultimately, a global settlement was reached between Ms. Pruss, AmTrust and the
20 Commissioner, and the Commissioner filed his Application for Order Approving Discounted
21 Distribution to Eita Pruss as part of a global settlement which was scheduled for hearing on
22 August 3, 2020 in Department 302 before the Honorable Ethan P. Schulman. The foregoing
23 Application was granted by the Court on August 3, 2020 and the global settlement and
24 accompanying release of all claims by Ms. Pruss, were approved and ratified. The Court
25 authorized the Commissioner to pay the agreed discounted distribution amount contained in the
26 global settlement agreement to Ms. Pruss as of the date of finality of the order approving and
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1 ratifying the settlement agreement. The discounted distribution was duly paid and all claims
2 relating to Ms. Pruss against the CastlePoint estate or the Commissioner have been fully and
3 finally released and all proceedings involving Ms. Pruss, including appeals, have been dismissed.
4 (Holloway Decl., ¶ 12.)

5 **3. TruPS Claim**

6 In 2020, the Commissioner also continued to oversee and direct his attorneys in
7 connection with a motion brought by interested third-party Movants⁴ on November 20, 2018.
8 (Holloway Decl., ¶ 13.) By the motion, Movants requested clarification from this Court that the
9 standing injunctions entered in connection with the CastlePoint insolvency do not prohibit or stay
10 the continued prosecution of a civil action they filed in the Supreme Court of the State of New
11 York, Index No. 655881/2017 against certain named defendants, including AmTrust. The motion
12 brought by Movants was filed following the agreement of the Movants, Commissioner, and
13 defendants to a stipulation and proposed order setting the briefing schedule and hearing for this
14 matter. This matter has also required a considerable amount of the time of the CLO and its
15 attorneys. (*Id.*)

16 The Movants are holders of subordinated debt instruments referred to as “TruPS” (short
17 for “Trust Preferred Securities”). The TruPS were issued by one or more companies that were
18 previously up-stream, non-insurance company affiliates of CastlePoint that were members of a
19 group of companies referred to as the “Tower Group.” CastlePoint is neither an issuer nor obligor
20 under the TruPS. CastlePoint is no longer an affiliate of the Tower Group, having formally
21 “deconsolidated” from the Tower Group pursuant to the Plan approved by the Court on
22 September 13, 2016. (Holloway Decl., ¶ 14.)

23 In the New York action, Movants have been seeking payment on the TruPS. However,
24 because the specific Tower Group companies that issued the TruPS are likely insolvent and
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26 ⁴ “Movants” comprise non-parties Alesco Preferred Funding VIII, Ltd., Alesco Preferred Funding XI, Ltd., Alesco
27 Preferred Funding XII, Ltd., Alesco Preferred Funding XIV, Ltd., Hildene Opportunities Master Fund II, Ltd., NFC
Partners, LLC, Wolf River Opportunity Fund LLC, Wolf River Partner Fund, and WT Holdings, Inc.

1 unable to pay any of the sizable amounts due on the TruPS, the Movants named a broad array of
2 defendants (officers, directors, affiliates, and third parties) and asserted a number of alternative
3 claims and liability theories. While CastlePoint is not a defendant in the New York action, the
4 asserted claims and liability theories encroach on claims that are (or were) owned by CastlePoint
5 and have already been released in exchange for the significant value received by the CastlePoint
6 estate under the Plan. (Holloway Decl., ¶ 15.)

7 Following briefing by the Movants and the New York defendants, as well as the
8 submission of the Commissioner’s statement of position filed on January 15, 2019, a hearing was
9 held before this Court on March 11, 2019. At oral argument at the hearing, the Court instructed
10 counsel for the Movants and New York defendants to file supplemental briefing setting forth
11 concisely why each party contends that the prosecution of Movants’ claims either would or would
12 not violate the injunction or, conversely, that those claims have been or have not been released.
13 The Court also permitted supplemental briefing on new authority offered by the New York
14 defendants. The Court invited the Commissioner to submit further analysis as well, which the
15 Commissioner provided in a supplemental statement of position on April 2, 2019. (Holloway
16 Decl., ¶ 16.)

17 Ultimately, the Commissioner concluded that the Movants’ tort claims were either
18 released by the Commissioner,⁵ or unreleased claims that still belong to the Commissioner, as
19 Conservator and then Liquidator of the CastlePoint estate, and were enjoined by the Court’s prior
20 orders. Any loss in investment value thereafter suffered by Movants, apart from direct breach of
21 contract claims against Issuers, were “merely incidental” to claims belonging to the
22 Commissioner for loss of assets belonging to the estate. (*Avikian v. WTC Financial Corp.* (2002)
23 98 Cal. App. 4th 1108, 1116.) (Holloway Decl., ¶ 17.)

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26 ⁵ The Commissioner discussed the Release Agreement in his *Statement of Position in Response to Motion for Order*
27 *Clarifying the CastlePoint Stay Does Not Apply to New York Action* at pp. 6-7, 9. See also Release Agreement,
28 March 30, 2017 Liquidation Order, and September 13, 2016 Plan Order.

1 The Court issued an order on May 16, 2019 finding that all but one (breach of contract) of
2 the ten causes of action brought by Movants in New York “are barred by the outstanding
3 injunctions issued by this Court and releases approved by this Court in the underlying CastlePoint
4 liquidation proceedings.” (May 16, 2019 Order at p. 2.) On May 31, 2019, the Movants filed a
5 Motion for Reconsideration of this Court’s May 16, 2019 Order. A hearing was held on August
6 13, 2019, following which the Court issued an Order denying the Motion for Reconsideration.
7 On August 27, 2019, the Movants filed a notice of appeal of the May 16, 2019 and August 13,
8 2019 Orders. (Case No. A158645) Briefing on the appeal was submitted in 2020. On June 15,
9 2021, the Court of Appeal, First Appellate District, issued its decision affirming in part, and
10 reversing in part, the May 16, 2019 Order. Specifically, the Court of Appeal determined that
11 causes of action relating to the alleged breach of the so-called “successor obligor provisions” and
12 to the alleged \$143 million payment from ACP Re, Ltd. to shareholders of the Tower Group
13 International, Ltd. (Bermuda) should be allowed to proceed. However, the Court of Appeal
14 determined that fraudulent conveyance causes of action and the cause of action for unjust
15 enrichment were barred by the injunctions and releases in the liquidation proceeding. The
16 decision of the Court of Appeal is now final, with no further appellate review having been sought.
17 (Holloway Decl., ¶ 18.)

18 **4. Public Records Act Litigation by Christopher Dion**

19 In the spring of 2020, the California Department of Insurance (“CDI”) and the CLO
20 received California Public Records Act (“PRA”) requests from attorney Christopher Dion, who is
21 representing himself. Mr. Dion’s PRA requests to the CLO include, among other things, requests
22 for documents of the Commissioner in his capacity as liquidator of the CastlePoint estate and
23 business records of CastlePoint. Mr. Dion, who raised no objection to the Court’s approval of the
24 plan of conservation and liquidation for CastlePoint, informed the CLO that he seeks these
25 records because the documents relate to his assertions that assets were stripped from CastlePoint
26 by the Karfunkel Group prior to conservation and that the Commissioner surreptitiously conveyed
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1 valuable items to the Karfunkel Group in connection with the plan for CastlePoint. The
2 Commissioner advised Mr. Dion that these records are not public records within the scope of the
3 PRA. Dissatisfied with the CLO's response and communications, as well as the CDI's separate
4 communications, on May 15, 2020, Mr. Dion filed a petition for writ of mandate and complaint
5 for declaratory relief in the California Superior Court in Los Angeles against the CDI and CLO
6 for violation of the PRA ("Petition"), case number 20STCP01687. In that case, the CLO, on
7 behalf of the CastlePoint estate, responded to discovery requests, engaged in motion practice, and
8 filed its opposition brief in the foregoing writ of mandate proceeding. The hearing on Mr. Dion's
9 petition for a writ of mandate is set for December 10, 2021 in Los Angeles Superior Court. The
10 position of the CLO in the writ of mandate proceeding is that: (1) documents of the CastlePoint
11 estate are private business records and are not subject to the Public Records Act and (2) in any
12 event, records sought by Mr. Dion are unavailable by reason of applicable privileges and
13 protections contained within the California Insurance Code and elsewhere. Counsel for the CLO
14 advised Mr. Dion in 2020 that the CLO agreed to temporarily suspend compliance with
15 CastlePoint estate's Court-approved records destruction procedures while the PRA litigation
16 remains undecided by the Los Angeles Superior Court. (Holloway Decl., ¶ 19.)

17 **B. Expenses of Administration**

18 In 2020, the CastlePoint estate paid expenses totaling \$4,152,557.⁶ (Holloway Decl., Ex.
19 B, ¶ 20.) Of that total, \$120,552 was paid for various office expenses. (*Id.*) Also of that
20 expenses total, \$995,549 was paid for professional fees. (Holloway Decl., ¶ 20.) Within the total
21 for professional fees, \$535,102 was paid for legal expenses (including \$442,095 for fees paid to
22 Orrick for legal services in connection with the liquidation during 2020), \$460,447 was paid for
23 necessary consultants and contractors, and \$3,036,488 was paid to the CLO for professional fees,
24 which included in part amounts allocated to the CLO Accounting Department (\$315,808), CLO
25 Executive Department (\$152,921), CLO Claims Department (\$254,655), the CLO IT Department

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27 ⁶ In 2019, the CastlePoint estate paid expenses totaling \$6,093,970. (Holloway Decl., footnote 4.)

1 (\$1,175,727), the CLO Reinsurance Department (\$958,357), and the CLO Estate Trust
2 Department (\$179,018). (*Id.*) A full breakdown of all expenses paid during 2020 related to the
3 liquidation can be found at Exhibit B to the Declaration of Joseph Holloway, which provides
4 additional detail on the information found on page 2 of Exhibit A. (Holloway Decl., Ex. B.)

5 The Court’s Liquidation Order authorizes the Commissioner, acting as Liquidator, to fix
6 and pay the administrative expenses of the liquidation from the assets of CastlePoint, subject to
7 the Court’s oversight and approval as specified. (*See* Liquidation Order, ¶¶ 3, 15-18.) These
8 provisions were entered pursuant to California Insurance Code sections 1035 and 1036, which
9 grant the Commissioner the power to fix all administrative costs (§ 1035) and the compensation
10 of outside attorneys (§ 1036), with the approval of the Court, and to have those expenses paid by
11 the liquidation estate. The Commissioner believes that the expenses incurred, which are
12 administrative costs and legal fees, were necessary to the efficient and orderly administration of
13 CastlePoint during 2020 for the continuing liquidation of CastlePoint. (Holloway Decl., ¶ 21.)

14 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

15 **A. The Commissioner Has Broad Authority to Manage the CastlePoint Estate**

16 The Commissioner is vested with broad discretion to conduct the liquidation of an
17 insolvent insurer subject to certain statutory limitations and the limitation “that the exercise of
18 discretion be neither arbitrary nor improperly discriminatory.” (*In re Executive Life Ins. Co.*
19 (1995) 32 Cal.App.4th 344, 356 (citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d
20 307, 329).) His decisions as to matters concerning an insolvent insurer are reviewed by the Court
21 on an abuse of discretion standard. (*In re Executive Life, supra*, 32 Cal.App.4th at 358.)

22 **B. The Expenses of Administration for Which Approval is Sought Are Within the Commissioner’s Authority**

23 California Insurance Code Sections 1035 and 1036 require the Commissioner to seek
24 approval of the Court for the payment of administrative costs (§ 1035) and legal fees (§ 1036)
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1 from the assets of CastlePoint. Specifically, section 1035(a) provides that “all expenses of taking
2 possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the
3 business and property of [CastlePoint]...shall be fixed by the commissioner, subject to the
4 approval of the court, and shall be paid out of the assets of [CastlePoint] to the department.” (Ins.
5 Code § 1035(a).) Similarly, section 1036 states that “compensation of any counsel outside of
6 California state service who is employed...to represent the commissioner as receiver shall be
7 fixed by the commissioner, subject to the approval of the court. Compensation of counsel
8 representing the commissioner as receiver shall be paid from the assets of [CastlePoint].” (Ins.
9 Code § 1036.)

10 The expenses and professional fees incurred by the Commissioner during 2019 were
11 typical for a receivership of this size and complexity, and were necessary, reasonable, and an
12 appropriate exercise of the Commissioner’s discretion to secure and manage the CastlePoint
13 estate and to protect its creditors to the fullest extent possible. (Holloway Decl., ¶¶ 19, 22.)

14 **IV. CONCLUSION**

15 Based on the foregoing, including the within Memorandum of Points and Authorities, the
16 Commissioner respectfully requests that the Court approve and ratify the 2020 Financial Report
17 and the expenses of administration paid by the Commissioner during 2020 as set forth above and
18 in the Holloway Declaration and its accompanying exhibits. At the hearing on this Application,

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1 the Commissioner, through counsel, will be prepared to answer any questions that the Court may
2 have regarding the status of the liquidation and the expenses of administration incurred in 2020.

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Dated: December 3, 2021

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