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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  
AMENDED 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: August 13, 2020  
Time: 9:30 a.m.  
Dept: 302  
Judge: Hon. Ethan P. Schulman**

ELECTRONICALLY

**D**

Superio Cour o California,  
Count o Sa Francisco

**06/17/2020**

Cler o th Court

BY ERNALY BURA

Deput 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: June 17, 2020

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11 Insurance Commissioner of the State of  
12 California in his capacity as Liquidator of  
13 CastlePoint National Insurance Company  
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1 Liquidator, to preserve the institutional knowledge held by the legacy employees of CastlePoint  
2 located in New Jersey and New York. (Holloway Decl., ¶ 5.) However, by early 2019, the  
3 remaining liquidation activities were transferred to and assigned to the staff of the  
4 Commissioner’s Conservation and Liquidation Office in San Francisco (“CLO”) and, as of March  
5 31, 2019, all remaining activities were transferred to San Francisco and the CastlePoint home  
6 office was closed. (*Id.*) With all activities transferred to the CLO, as noted above, the 2019  
7 Financial Report submitted with this Application is different than past years. (Holloway Decl.,  
8 ¶ 10.)

9 The CLO and/or the CastlePoint home office accomplished the following tasks in 2019,  
10 among others:

- 11 1. Continued to open and/or re-open claim files for the Guaranty Associations, now  
12 totaling over 2,821 claim files since the Liquidation Date through December 31, 2019;
- 13 2. Billed \$14,000,000 of reinsurance recoverables;
- 14 3. Collected reinsurance balances of approximately \$17,000,000;
- 15 4. Collected miscellaneous recoveries of approximately \$5,000,000;
- 16 5. Filed the tax return for the 2018 tax year and finalized the 2018 audit;
- 17 6. Completed a statutory deposit release to CIGA of \$19,044,989 in December 2019;
- 18 7. Secured the extensions of selected provisions of addenda to the administrative services  
19 agreements with AmTrust and National General; and
- 20 8. On behalf of CastlePoint, completed the novation of certain insurance policies and a  
21 reinsurance agreement, effective as of October 1, 2019, with Lion Insurance Company  
22 (“Lion”), State National Insurance Company, Inc. (“State National”), and Southeast  
23 Personnel Leasing, Inc., which in part novated all obligations and liabilities of  
24 CastlePoint under certain agreements to a new insurer, State National, and in  
25 connection therewith, the Commissioner received a one-time novation fee of \$25,000  
and assisted with the release of assets held by Wells Fargo in a Trust Account to State  
National.<sup>3</sup>

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27 <sup>3</sup> Lion and CastlePoint were parties to a Trust Agreement, dated June 15, 2011, by and among Wells Fargo Bank,  
N.A. (“Wells Fargo”) as Trustee, Lion as Grantor, and CastlePoint as the Beneficiary. (Holloway Decl., ¶ 7.)

1 (Holloway Decl., ¶ 6.)

2 A copy of the 2019 Financial Report is attached as Exhibit A to the Declaration of Joseph  
3 Holloway for the approval of the Court. (Holloway Decl., ¶ 8, Ex. A.)

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

6 As part of the Commissioner’s claims handling functions on behalf of CastlePoint, the  
7 CLO also continued to handle, and direct its attorneys at Orrick on, substantial litigation in 2019  
8 surrounding the proof of claim filed by Claimant Eita Pruss (“Pruss POC”) for \$5 million in 2017  
9 and continuing claims by Ms. Pruss involving the Commissioner and AmTrust. (Holloway Decl.,  
10 ¶ 11.)<sup>4</sup> Starting in late 2016, and continuing to present, the claims of Ms. Pruss have required a  
11 considerable amount of the time of the CLO and its attorneys. (*Id.*)

12 On June 27, 2018, the Commissioner, acting through the CLO, issued his determination  
13 formally allowing the Pruss POC as a Class 2 (policyholder priority) claim under California  
14 Insurance Code Section 1033(a) for \$4 million, representing the full \$5 million policy limits of  
15 the CastlePoint policy less credit for \$1 million that was paid to Ms. Pruss by the New York  
16 Liquidation Bureau (“Commissioner’s Determination”). The Commissioner rejected the claims  
17 of Ms. Pruss that she was entitled to have the \$4 million paid in cash on a priority or preferential  
18 basis because of alleged misrepresentations made regarding the availability of the \$5 million in  
19 cash at the time of the underlying settlement by counsel for CastlePoint and CastlePoint’s  
20 insureds. Since the Commissioner rejected Ms. Pruss’ request for a preferential or priority  
21 payment in his Determination, the Commissioner provided notice to Ms. Pruss of her rights to  
22 apply to the San Francisco Superior Court (Liquidation Court) for an order to show cause

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25 Section 1(a) of the Trust Agreement directed Wells Fargo to administer a trust account (the “Trust Account”) for the  
26 Beneficiary. Beneficiary as defined in the Trust Agreement also included Tower Insurance Company of New York  
27 (“TICNY”) and Tower National Insurance Company (“TNIC”), for which CastlePoint is the successor by merger.  
28 (*Id.*)

<sup>4</sup> 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 pursuant to Insurance Code section 1032 as her exclusive judicial remedy to challenge the  
2 Commissioner's Determination.

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

16 Following the June 4, 2019 hearing, Judge Kahn issued Orders dated July 1, 2019 denying  
17 the OSC Application of Ms. Pruss and granting in part and deferring in part her Application for  
18 Leave. Pursuant to the Order on the Application for Leave, the Court would address at a later  
19 hearing whether the claims of Ms. Pruss against AmTrust in Pruss II and III, and against counsel  
20 named in Pruss II, would be permitted to proceed in New York, or whether they would be  
21 required to proceed before the Liquidation Court in California.

22 AmTrust and the Commissioner both appealed the July 1, 2019 Order on the Application  
23 for Leave. Their appeals are pending, and briefing has not yet commenced. Judge Kahn  
24 subsequently requested briefing regarding whether the pending appeals by the Commissioner and  
25 AmTrust effect a stay of proceedings in the Liquidation Court regarding Ms. Pruss' request to  
26 pursue claims asserted in Pruss II and Pruss III, and if so, the scope of the stay. A hearing was  
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1 held on February 6, 2020 before Judge Kahn on this issue. In an Order dated March 5, 2020, the  
2 Court denied an automatic stay of proceedings pending appeal but indicated that he will consider  
3 whether to grant a discretionary stay of proceedings pending appeal after he issues a ruling on the  
4 proper venue for Ms. Pruss' claims against AmTrust and the procedures applicable to the  
5 proceedings on those claims in light of the CastlePoint conservation and liquidation proceedings.  
6 Judge Kahn held a hearing on April 1, 2020, in which he set a schedule for briefing on the  
7 foregoing issues and related matters, under which briefing will be completed in May 2020, with a  
8 hearing thereon to be held June 9, 2020.

9           Additionally, on June 11, 2019, Judge Kahn issued an Order requiring the participation of  
10 Ms. Pruss, AmTrust, and the Commissioner in a mandatory settlement conference with Judge  
11 Ross. Judge Ross has engaged the foregoing parties in settlement discussions over the last  
12 several months, but a settlement has not yet been reached. The Commissioner has engaged in  
13 good faith with this process and remains open to further efforts.

14           **3. TruPS Claim**

15           The CLO on behalf of the Commissioner also continued to oversee and direct its attorneys  
16 in connection with a motion brought by interested third-party Movants<sup>5</sup> on November 20, 2018.  
17 (Holloway Decl., ¶ 12.) By the motion, Movants requested clarification from this Court that the  
18 standing injunctions entered in connection with the CastlePoint insolvency do not prohibit or stay  
19 the continued prosecution of a civil action they filed in the Supreme Court of the State of New  
20 York, Index No. 655881/2017 against certain named defendants, including AmTrust. The motion  
21 brought by Movants was filed following the agreement of the Movants, Commissioner, and  
22 defendants to a stipulation and proposed order setting the briefing schedule and hearing for this  
23 matter. This matter has also required a considerable amount of the time of the CLO and its  
24 attorneys. (*Id.*)

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27 <sup>5</sup> "Movants" comprise non-parties Alesco Preferred Funding VIII, Ltd., Alesco Preferred Funding XI, Ltd., Alesco  
28 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           Ultimately, the Commissioner concluded that the Movants’ tort claims appear either to  
2 have been released by the Commissioner,<sup>6</sup> or to be unreleased claims that still belong to the  
3 Commissioner, as Conservator and then Liquidator of the CastlePoint estate, and are enjoined by  
4 the Court’s prior orders. Any loss in investment value thereafter suffered by Movants, apart from  
5 direct breach of contract claims against Issuers, appear to be “merely incidental” to claims  
6 belonging to the Commissioner for loss of assets belonging to the estate. (*Avikian v. WTC*  
7 *Financial Corp.* (2002) 98 Cal. App. 4th 1108, 1116.)

8           The Court issued an order on May 16, 2019 finding that all but one (breach of contract) of  
9 the ten causes of action brought by Movants in New York “are barred by the outstanding  
10 injunctions issued by this Court and releases approved by this Court in the underlying CastlePoint  
11 liquidation proceedings.” (May 16, 2019 Order at p. 2.) On May 31, 2019, the Movants filed a  
12 Motion for Reconsideration of this Court’s May 16, 2019 Order. A hearing was held on August  
13 13, 2019, following which the Court issued an Order denying the Motion for Reconsideration.  
14 On August 27, 2019, the Movants filed a notice of appeal of the May 16, 2019 and August 13,  
15 2019 Orders. The appeals remain pending and briefing has only recently commenced. Parallel to  
16 the briefing, on March 24, 2020, the New York defendants filed a motion to strike the filing of the  
17 notice of appeal as well as an application for order to show cause regarding contempt against the  
18 Movants. In the motion to strike, the New York defendants allege that the orders that Movants  
19 seek to appeal are not in fact appealable on the grounds that a motion for clarification regarding  
20 an injunction, and a motion for reconsideration of that, are not appealable under California law.  
21 In the application regarding contempt, the New York defendants claim that Movants should be  
22 held in contempt for an amended complaint they filed in December 2019 that defies the orders of  
23 this Court by asserting claims against the New York defendants that had been barred by this  
24 Court. A hearing has been scheduled for July 20, 2020 to address these two filings.

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26           <sup>6</sup> 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 liquidation during 2019), \$697,074 was paid for necessary consultants and contractors, and  
2 \$3,230,528 was paid to the CLO for professional fees, which included in part amounts allocated  
3 to the CLO Claims Department (\$448,135), the CLO IT Department (\$1,083,793), the CLO  
4 Reinsurance Department (\$992,969), and the CLO Estate Trust Department (\$432,121). (*Id.*) A  
5 full breakdown of all expenses paid during 2019 related to the liquidation can be found at Exhibit  
6 B to the Declaration of Joseph Holloway, which provides additional detail on the information  
7 found on page 2 of Exhibit A. (Holloway Decl., ¶ 9, Ex. B.)

8 The Court’s Liquidation Order authorizes the Commissioner, acting as Liquidator, to fix  
9 and pay the administrative expenses of the liquidation from the assets of CastlePoint, subject to  
10 the Court’s oversight and approval as specified. (*See* Liquidation Order, ¶¶ 3, 15-18.) These  
11 provisions were entered pursuant to California Insurance Code sections 1035 and 1036, which  
12 grant the Commissioner the power to fix all administrative costs (§ 1035) and the compensation  
13 of outside attorneys (§ 1036), with the approval of the Court, and to have those expenses paid by  
14 the liquidation estate. The Commissioner believes that the expenses incurred, which are  
15 administrative costs and legal fees, were necessary to the efficient and orderly administration of  
16 CastlePoint during 2019 for the continuing liquidation of CastlePoint.

### 17 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

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

19 The Commissioner is vested with broad discretion to conduct the liquidation of an  
20 insolvent insurer subject to certain statutory limitations and the limitation “that the exercise of  
21 discretion be neither arbitrary nor improperly discriminatory.” (*In re Executive Life Ins. Co.*  
22 (1995) 32 Cal.App.4th 344, 356 (citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d  
23 307, 329).) His decisions as to matters concerning an insolvent insurer are reviewed by the Court  
24 on an abuse of discretion standard. (*In re Executive Life, supra*, 32 Cal.App.4th at 358.)  
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1 **The Expenses of Administration for Which Approval is Sought Are Within the**  
2 **Commissioner's Authority**

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

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

18 **IV. CONCLUSION**

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20 Based on the foregoing, including the within Memorandum of Points and Authorities, the  
21 Commissioner respectfully requests that the Court approve and ratify the 2019 Financial Report  
22 and the expenses of administration paid by the Commissioner during 2019 as set forth above and  
23 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 2019.

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Dated: May 6, 2020

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