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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**

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

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.

Case No. CPF-16-515183

**DECLARATION OF DAVID E.
WILSON IN SUPPORT OF REPLY
BRIEF 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**

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
09/06/2016
Clerk of the Court
BY: DAVID YUEN
Deputy Clerk

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 have personal
4 knowledge of the matters set forth herein and if called upon as a witness, I would testify as set
5 forth below.

6 2. I make this declaration in support of the Conservator's Reply Brief in Support of
7 Motion for Order Approving Conservation and Liquidation Plan for CastlePoint National
8 Insurance Company ("Reply"),¹ which is filed contemporaneously with this declaration.

9 3. Pursuant to the Court's July 28, 2016, Order Appointing Conservator and
10 Restraining Orders ("Conservation Order"), California Insurance Commissioner Dave Jones, in
11 his capacity as Conservator of CastlePoint National Insurance Company ("CastlePoint"), has
12 appointed me to act as the Deputy Conservator of CastlePoint.

13 4. Following the Conservation Order, the CLO and counsel for the Conservator have
14 received a variety of informal inquiries regarding the conservation process. These informal
15 inquiries arrived in the form of calls, emails, and letters. My staff and counsel have collected the
16 more substantive of the informal emails and letters, along with other submissions to the Court,
17 into an Appendix, a true and correct copy of which is attached as **Exhibit A** to this declaration.
18 The Appendix includes documents from the following three categories:

- 19 a. Papers filed with the Court in response to the Motion.
- 20 b. Letters sent to Judge Kahn in response to the Motion.
- 21 c. Miscellaneous commentary and communications.

22 5. The mailed and published hearing notices also provided a toll-free telephone
23 number (877-813-8531) ("Hotline") for interested individuals to call and ask questions or to learn
24 more about the conservation. As of August 31, 2016, two hundred eighty-eight (288) phone calls
25 have been made to the Hotline. These phone calls fell into the following categories:

26

27 ¹ Except where otherwise indicated, capitalized terms have the same meaning as in the Conservator's Motion For
28 Order Approving Conservation & Liquidation Plan For CastlePoint National Insurance Company ("Motion") and its
accompanying Memorandum.

- a. 142 Claims-related questions;
- b. 81 Questions regarding the letter notice;
- c. 45 Calls where the caller hung up or did not leave a message;
- d. 19 Inquiries from vendors; and
- e. 1 Reporter asking for comment.

6. The CLO and its counsel have provided direct responses to many of the informal inquires. We have also provided responses to the calls received on the Hotline. In addition, information regarding the conservation, including answers to many of the questions posed in the inquiries my office received, is publicly available through the CLO's website.

7. The CLO and its counsel will continue to respond to inquiries as they are received. The Commissioner expects that the majority of these inquiries will continue to be claims related. One of the primary objectives of the Plan is to assist claimants in perfecting any claim they might have against the estate so that such claims can be properly evaluated and adjudicated.

8. Attached hereto as **Exhibit B** is a true and correct copy of CastlePoint's (Unaudited) Merged Statutory Balance Sheet as of June 30, 2016. These financials show that the total assets of CastlePoint and the Constituent Companies as of that date were approximately \$697.6 million, while the companies' combined liabilities were over \$1 billion. Additionally, the companies' aggregate policyholder surplus was *negative* \$318.3 million.

9. Based on these financials and company's lack of liquidity, it is clear that the Tower Insurance Companies would become unable to pay policyholder claims in the near future. The Commissioner therefore worked closely with regulators in all of the affected states to develop a collaborative plan that the regulators agreed was in the best interests of policyholders and creditors. The fundamental intent of the Plan is to advance the interests of policyholders and creditors as a whole.

10. Each of the domiciliary regulators issued administrative orders approving the merger of the Tower Insurance Company(ies) in their state into CastlePoint, which mergers were performed in anticipation of the conservation and Plan. Those orders formalized and confirmed

1 recent meeting of the National Association of Insurance Commissioners, a meeting of insurance
2 regulators from all 50 states and DC. No opposition to the Plan was expressed by any regulator in
3 any state in which CastlePoint has issued policies or has liabilities.

4 11. In its comment on the Plan, 1436-1438 Williamsbridge Road LLC
5 (“Williamsbridge”) requested that the Conservator confirm that the insurance policy issued to
6 Williamsbridge by Hermitage Insurance Company contained a cut-through endorsement. I
7 instructed counsel to perform a search for a copy of that cut-through endorsement, and on
8 August 31, 2016, my counsel forwarded a copy of the relevant cut-through endorsement to
9 counsel for Williamsbridge. A copy of the cut-through endorsement is not attached hereto as it
10 contains confidential information.

11 This declaration was executed this 6th day of September, 2016, in New York City, New
12 York.

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

15 

16 _____
David E. Wilson

Exhibit A

APPENDIX OF SUPPORT, COMMENT, OR OPPOSITION TO CONSERVATION AND LIQUIDATION

CONSERVATOR'S REPLY BRIEF IN SUPPORT OF MOTION FOR ORDER APPROVING CONSERVATION AND LIQUIDATION PLAN FOR CASTLEPOINT NATIONAL INSURANCE COMPANY

Dave Jones, Insurance Commissioner of the State of California,

v.

CastlePoint National Insurance Company

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

Case No. CPF-16-515183

CATEGORY I. PAPERS FILED WITH THE COURT IN RESPONSE TO THE MOTION

A. Opposition from Northern Star Management, Inc.:

1. Northern Star Management, Inc.'s Notice of Opposition and Objections to Motion for Order Approving Conservation and Liquidation Plan for CastlePoint National Insurance Company
2. Northern Star Management, Inc.'s Memorandum of Points and Authorities in Opposition to Motion for Order Approving Conservation and Liquidation Plan for CastlePoint National Insurance Company
3. Declaration of Barry Leigh Weissman in Support of Northern Star Management, Inc.'s Opposition and Objections to Motion for Order Approving Conservation and Liquidation Plan for CastlePoint National Insurance Company

B. Response from Wellington Insurance Company:

1. Wellington Insurance Company's Notification and Response to Insurance Commissioner Dave Jones' Motion for Order Approving Conservation and Liquidation Plan for CastlePoint National Insurance Company

C. Comment from 1436-1438 Williamsbridge Road LLC and Seneca Insurance Company (collectively "Williamsbridge"):

1. Williamsbridge's Comment on the Proposed Conservation and Liquidation Plan for CastlePoint National Insurance Company
2. Declaration of David Mercado in Opposition to Proposed Conservation and Liquidation Plan for CastlePoint National Insurance Company

CATEGORY II. LETTERS SENT TO THE HONORABLE HAROLD E. KAHN IN RESPONSE TO THE MOTION

A. Letters from Counsel for Karen Wilkie:

1. Letter dated August 17, 2016 from Elliot H. Taub to The Honorable Harold E. Kahn
2. Letter dated August 24, 2016 from Elliot H. Taub to The Honorable Harold E. Kahn

B. Letter from Counsel for Lorraine and Donald Turchiarelli:

1. Letter dated August 23, 2016 from Jeanne M. Vinal to The Honorable Harold E. Kahn enclosing Affidavit in Opposition to Motion for Order Approving Conservation and Liquidation Plan for CastlePoint National Insurance Company

C. Letter from Counsel for Hildene Capital Management and Hildene Opportunities Master Fund II, Ltd.:

1. Letter dated August 23, 2016 from Isaac M. Gradman to The Honorable Harold E. Kahn

CATEGORY III. MISCELLANEOUS COMMENTARY AND COMMUNICATIONS

1. Email dated August 8, 2016 from Don Nash (paralegal) to Marguerite Stricklin, Thomas Welsh, Patrick Bocash, Richard Rizk, Bill Reinig, and David Campbell.
2. Letter dated August 23, 2016 from Richard Rizk to John Battle.
3. Letter dated August 12, 2016 from William Reinig, Jr. to Marguerite Stricklin.
4. Email dated August 10, 2016 from Bill Reinig (sSent by Cindy Malloy) to Marguerite Stricklin.
5. Letter dated August 10, 2016 from Randal Mathis to Thomas Welsh.
6. Letter dated August 10, 2016 from Anthony Macri to The Honorable Stephanie A. Mitterhoff, J.S.C.
7. Letter dated August 12, 2016 from Jay Handlin emailed to Thomas Welsh.
8. Letter dated August 12, 2016 from Scott Baron emailed to Thomas Welsh.
9. Letter dated August 16, 2016 from Elliot Taub to Marguerite Stricklin.
10. Email dated August 16, 2016 from Marc Alpert to Thomas Welsh, Patrick Bocash and Marguerite Stricklin.

11. Letter dated August 17, 2016 from Jeffrey Cohen to Thomas Welsh and Marguerite Stricklin.
12. Email dated August 17, 2016 from Paul Scheele to Patrick Bocash.
13. Email dated August 18, 2016 from Mark Horpoupian to Thomas Welsh.
14. Email dated August 19, 2016 from Raymond Tittman to Thomas Welsh.
15. Letter dated August 24, 2016 from T.B. Nicholas to Thomas Welsh.
16. Email dated August 29, 2016 from Jeff Brody to Thomas Welsh.
17. Email dated August 30, 2016 from Colleen Smeryage to Thomas Welsh and Patrick Bocash.
18. Letter dated July 8, 2016 from Randle Thompson to York Risk Services (copy provided by Marguerite Stricklin).

CATEGORY I (A) 1

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2 Valerie D. Escalante Troesh (Bar No. 281386)
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11 Attorneys for Creditor
12 Northern Star Management, Inc.

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

15 DAVE JONES, INSURANCE
16 COMMISSIONER OF THE STATE OF
17 CALIFORNIA,

18 Applicant,

19 v.

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

22 Respondents.

23 CASE NO. CPF-16-515183

24 **NORTHERN STAR MANAGEMENT, INC.'S**
25 **NOTICE OF OPPOSITION AND**
26 **OBJECTIONS TO MOTION FOR ORDER**
27 **APPROVING CONSERVATION AND**
28 **LIQUIDATION PLAN FOR CASTLEPOINT**
NATIONAL INSURANCE COMPANY

Assigned to Hon. Harold E. Kahn

Date: September 13, 2016
Time: 9:30 a.m.
Place: Dept. 302
Hon. Harold E. Kahn
400 McAllister Street
San Francisco, CA 94102

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/25/2016
Clerk of the Court
BY:ROMY RISK
Deputy Clerk

Case No. CPF-16-515183

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2
3 **PLEASE TAKE NOTICE** that in connection with the hearing on Applicant Dave Jones',
4 Insurance Commissioner of the State of California in his Capacity as Conservator of CastlePoint
5 National Insurance Company, Motion for Order Approving Conservation and Liquidation Plan for
6 CastlePoint National Insurance Company ("Motion for Order Approving Conservation and Liquidation
7 Plan") set for September 13, 2016 at 9:30 a.m. or thereafter as the matter may be heard in Department
8 302 of the above referenced Court, Creditor Northern Star Management, Inc. will oppose and object to
9 the Motion for Order Approving Conservation and Liquidation Plan.

10 Creditor Northern Star Management, Inc.'s Opposition and Objections are made pursuant to this
11 Court's July 29, 2016 Order: (1) Setting Hearing Date and Briefing Schedule for Conservator's Motion
12 for Order Approving Conservation and Liquidation Plan for CastlePoint National Insurance Company;
13 (2) Establishing Procedures for Hearing; (3) Approving Form of Mail Notice; Approving Form of
14 Publication Notice, subdivision (iii).

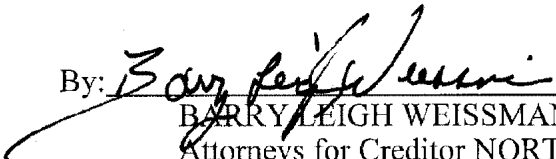
15 Creditor Northern Star Management, Inc. opposes and objects to the Motion for Order
16 Approving Plan on the following grounds:

- 17
- 18 • The Commissioner fails to articulate the basis for the proposed Plan, neglecting to
19 provide any financial factual basis for the proposed methods of conservation, including
20 anticipated liquidation;
 - 21 • The Commissioner fails to provide an adequate explanation of the actions already taken
22 in furtherance of the proposed Plan (which were taken without Court approval); and
 - 23 • Provisions of the proposed Plan are vague, and they should be clarified before any
24 further action on the proposed Plan is taken.
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1 Northern Star's Opposition and Objections are based upon this Notice, the attached
2 Memorandum of Points and Authorities, the Declaration of Barry Leigh Weissman, all the pleadings
3 and papers on file in this action, and upon such other evidence as the Court may properly allow on this
4 matter.

5 Dated: August 24, 2016

CARLTON FIELDS JORDEN BURT, LLP
BARRY LEIGH WEISSMAN
VALERIE D. ESCALANTE TROESH

7
8 By:  _____
BARRY LEIGH WEISSMAN
9 Attorneys for Creditor NORTHERN STAR
MANAGEMENT, INC.
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PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. § 1013a(3)/ Cal. R. Ct. R. 2.260

I am a resident of, or employed in, the County of Los Angeles. I am over the age of 18 and not a party to this action. My business address is: Carlton Fields Jordan Burt, LLP, 2000 Avenue of the Stars, Suite 530 North Tower, Los Angeles, CA 90067-4707. On **August 24, 2016**, I served the following listed document(s), by method indicated below, on the parties in this action:
NORTHERN STAR MANAGEMENT, INC.'S NOTICE OF OPPOSITION AND OBJECTIONS TO MOTION FOR ORDER APPROVING CONSERVATION AND LIQUIDATION PLAN FOR CASTLEPOINT NATIONAL INSURANCE COMPANY

SEE ATTACHED SERVICE LIST

BY U.S. MAIL

By placing the original / a true copy thereof enclosed in a sealed envelope(s), with postage fully prepaid, addressed as per the attached service list, for collection and mailing at 2000 Avenue of the Stars, Suite 530 North Tower, Los Angeles, CA 90067-4707, following ordinary business practices. I am readily familiar with Carlton Fields Jordan Burt LLP's practice for collection and processing of documents for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day as it is collected and processed for mailing in the ordinary course of business.

BY OVERNIGHT DELIVERY

By delivering the document(s) listed above in a sealed envelope(s) or package(s) designated by the express service carrier, with delivery fees paid or provided for, addressed as per the attached service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents. **Note:** Federal Court requirement: service by overnight delivery was made pursuant to agreement of the parties, confirmed in writing, or as an additional method of service as a courtesy to the parties or pursuant to Court Order.

BY ELECTRONIC SERVICE via electronic filing service provider LexisNexis

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider at www.fileandserve.lexisnexis.com, from the email address _____@carltonfields.com, at approximately _____. To my knowledge, the transmission was reported as complete and without error. See Cal. R. Ct. R. 2.253, 2.255, 2.260.

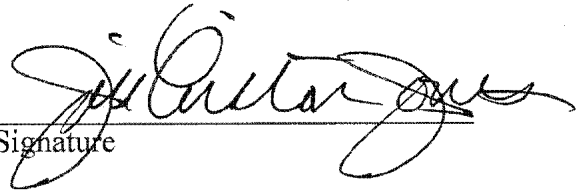
BY EMAIL

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list from the email address jijones@carltonfields.com at approximately _____. To my knowledge, the transmission was reported as complete and without error. Service by email was made pursuant to agreement of the parties, confirmed in writing, or as an additional method of service as a courtesy to the parties or pursuant to Court Order. See Cal. R. Ct. R. 2.260.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct. Executed on August 24, 2016 at Los Angeles, California.

Jill Liston Jones
Type or Print Name

Signature



SERVICE LIST

1
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3 Attorney General of the State of California
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5 Supervising Deputy Attorney General
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Insurance Commissioner of the State
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Conservator of CastlePoint National
Insurance Company*

CATEGORY I (A) 2

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11 Attorneys for Creditor
12 Northern Star Management, Inc.

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

11 DAVE JONES, INSURANCE
12 COMMISSIONER OF THE STATE OF
13 CALIFORNIA,

14 Applicant,

15 v.

16 CASTLEPOINT NATIONAL INSURANCE
17 COMPANY; and DOES 1-50, inclusive,

18 Respondents.

CASE NO. CPF-16-515183

**NORTHERN STAR MANAGEMENT, INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION FOR ORDER APPROVING
CONSERVATION AND LIQUIDATION
PLAN FOR CASTLEPOINT NATIONAL
INSURANCE COMPANY**

Assigned to Hon. Harold E. Kahn

Date: September 13, 2016
Time: 9:30 a.m.
Place: Dept. 302
Hon. Harold E. Kahn
400 McAllister Street
San Francisco, CA 94102

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
08/24/2016
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

Case No. CPF-16-515183

1 **NORTHERN STAR MANAGEMENT, INC.’S OPPOSITION AND OBJECTIONS**
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 Pursuant to Section (iii) of this Court’s July 29, 2016 Order, Creditor Northern Star
4 Management, Inc. (“Northern Star”) opposes and objects to the Motion for Order Approving
5 Conservation and Liquidation Plan for CastlePoint National Insurance Company (“Motion for Order
6 Approving Conservation and Liquidation Plan”). Specifically, Northern Star objects to the Court’s
7 approval of the proposed Plan due to various defects revealed in the Commissioner’s Motion for Order
8 Approving Conservation and Liquidation Plan and accompanying papers.

9 Perhaps most glaring is the fact that the Commissioner fails to make any showing about the
10 basis of the proposed Conservation and Liquidation Plan (“Plan”); he does not provide facts to justify
11 why the proposed Plan is needed. The Court cannot approve the proposed Plan, without being provided
12 with actual facts rather than just a narrative explanation of why the Commissioner believes the Plan is
13 necessary.

14 The Commissioner also does not provide an adequate explanation of the actions already taken in
15 furtherance of the proposed Plan—the merger of nine (9) separate and distinct insurance companies
16 into CastlePoint, and whether that merger preserved Northern Star’s (and other creditors’) interests.
17 For example, there is no information about how the six different departments of insurance in various
18 states ensured that the multiple insurance codes on mergers were followed. Having no information
19 about these critical actions, the Court cannot and should not approve the proposed Plan.

20 Additionally, provisions of the proposed Plan are vague and unclear. Given that these
21 provisions, among others, impact all policyholders and creditors, including Northern Star’s interests,
22 they should be clarified before any further action on the proposed Plan is taken.

23 For these reasons, as further explained below, Northern Star respectfully requests that the Court
24 defer approving the proposed Plan until at least further information, as outlined below, is provided so
25 that it may fully assess the proposed Plan.

1 **I. INTERESTS OF CREDITOR NORTHERN STAR MANAGEMENT, INC.**

2 Northern Star is a judgment creditor of CastlePoint National Insurance Company after obtaining
3 a judgment against it in an arbitration. Declaration of Barry Leigh Weissman (“Weissman Decl.”), ¶ 4,
4 Ex. 1. Specifically, on or about January 6, 2016, the Hon. Cynthia S. Kern of the Supreme Court of the
5 State of New York, County of New York, entered an Amended Order and Judgment confirming the
6 award issued in *In the Matter of the Arbitration Between NORTHERN STAR MANAGEMENT, INC. v.*
7 *CASTLEPOINT NATIONAL INSURANCE COMPANY*. *Id.* The total money judgment, as entered on
8 February 22, 2016, is \$2,319,091.97. On May 16, 2016, Judge Kern issued an order directing that the
9 judgment be amended to include \$107,992.97, plus statutory interest, and the amended judgment is
10 awaiting entry in the clerk’s office. *Id.* The Judgment has not been satisfied. *Id.*

11 Northern Star recently learned that CastlePoint National Insurance Company is subject to a
12 conservatorship under the Insurance Commissioner of the State of California (“Commissioner”), and
13 that the Commissioner is moving this Court for an order approving a conservation and liquidation plan.
14 Weissman Decl., ¶ 5. The Commissioner’s Motion for Order Approving Conservation and Liquidation
15 Plan, however, fails to provide sufficient information to enable Northern Star to determine whether the
16 Plan protects the interests of policyholders and creditors such as Northern Star.

17 Northern Star files this Opposition and Objections to raise its concerns, and will appear at the
18 September 13, 2016 Hearing on the Commissioner’s Motion to present them as well. Weissman Decl.,
19 ¶ 6.

20 **II. NORTHERN STAR’S OPPOSITION AND OBJECTIONS**

21 In exercising power as conservator, “the Commissioner is vested with broad discretion” that is
22 “subject to statutory limitations” and “the requirement that the exercise of discretion be neither
23 arbitrary nor improperly discriminatory.” *In re Exec. Life Ins. Co.* (1995) 32 Cal. App. 4th 344, 356, *as*
24 *modified on denial of reh’g* (Mar. 15, 1995) (citations omitted). The Commissioner must exercise this
25 discretion in accordance with his role as “trustee for the benefit of all creditors and other persons
26 interested in the insolvency estate.” *Id.*; Ins. Code, § 1057 (“In all proceedings under this article, the
27 commissioner shall be deemed to be a trustee for the benefit of all creditors and other persons interested
28

1 in the estate of the person against whom the proceedings are pending.”); *Commercial Nat. Bank v.*
2 *Superior Court* (1993) 14 Cal. App. 4th 393, 399.

3
4 **A. The Commissioner’s Motion Fails to Provide the Factual Basis for the Plan; He**
5 **Neglects to Share *Why* the Conservation and Liquidation Plan is Needed Over**
6 **Other Alternatives**

7 The Commissioner dedicates its Memorandum of Points and Authorities in support of the
8 present Motion to explaining how the proposed Conservation and Liquidation Plan came to be and its
9 feasibility. *See* Commissioner’s Memorandum of Point and Authorities ISO Motion, filed August 5,
10 2016, pp. 1-5 (introduction and summary of the plan). However, the Commissioner’s Motion and
11 accompanying papers fail to articulate the basis *why this* Plan is necessary.

12 For example, the Commissioner anticipates a liquidation, and structures the Plan toward that
13 ultimate goal; yet as the Commissioner recognizes, liquidation is a “last resort” only to be used only if
14 rehabilitation is not possible. *See* Commissioner’s Memorandum of Point and Authorities ISO Motion,
15 filed August 5, 2016, p. 15, Ins. 1-4 (citing *In re Exec. Life Ins. Co.* (1995) 32 Cal. App. 4th 344, 356).
16 Yet, the Commissioner fails to provide a sufficient explanation with factual support as to why
17 *rehabilitation* is not an option and why this Plan with anticipated liquidation, over any other alternative
18 approaches should be approved. To ensure that the proposed Plan is in the interests of CastlePoint’s
19 policyholders and creditors, this Court, at minimum should have all such information.

20 At most, Northern Star has only recently learned that *before* the Commissioner was appointed
21 as conservator (in July of 2016), the proposed Plan was already documented and being implemented
22 after groups (which subsequently merged with CastlePoint) engaged in “extensive discussion and
23 [made] consideration and evaluation of alternative structures” to address the financial condition of
24 those groups. Commissioner’s Memorandum of Point and Authorities ISO Motion, filed August 5,
25 2016, p. 7, Ins. 16-23 (in “[e]arly 2016, the Tower Insurance Companies, along with the Tower Group,
26 ACP Re, and its affiliates, began working with six domiciliary insurance regulators of the Tower
27 Insurance Companies . . . to develop a plan to address the increasingly distressed financial condition of

1 the Tower Insurance Companies”). Yet, none of the information concerning such extensive
2 discussions or information about alternative structures for conservation, nor the methodology used to
3 accomplish the combination of the nine (9) separate and distinct Tower insurance companies into
4 CastlePoint appears in any of the Commissioner’s present filings—information critical to determine
5 whether the proposed Plan protects the interests of policyholders and other creditors, including
6 Northern Star.

7 Furthermore, Northern Star has also discerned that the proposed Plan, which calls for tax
8 deconsolidation and restructuring of CastlePoint, appears to be the result of one company’s pressure
9 upon the Commissioner and the proposed Plan:

10 During the negotiation of the transactions described in the Conservation
11 Agreement, ACP Re notified the Commissioner of its need to either transfer its stock in
12 Tower Group or claim a worthless tax deduction on its 2016 U.S. federal income tax
13 return with respect to the stock. (Supp. Wilson Decl., ¶ 17.) **ACP Re stated that this
14 tax treatment of its Tower Group stock was an essential prerequisite to its
15 willingness to enter into the Conservation Agreement and perform its portions of
16 the transactions and agreements that will ultimately deliver \$90 and \$150 million in
17 net new value into CastlePoint for the benefit of policyholders. (Ibid.) The
18 Conservator has been advised that unless the Plan is properly structured to include
19 a deconsolidation of CastlePoint that is designed to meet the requirements of
20 Internal Revenue Code section 382(1)(5), either of ACP Re's proposed actions with
21 respect to its Tower Group stock will significantly reduce and potentially eliminate
22 CastlePoint's sizable NOL asset. (Ibid.)**

23 Commissioner’s Memorandum of Point and Authorities ISO Motion, filed August 5, 2016, p. 8, Ins. 7-
24 17. Having further information about this feature of the proposed Plan, including whether this pressure
25 impacted the terms of the proposed Plan (to policyholders and creditors’ detriment) and whether any
26 alternative arrangements are available, would enable this Court to fully understand the proposed Plan
27 and if it does indeed protect policyholders’ and creditors’ interests.

28 Ultimately, the Court, Northern Star, and other interested parties are entitled to consider all such
information bearing on whether the Commissioner’s proposed Plan is appropriate.

1 **B. The Commissioner and Purported Interested Parties Have Already Taken Action**
2 **on the Proposed Plan without Approval; Yet the Commissioner Fails to Provide An**
3 **Adequate Explanation of Their Actions**

4 The Commissioner's Memorandum of Points and Authorities in support of the present Motion
5 also reveals that the Commissioner has *already taken* action towards completing the Plan *before the*
6 *Commissioner* was appointed and *without Court approval*, namely merging various companies into
7 CastlePoint through working with various interested parties. See Commissioner's Memorandum of
8 Point and Authorities ISO Motion, filed August 5, 2016, pp. 2 ("the first step, which was undertaken
9 prior to and in anticipation of conservation, was to consolidate the ten insurance companies into a
10 single company – CastlePoint . . ."), 5-7. This first step has significant impact on the financial status
11 of CastlePoint (and its ability to satisfy creditors such as Northern Star), yet nothing about the mergers
12 has been shared (other than they occurred).

13 Northern Star objects to this step of the Plan not only due to its lack of transparency (how all
14 interested parties came to be involved, why they were permitted to be involved, why this step of the
15 plan was not revealed until after completion), but also due to the other components of this step that
16 were not disclosed:

- 17
- 18 • How the mergers occurred and whether they complied with all laws regarding mergers
19 given that any merger out of compliance with the law will be a liability to CastlePoint;
 - 20 • The financial basis for merging the companies given that if the mergers were not
21 financially wise, CastlePoint's ability to pay its creditors will be hindered; and
 - 22 • Evidence showing that the mergers were in the interest of CastlePoint's policyholders
23 and creditors, including financial statements for the various companies that were
24 merged.

25 Each of these points about the mergers impact Northern Star's interests as a creditor. Yet, those points,
26 among others, have not been shared with the Court or interested parties so that they may consider the
27 appropriateness of the mergers. See generally, Commissioner's Memorandum of Point and Authorities
28 ISO Motion, filed August 5, 2016.

1 The proposed Plan should not be approved until this information has been provided.

2 **C. Other Portions of the Proposed Plan are Vague; They Will Impact Northern Star's**
3 **Interests and Should be Clarified Before the Proposed Plan is Approved**
4

5 Several features of the proposed Plan are unclear, and must be clarified before further action
6 towards the proposed Plan is taken. These features impact Northern Star's interests (and other
7 creditors' interests too):

- 8 • Who the "historical shareholders" or "creditors" are who would receive CastlePoint
9 stock in connection with terminating the existing stock of CastlePoint and how such
10 receipt of stock benefits them and does not harm their interests or claims (as opposed to
11 payment by some another method), Commissioner's Memorandum of Point and
12 Authorities ISO Motion, filed August 5, 2016, p. 10-11 ("The Conservator will cancel
13 the existing stock and ownership of CastlePoint and transfer it to CastlePoint's historical
14 creditors by way of re-issuance of new CastlePoint stock to the Commissioner, as trustee
15 for the benefit of historical shareholders and creditors of CastlePoint").
- 16 • How will the Trust that is created to "hold the reissued CastlePoint stock for the sole
17 benefit of CastlePoint's historical shareholders and creditors" be administered, and how
18 will creditors' claims be satisfied through the Trust, *id.* at p. 11, lns. 15-21.
- 19 • What is the basis and factual support for claiming that the "runoff administration
20 services" to be provided by "affiliates of AmTrust and National General" "without
21 charge" is valued at ". . . up to \$40 million in administration fee liability that
22 CastlePoint would otherwise be required to pay while running off and administering
23 CastlePoint's policies and claims", *id.* at p. 21, lns. 3-7.

24 Without such information, the Court, policyholders, creditors including Northern Star are unable to
25 fully assess the proposed Plan to discern whether its terms may harm creditors.

26 The proposed Plan as currently set forth in the Commissioner's Motion and accompanying
27 papers is unclear on whether it provides a benefit to Northern Star (and other creditors too) that is

1 “equivalent to or greater than those they would have received in a straight liquidation”, the standard the
2 Commissioner recognizes he must meet to defeat any objection to the plan. See Commissioner’s
3 Memorandum of Point and Authorities ISO Motion, filed August 5, 2016, p. 14, Ins. 2-9 (“A plan that
4 provides benefits to policyholders and creditors equivalent to or greater than those they would have
5 received in a straight liquidation is an appropriate exercise of discretion . . . and satisfies the standard
6 for approval under California law.”).


7 The Court should require that the points raised above be clarified before any further steps
8 toward approving the proposed Plan are taken.

9 **III. CONCLUSION**

10 Given the lack of transparency in the proposed Plan and its vague provisions the Court is well
11 within its discretion to deny approving the Plan until more information is provided so that it may
12 properly consider the proposal. Northern Star thus respectfully asks this Court to defer ruling on the
13 Commissioner’s Motion until after the Commissioner provides the additional information needed
14 described above.

15
16 Dated: August 24, 2016

CARLTON FIELDS JORDEN BURT, LLP
BARRY LEIGH WEISSMAN
VALERIE D. ESCALANTE TROESH

17
18
19 By:  _____
20 BARRY LEIGH WEISSMAN
21 Attorneys for Creditor NORTHERN STAR
22 MANAGEMENT, INC.
23
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25
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28

PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. § 1013a(3)/ Cal. R. Ct. R. 2.260

I am a resident of, or employed in, the County of Los Angeles. I am over the age of 18 and not a party to this action. My business address is: Carlton Fields Jordan Burt, LLP, 2000 Avenue of the Stars, Suite 530 North Tower, Los Angeles, CA 90067-4707. On August 24, 2016, I served the following listed document(s), by method indicated below, on the parties in this action: **NORTHERN STAR MANAGEMENT, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ORDER APPROVING CONSERVATION AND LIQUIDATION PLAN FOR CASTLEPOINT NATIONAL INSURANCE COMPANY**

SEE ATTACHED SERVICE LIST

BY U.S. MAIL

By placing the original / a true copy thereof enclosed in a sealed envelope(s), with postage fully prepaid, addressed as per the attached service list, for collection and mailing at 2000 Avenue of the Stars, Suite 530 North Tower, Los Angeles, CA 90067-4707, following ordinary business practices. I am readily familiar with Carlton Fields Jordan Burt LLP's practice for collection and processing of documents for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day as it is collected and processed for mailing in the ordinary course of business.

BY OVERNIGHT DELIVERY

By delivering the document(s) listed above in a sealed envelope(s) or package(s) designated by the express service carrier, with delivery fees paid or provided for, addressed as per the attached service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents. **Note:** Federal Court requirement: service by overnight delivery was made pursuant to agreement of the parties, confirmed in writing, or as an additional method of service as a courtesy to the parties or pursuant to Court Order.

BY ELECTRONIC SERVICE via electronic filing service provider LexisNexis

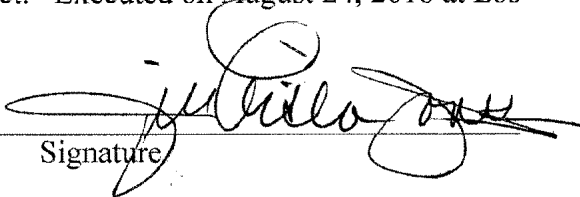
By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider at www.fileandserve.lexisnexis.com, from the email address _____@carltonfields.com, at approximately _____. To my knowledge, the transmission was reported as complete and without error. See Cal. R. Ct. R. 2.253, 2.255, 2.260.

BY EMAIL

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list from the email address jijones@carltonfields.com at approximately _____. To my knowledge, the transmission was reported as complete and without error. Service by email was made pursuant to agreement of the parties, confirmed in writing, or as an additional method of service as a courtesy to the parties or pursuant to Court Order. See Cal. R. Ct. R. 2.260.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct. Executed on August 24, 2016 at Los Angeles, California.

Jill Liston Jones
Type or Print Name


Signature

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

DAVE JONES, INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA,

Applicant,

v.

CASTLEPOINT NATIONAL INSURANCE
COMPANY; and DOES 1-50, inclusive,

Respondents.

CASE NO. CPF-16-515183

**DECLARATION OF BARRY LEIGH
WEISSMAN IN SUPPORT OF NORTHERN
STAR MANAGEMENT, INC.'S
OPPOSITION AND OBJECTIONS TO
MOTION FOR ORDER APPROVING
CONSERVATION AND LIQUIDATION
PLAN FOR CASTLEPOINT NATIONAL
INSURANCE COMPANY**

Assigned to Hon. Harold E. Kahn

Date: September 13, 2016
Time: 9:30 a.m.
Place: Dept. 302
Hon. Harold E. Kahn
400 McAllister Street
San Francisco, CA 94102

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
08/24/2016
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

Case No. CPF-16-515183

1 **DECLARATION OF BARRY LEIGH WEISSMAN**

2 I, Barry LEIGH Weissman, declare:

3 1. I am an attorney at law, duly licensed to duly admitted to the practice before this Court.
4 I am a shareholder in the law firm of Carlton Fields Jordan Burt, LLP, and counsel for Creditor
5 Northern Star Management, Inc. ("Northern Star") in this matter.

6 2. I have personal knowledge of all the facts set forth in this Declaration and, if called and
7 sworn as a witness at trial or any other hearing before this Court, would and could testify as set forth
8 herein.

9 3. I submit this Declaration in support of Creditor Northern Star Management, Inc.'s
10 Notice of and Opposition and Objections to the Commissioner's Motion for Order Approving
11 Conservation and Liquidation Plan for CastlePoint National Insurance Company ("Motion for Order
12 Approving Conservation and Liquidation Plan").

13 4. Northern Star is a judgment creditor of CastlePoint National Insurance Company after
14 obtaining a judgment against it in an arbitration that took place in New York. Specifically, on or about
15 January 6, 2016, the Hon. Cynthia S. Kern of the Supreme Court of the State of New York, County of
16 New York, entered an Amended Order and Judgment confirming the award issued in *In the Matter of*
17 *the Arbitration Between NORTHERN STAR MANAGEMENT, INC. V. CASTLEPOINT NATIONAL*
18 *INSURANCE COMPANY*. The total money judgment, as entered on February 22, 2016, is
19 \$2,319,091.97. On May 16, 2016, Judge Kern issued an order directing that the judgment be amended
20 to include \$107,992.97, plus statutory interest, and the amended judgment is awaiting entry in the
21 clerk's office.

22 5. Northern Star recently learned that CastlePoint National Insurance Company is subject
23 to a conservatorship under the Insurance Commissioner of the State of California ("Commissioner"),
24 and that the Commissioner moves this Court for an order approving a Conservation and Liquidation
25 Plan. The Commissioner's Motion for Order Approving Conservation and Liquidation Plan, however,
26 fails to provide sufficient information to enable Northern Star to determine whether the Plan protects its
27 interests.

28

PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. § 1013a(3)/ Cal. R. Ct. R. 2.260

I am a resident of, or employed in, the County of Los Angeles. I am over the age of 18 and not a party to this action. My business address is: Carlton Fields Jordan Burt, LLP, 2000 Avenue of the Stars, Suite 530 North Tower, Los Angeles, CA 90067-4707. On August 24, 2016, I served the following listed document(s), by method indicated below, on the parties in this action:
DECLARATION OF BARRY LEIGH WEISSMAN IN SUPPORT OF NORTHERN STAR MANAGEMENT, INC.'S NOTICE OF AND OPPOSITION AND OBJECTIONS TO MOTION FOR ORDER APPROVING CONSERVATION AND LIQUIDATION PLAN FOR CASTLEPOINT NATIONAL INSURANCE COMPANY

SEE ATTACHED SERVICE LIST

BY U.S. MAIL

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BY ELECTRONIC SERVICE via electronic filing service provider LexisNexis

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct. Executed on August 24, 2016 at Los Angeles, California.

Jill Liston Jones
Type or Print Name


Signature