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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
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

**INSURANCE COMMISSIONER DAVE
JONES' MOTION FOR ORDER
APPROVING CONSERVATION AND
LIQUIDATION PLAN FOR
CASTLEPOINT NATIONAL
INSURANCE COMPANY**

**Date: September 13, 2016¹
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Harold E. Kahn**

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¹ The hearing date and special briefing schedule to be established by Court order.

1 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Dave Jones, Insurance Commissioner of the State of California (the “Commissioner”), as
3 the statutory Conservator (the “Conservator”) of CastlePoint National Insurance Company
4 (“CastlePoint”), pursuant to the Court’s July 28, 2016 Order Appointing Insurance Commissioner
5 As Conservator And Restraining Orders (the “Conservation Order”), will and hereby does move
6 the Court for an Order Approving the Conservation and Liquidation Plan for CastlePoint National
7 Insurance Company (the “Motion”). By this Motion, the Conservator seeks the Court’s
8 authorization to implement, close, and effect all of the actions described in the Conservation and
9 Liquidation Plan For CastlePoint National Insurance Company (the “Plan”); to close and
10 consummate, on behalf of CastlePoint, the transactions described in the CastlePoint National
11 Insurance Company Conservation Agreement and each of the appended agreements thereto
12 (collectively, the “Conservation Agreement”), which agreements include a Commercial Lines
13 Administrative Services Agreement, a Personal Lines Administrative Services Agreement, a
14 Release Agreement, and three Commutation and Release Agreements and any ancillary
15 agreements necessary to the implementation of such transactions; and to take such other actions
16 as the Conservator determines are necessary to implement the Plan and the Conservation
17 Agreement. True and correct copies of the Plan and Conservation Agreement are attached to the
18 accompanying declaration of David E. Wilson In Support Of Motion For Order Approving
19 Conservation And Liquidation Plan For CastlePoint National Insurance Company.

20 The Plan contemplates a four-step process for the efficient and orderly runoff and eventual
21 liquidation of CastlePoint:

22 1) Consolidation by Merger and Conservation: The first step, which was
23 undertaken prior to and in anticipation of conservation, was to consolidate the ten
24 insurance companies (the “Tower Insurance Companies”) into a single surviving company
25 – CastlePoint – and then place that insurer into conservation. By consolidating the Tower
26 Insurance Companies, the Commissioner and his fellow regulators avoided the delay,
27 confusion and waste that would have resulted from ten separate legal proceedings in six
28 states.

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2) Restructuring of CastlePoint Under Internal Revenue Code section 382(l)(5): To preserve CastlePoint’s tax attributes, including hundreds of millions of dollars in net operating loss carryforwards (also known as “NOLs”), to protect CastlePoint from exposure to any future tax liabilities of the non-insurance company members of the consolidated taxpayer group in which CastlePoint is currently a member, and to facilitate the valuable Conservation Agreement transactions described in step 3 below, the Plan provides for the restructuring of CastlePoint’s equity ownership pursuant to federal tax law, specifically Internal Revenue Code section 382(l)(5). In simple terms, this section of the tax code allows companies in receivership or bankruptcy to restructure and change their ownership (an action that would normally wipe out the value of the company’s NOLs) and emerge with their NOLs intact, provided the restructuring results in the majority of the new equity of the company being owned by the historical creditors of the company – a “debt for equity” exchange. The tax restructuring provisions of the Plan are intended to ensure that CastlePoint’s NOLs are preserved so that the CastlePoint estate is not inappropriately subjected to federal income tax liabilities during its conservation and liquidation, and so that policyholder and other creditor recoveries may be maximized to every extent possible.

3) Conservation Agreement Transactions: Following the tax deconsolidation, the Plan provides for CastlePoint to close on a series of integrated transactions and agreements set forth in the Conservation Agreement entered into by the Conservator with a group of aligned parties that participated in an earlier effort in September 2014 to salvage the Tower Insurance Companies.² Under the Conservation Agreement, \$200 million (net of the net intercompany balances between CNIC, on the one hand, and AmTrust and National General parties on the other hand accrued and unpaid as of the conservation date) will be injected into CastlePoint by several parties to the Conservation

² The counter-parties to the Conservation Agreement are fully described in the legal documents and agreements that are collectively attached to the Plan. The Plan is Exhibit A to the declaration of David E. Wilson, and the Conservation Agreement is Exhibit B to the declaration.

1 Agreement. This infusion will provide CastlePoint with much needed liquidity to ensure
2 that policy claims and benefits will continue to be paid during the conservation period,
3 while the Conservator prepares for the eventual liquidation of CastlePoint and the
4 resulting transfer of all claims to the appropriate state insurance guaranty associations
5 (“IGAs”). In consideration for the injection of this \$200 million, (a) the Conservator will
6 cause CastlePoint to commute (terminate) several existing reinsurance agreements
7 between and among several Parties to the Conservation Agreement, and (b) all insurance
8 policies issued by CastlePoint after September 15, 2014, which were already 100% quota-
9 share reinsured (the “Fronted Policies”), will be assigned to and assumed by two solvent
10 insurers so that these policyholders are not disadvantaged by CastlePoint’s conservation
11 and liquidation. The Conservation Agreement also provides for CastlePoint to receive
12 run-off administration services (policy administration and claims administration) free of
13 charge for up to two years, at an estimated value to CastlePoint of as much as \$40 million.

14 4) Orderly Liquidation and Transition of Claims to IGAs: Finally, the Plan
15 anticipates that at such time as the Conservator determines is appropriate and in the best
16 interests of policyholders, he will apply to the Court for entry of an Order of Liquidation
17 for CastlePoint and a finding that CastlePoint is legally insolvent. Those two events, a
18 liquidation order and a finding of insolvency, will trigger the statutory duties of the IGAs
19 to step in and assume the administration and payment of CastlePoint’s remaining claims.
20 During the conservation period prior to entry of a liquidation order, the Conservator will
21 work closely with the IGAs to facilitate a smooth transition of claims administration and
22 payment responsibilities in order to reduce disruption and inconvenience to policyholders
23 and claimants. Notably, the free run-off administration services that the Conservator will
24 obtain under the Conservation Agreement are assignable to any IGA that wishes to and is
25 statutorily authorized to take advantage of this benefit of the Plan.

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1 This Motion is made pursuant to the provisions and authority of the Conservation Order,
2 the Scheduling Order, California Insurance Code sections 1011, 1012, 1016, 1033, 1037, 1043,
3 and other relevant and applicable sections thereof, on the grounds that:

4 1. CastlePoint has been found, after an examination, to be in such a condition that its
5 further transaction of business would be hazardous to its policyholders, creditors, or to the public
6 and thus has been placed in conservation by the Court with the Commissioner having been
7 appointed as its Conservator;

8 2. The Conservation and Liquidation Plan is lawful, reasonable, appropriate, and
9 necessary to protect the interests of CastlePoint’s policyholders, creditors and other stakeholders,
10 and the public, and it should therefore be approved; and

11 3. The Plan is necessary to preserve the assets of the estate for the benefit of
12 policyholders and creditors, is not an abuse of the Commissioner’s discretion, and is in the best
13 interest of CastlePoint’s policyholders and creditors.

14 The Conservator has filed an *Ex Parte* Application³ requesting that the Court set a hearing
15 date on this Motion (“Hearing”), establish a special briefing schedule for the Motion, and approve
16 the Conservator’s forms of notice. Once the Court has set a hearing date and briefing schedule
17 and approved the Conservator’s forms of notice, the Conservator will send notice to all parties
18 and file additional papers in support of the Plan in accordance with the schedule set by the Court.

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27 ³ See Conservator’s Ex Parte Application For Order (1) Setting Hearing Date and Briefing Schedule for the
28 Conservator’s Motion for Order Approving Plan of Rehabilitation for CastlePoint National Insurance Company in
Conservation; (2) Establishing Procedures for the Hearing; (3) Approving Form of Notice by Mail; and (4)
Approving Form of Publication Notice, filed concurrently.

1 This Motion is based on the accompanying Declaration of David Wilson, a Memorandum
2 of Points and Authorities, Special Notice to Internal Revenue Service of the Motion, additional
3 briefs and declarations to be filed pursuant to the Court's scheduling order, the prior record of
4 proceedings in this action, and such additional evidence and argument as may be offered at the
5 time of the Hearing on this Motion.

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8 Dated: July 28, 2016


KAMALA D. HARRIS
Attorney General of the State of California

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11 By: _____
MARGUERITE C. STRICKLIN
Deputy Attorney General

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13 Attorneys for Applicant Dave Jones,
Insurance Commissioner of the
14 State of California

15 Dated: July 28, 2016

THOMAS J. WELSH
PATRICK B. BOCASH
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18 By: _____
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20 Attorneys for Applicant Dave Jones,
Insurance Commissioner of the
21 State of California