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

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

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

17 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,
18
Applicant,
19
v.
20 CASTLEPOINT NATIONAL INSURANCE
COMPANY, and DOES 1-50, inclusive,
21
22 Respondents.

Case No. CPF-16-515183
Reservation No. [N/A]

**NOTICE OF APPLICATION AND
APPLICATION FOR ORDER
AUTHORIZING: (1) EARLY ACCESS
DISTRIBUTION OF ASSETS TO
STATE INSURANCE GUARANTY
FUNDS; AND (2) SETTLEMENT
AGREEMENT AND EARLY
HARDSHIP PARTIAL
DISTRIBUTION OF FUNDS TO
CLASS TWO CLAIMANT KAREN
WILKIE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

**Date: September 15, 2022
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Ethan P. Schulman**

1 TO EACH PARTY AND ATTORNEY OF RECORD IN THIS ACTION:

2 PLEASE TAKE NOTICE that on September 15, 2022, in Department 302 of the
3 Sacramento Superior Court, 400 McAllister Street, San Francisco, California 94102, before Judge
4 Ethan P. Schulman, the Insurance Commissioner of the State of California, as Liquidator
5 (Commissioner) of CastlePoint National Insurance Company (CastlePoint) will, and hereby does,
6 apply to the Court for an order authorizing: (1) an early access distribution of assets to state
7 insurance guaranty funds pursuant to his proposal described herein; and (2) approving a
8 settlement agreement entitled “Agreement Regarding Hardship Distribution between Karen
9 Wilkie and the California Insurance Commissioner, as Liquidator of CastlePoint National
10 Insurance Company” (Wilkie Agreement) providing, among other things, for an early hardship
11 partial distribution of funds to her (Application).

12 This Application is made pursuant to California Insurance Code sections 1016, 1035.5,
13 1037, subdivisions (c) - (d) and related provisions of Part 2, Chapter 1, Article 14 of the Insurance
14 Code and pursuant to the Liquidation Order for CastlePoint dated March 30, 2017 (Liquidation
15 Order). This Application is made upon the grounds that the Commissioner, in his capacity as the
16 Court-appointed liquidator of respondent CastlePoint National Insurance Company (CastlePoint
17 or the Company) has demonstrated his entitlement to the requested order approving his proposal
18 to distribute CastlePoint assets to state insurance guaranty funds pursuant to Insurance Code
19 Section 1035.5 and the proposal is within his lawful discretion. In addition, under Insurance
20 Code section 1037, subdivision (c) the Commissioner has the discretion to compromise and settle
21 claims against CastlePoint on terms and conditions that the Commissioner deems advantageous to
22 the CastlePoint estate, subject to approval of the Court under Insurance Code section 1037,
23 subdivision (d) if the market value of the property involved exceeds \$20,000. As such, the
24 proposed Wilkie Agreement claim is within the Commissioner’s lawful discretion and should be
25 approved.

26 Accordingly, the Commissioner seeks: (1) Court approval of his contemplated distribution
27 of approximately \$60,028,780 in assets of the CastlePoint estate to state insurance guaranty funds

1 or similar entities representing amounts paid for which they could assert a claim against the
2 Commissioner, as itemized in Exhibit A (Proposed Distributions to Insurance Guaranty Funds
3 from the CastlePoint Estate) to the Declaration of Joseph Holloway in support hereof (Holloway
4 Decl.); and (2) Court approval of the Wilkie Agreement settling her allowed Class Two claim and
5 providing for an early hardship partial distribution in the amount of \$877,711.12, representing 50
6 percent of her allowed Class Two claim of \$2 million, discounted to present value, with any
7 remaining pro rata portion of her allowed claim to be paid at the time of final distribution of the
8 CastlePoint estate. (See Holloway Decl. ¶¶ 16-18; and Exhibit D thereto.)

9 This Application is based on this notice, the Application itself, the Commissioner's
10 memorandum of points and authorities, and the Holloway Declaration in support of this
11 Application and exhibits thereto, and such oral argument and additional evidence as may be
12 received by the Court at the hearing on the Application.

13
14 Dated: August 16, 2022

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21 By: /s/ Cynthia J. Larsen

CYNTHIA J. LARSEN

22 Attorneys for Applicant Ricardo Lara,
23 Insurance Commissioner of the State of
24 California in his capacity as Liquidator of
CastlePoint National Insurance Company

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION**
2 **FOR ORDER AUTHORIZING EARLY ACCESS DISTRIBUTION OF ASSETS TO**
3 **STATE INSURANCE GUARANTY FUNDS AND APPROVING EARLY HARDSHIP**
4 **PARTIAL DISTRIBUTION TO KAREN WILKIE**

5 **I.**

6 **FACTUAL BACKGROUND**

7 **1. Proposed Early Access Distribution to State Insurance Guaranty Funds**

8 The Commissioner was appointed as conservator of respondent CastlePoint by the Court
9 on July 28, 2016, and was thereafter appointed as liquidator of CastlePoint by the Court on
10 March 30, 2017, pursuant to Insurance Code sections 1011 and 1016, respectively. As liquidator,
11 the Commissioner was directed to liquidate and wind up the business affairs of CastlePoint in
12 accordance with the applicable provisions of the Insurance Code. (Liquidation Order ¶ 4.)

13 In aid and fulfillment of the Commissioner’s role as liquidator, Insurance Code section
14 1035.5, subdivision (a) provides that the Commissioner may apply for and obtain Court approval
15 of a proposal to disburse the insurer’s assets to state insurance guaranty funds as follows:

16 Within 120 days of the issuance of an order directing the winding up and
17 liquidation of the business of an insolvent insurer under Section 1016, the commissioner
18 shall make application to the court for approval of a proposal to disburse the insurer's
19 assets, from time to time as such assets become available, to the California Insurance
20 Guarantee Association, or the California Life and Health Insurance Guarantee
21 Association, and to any entity or person performing a similar function in another state.

22 (Ins. Code, § 1035.5, subd. (a).) Such proposed distributions are to be in “amounts estimated at
23 least equal to the payment made or to be made by the associations for which such associations
24 could assert a claim against the commissioner” pursuant to the provisions of Insurance Code
25 section 1035.5, subdivision (c).

26 The Liquidation Order directs the Commissioner to “liquidate and wind up the business of
27 CastlePoint and to act in all ways and exercise all powers necessary for the purpose of carrying
28 out this Order and the liquidation provisions of the Insurance Code, Insurance Code sections 1010
et seq.” (Liquidation Order ¶ 4.) The Commissioner has concluded that the estate of CastlePoint
now possesses sufficient funds to make an early access distribution to state insurance guaranty

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1 funds or similar entities, after reserving for amounts described in Insurance Code section 1035.5,
2 subdivision (b)(1). (Holloway Decl. ¶ 7.)

3 Specifically, pursuant to Insurance Code section 1035.5, subdivision (b)(1), the
4 Commissioner's proposal contains appropriate provisions for the payment of administrative costs,
5 for the payment of the claims of secured creditors to the extent of the value of security held, and
6 for claims falling within the priorities established in Insurance Code section 1033, subdivision
7 (a)(1)-(4). The CastlePoint estate has accrued administrative costs as of year-end 2021 of
8 \$7,029,681 and liability for secured claims of \$105,455, for a total for the two categories of
9 \$7,135,136 as set forth in the Holloway Declaration and Exhibit B thereto. (See Holloway Decl.
10 ¶¶ 8-10; and Exhibit B thereto (Statement of Net Assets in Liquidation)). As of December 31,
11 2021, the Commissioner has retained a total of \$271,319,233 in cash and cash equivalents,
12 participation in pooled investments, and non-pooled short-term investments. (See Holloway
13 Decl., Ex. B.) The Net Assets shown in Exhibit B have not materially changed since year-end
14 2021. (Holloway Decl. ¶ 8.)

15 As shown in Exhibit A to the Holloway Declaration, at this time a total of forty-six (46)
16 guaranty funds are entitled, after the offset of statutory credits under Insurance Code
17 section 1035.5, subdivision (d), to an aggregate amount of \$60,028,780 in amounts paid on claims
18 under CastlePoint policies and related loss adjustment expenses. (See Holloway Decl. ¶ 9, Ex. A
19 (setting forth the amounts, with applicable offsets, to be paid by the Commissioner to 46 state
20 guaranty funds)). The Commissioner's contemplated distribution to state insurance guaranty
21 funds would result in the pro rata payment to each guaranty fund of 11.46 percent of paid losses
22 and loss adjustment expenses. Subtracting the proposed distribution to state insurance guaranty
23 funds of \$60,028,780, and the above total amount of \$7,135,136 for administrative expenses and
24 secured claims, from the remaining cash assets in the estate of \$271,319,233, it is clear that the
25 remaining cash assets in the estate are more than sufficient to cover both secured claims as well as
26 any future administrative costs and the like.

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1 To determine the appropriate amount to be distributed at this time to each state guaranty,
2 the Commissioner calculated the “ultimate loss” to each state guaranty fund, which consists of the
3 amounts paid by the guaranty fund on behalf of policyholders, as well as claims reserves and
4 administrative expenses. The Commissioner has then applied a “maximum cap” for the
5 distribution of 50 percent of each fund’s ultimate loss. Statutory releases of funds from
6 CastlePoint to state guaranty funds, as well as statutory deposits of CastlePoint to be released to
7 state guaranty funds, were then offset, along with any premium or other credits where
8 appropriate, pursuant to Insurance Code section 1035.5, subdivision (d)¹. (Holloway Decl. ¶ 10.)
9 Utilizing the methodology described in the Holloway Declaration and in Exhibit A thereto, the
10 Commissioner proposes to distribute and pay each of the 46 guaranty funds the amounts set forth
11 in Exhibit A.

12 If closure of the CastlePoint estate is delayed, the Commissioner may seek approval of
13 additional early access distributions when such liabilities and contingencies become known and
14 are quantified. (Holloway Decl. ¶ 13.)

15 In accordance with Insurance Code section 1035.5, subdivision (b)(4), with respect to the
16 state insurance guaranty funds receiving a distribution, the Commissioner has already requested
17 that each fund provide an executed “early access agreement” (EA Agreement) to return the
18 distributed assets as required to pay claims of secured creditors and claims falling within the
19 priorities established in Insurance Code section 1033, subdivisions (a)(1) and (a)(2). (Holloway
20 Decl. ¶ 14.) Many funds have already provided such executed EA Agreement, and disbursements
21 will not be made to any fund until its executed EA Agreement has been received by the
22 Commissioner. (See Holloway Decl., Ex. A (Column entitled “EA Agreement Rec’d”)). A true
23 and correct copy of the template EA Agreement required to be signed by all state guaranty funds
24 receiving a distribution is attached to the Holloway Declaration as Exhibit C.

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26 _____
27 ¹ As shown in Exhibit A, there are no statutory deposits in certain states. Accordingly, for those states, the
28 Commissioner will distribute the applicable amounts without applying an Insurance Code section 1035.5, subdivision
(d) offset for statutory deposits.

1 As detailed above, the Commissioner has satisfied the requirements of Insurance Code
2 section 1035.5 for disbursements of assets to insurance guaranty funds and similar entities. The
3 disbursements are an appropriate exercise of the Commissioner's discretion and, accordingly, the
4 Commissioner requests that his proposal be approved.

5 **2. Proposed Early Hardship Partial Distribution on Allowed Class 2 Claim of**
6 **Karen Wilkie**

7 The Commissioner has entered into the Wilkie Agreement, contingent on approval by the
8 Court, settling Wilkie's entitlement on her Class Two claim under Insurance Code section 1033,
9 subdivision (a)(2) and providing for an early hardship partial distribution to Wilkie in the sum of
10 \$877,711.12, which by agreement represents a payment of 50 percent of the value of her allowed
11 claim. This amount represents the agreed present value of 50 percent (or \$1 million) of Wilkie's
12 \$2 million allowed Class Two claim. A true and correct copy of the Wilkie Agreement between
13 the Liquidator and Wilkie is attached to the Holloway Declaration as Exhibit D (Wilkie
14 Agreement). The agreed present value of 50 percent of Wilkie's allowed claim was calculated
15 using a discount rate of 1.5 percent applied over eight years. (Holloway Decl. ¶ 16.) The
16 discount rate was selected by the Commissioner because it is the yield on the portfolio of invested
17 assets of the Commissioner's Conservation and Liquidation Office. The eight-year period was
18 selected by the Commissioner because 2030 is the currently projected time of final distribution of
19 all assets of the CastlePoint estate. (See Holloway Decl. ¶ 16.) If, at the time of final distribution
20 of all assets in the CastlePoint estate, the pro rata distribution percentage on allowed Class Two
21 claims does not exceed 50 percent of the total amount of each allowed Class Two claim, then
22 Wilkie will receive no further distribution. If, at the time of final distribution, the final pro rata
23 distribution percentage on each allowed Class Two claim exceeds 50 percent, Wilkie will receive
24 an appropriate additional pro rata payment based on her total approved claim of \$2 million, taking
25 into account that she has already received 50 percent of the full face value of her allowed claim
26 through the early hardship distribution. (See Holloway Decl. ¶ 16, Ex. D.)

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II.

DISCUSSION

A. THE RELIEF THE COMMISSIONER SEEKS IS AUTHORIZED BY LAW

1. The Proposed Early Access Distribution to State Insurance Guaranty Funds is within the Commissioner's Authority and Discretion and Should be Approved

Insurance Code section 1035.5 provides as follows:

Notwithstanding the provisions of Article 14 (commencing with Section 1010), with regard only to those insurers subject to this article:

(a) Within 120 days of the issuance of an order directing the winding up and liquidation of the business of an insolvent insurer under Section 1016, the commissioner shall make application to the court for approval of a proposal to disburse the insurer's assets, from time to time as such assets become available, to the California Insurance Guarantee Association, or the California Life and Health Insurance Guarantee Association, and to any entity or person performing a similar function in another state.

(b) The proposal shall at least include the following provisions for:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors (to the extent of the value of the security held) and claims falling within the priorities established in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 1033.

(2) Disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available.

(3) Equitable allocation of disbursements to each of the associations entitled thereto.

(4) The securing by the commissioner from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the commissioner such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1033 in accordance with the priorities. No bond shall be required of any association.

(5) A full report to be made by the association to the commissioner accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on the assets, and any other matter as the court may direct.

(c) The commissioner's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made by the associations for which such associations could assert a claim against the commissioner, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets. The

1 reserves of the insolvent insurer on the date of the order of liquidation shall be used for
2 purposes of determining the pro rata allocation of funds among eligible associations.

3 (d) The commissioner shall offset the amount disbursed to any entity or person
4 performing a function in any other state similar to that function performed by the
5 California Insurance Guarantee Association, or the California Life and Health Insurance
6 Guarantee Association, by the amount of any statutory deposit, premiums, or any other
7 asset of the insolvent insurer held in that state.

8 (e) Notice of such application shall be given to the associations in and to the
9 commissioners of insurance of each of the states. Any such notice shall be deemed to
10 have been given when deposited in the United States certified mails, first-class postage
11 prepaid, at least 30 days prior to submission of such application to the court. Action on
12 the application may be taken by the court provided the above required notice has been
13 given and provided further that the commissioner's proposal complies with paragraphs (1)
14 and (4) of subdivision (b).

15 As explained in the Holloway Declaration and Exhibits A through C thereto, the proposal
16 for early access partial distributions to state insurance guaranty funds for which the
17 Commissioner seeks court approval in this application fully satisfies the statutory provisions of
18 Insurance Code section 1035.5. (See generally Holloway Decl. ¶¶ 7-15.) First, the
19 Commissioner will retain available assets of CastlePoint in the amount of over \$271 million to
20 fund the estate's accrued administrative expenses and claims of secured creditors totalling only
21 \$7,135,136 at year end 2021, and the remaining available assets are more than sufficient to fund
22 such future expenses. (See Ins. Code, § 1035.5, subd. (b)(1).) Secondly, the Commissioner
23 proposes to disburse, on a pro rata basis, to each of the guaranty funds eligible for a distribution,
24 funds which the Commissioner has determined to be the "available assets" of the estate, pursuant
25 to Insurance Code section 1035.5, subdivisions (b)(2) and (c). Third, the proposal provides for an
26 equitable allocation of certain assets to the state insurance guaranty funds, pursuant to Insurance
27 Code section 1035.5, subdivision (b)(3). Fourth, disbursement of the assets will be subject to an
28 agreement by each of the state insurance guaranty funds to, if necessary, return assets previously
disbursed to pay claims of secured creditors, pursuant to Insurance Code section 1035.5,
subdivision (b)(4). Fifth, disbursements of the assets will also be subject to an agreement by each
of the state insurance guaranty funds to make a full report to the Commissioner accounting for all
assets disbursed to each fund, all disbursements made therefrom, and any interest earned by the
guaranty fund on the assets, as required by Insurance Code section 1035.5, subdivision (b)(5).

1 Finally, the Commissioner will offset the amount disbursed to any state insurance guaranty fund
2 by the amount of any statutory deposit, premiums, or any other asset that CastlePoint held in that
3 state, pursuant to Insurance Code section 1035, subdivision (d). Notice of this application has
4 been given in accordance with the provisions of Insurance Code section 1035, subdivision (e).
5 (See Holloway Decl. ¶¶ 7-15.)

6 Furthermore, apart from satisfying the statutory provisions provided for under the
7 Insurance Code, the Commissioner’s proposal for a distribution to state insurance guaranty funds
8 falls within the scope of his broad statutory discretion. The California Legislature has afforded to
9 the Commissioner, acting in his capacity as the court-appointed liquidator of an insolvent insurer,
10 substantial discretion under the Insurance Code to fashion appropriate procedures necessary to
11 carry out his statutory duties. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824-825;
12 *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 329.) As the Court-appointed
13 liquidator of CastlePoint, the Commissioner has the express authority to, among other things, take
14 such actions as he deems necessary to “carry on and conduct the business and affairs” of the
15 Company. (Ins. Code, § 1037, subd. (a).) Insurance Code section 1037, subdivisions (a) and (b)
16 provide, in pertinent part, as follows:

17 Upon taking possession of the property and business of any person in any
18 proceeding under this article, the commissioner, exclusively and except as otherwise
19 expressly provided by this article, either as conservator or liquidator . . . [s]hall have
20 authority . . . to carry on and conduct the business and affairs of that person or so much
21 thereof as to him . . . may seem appropriate . . . [and also] [s]hall have authority to
22 compound, compromise or in any other manner negotiate settlements of claims against
23 that person upon such terms and conditions as the commissioner shall deem to be most
24 advantageous to the estate of the person being administered . . . or otherwise dealt with
25 under this article.

26 Section 1037 further provides the Commissioner, as the appointed liquidator of CastlePoint, with
27 unspecified “[g]eneral powers” which shall not be construed to exclude:

28 in any manner his . . . right to perform and to do such other acts not herein
specifically enumerated, or otherwise provided for, which the commissioner may deem
necessary or expedient for the accomplishment or in aid of the purpose of such
proceedings.

(See *Carpenter, supra*, 10 Cal.2d 307 [seizure of insurance company by Commissioner may

1 lawfully be made without court order and trial court had power to ratify and confirm
2 Commissioner's actions]; *Garris v. Carpenter* (1939) 33 Cal.App.2d 649 [Commissioner
3 exercises very broad judgment and discretion in performance of duties].) Judicial approval of the
4 Commissioner's proposal will ensure that the conduct of the business and the winding down of
5 CastlePoint are conducted efficiently and in the best interests of its policyholders and creditors.

6 **2. The Wilkie Settlement and Agreement for an Early Hardship Partial**
7 **Distribution to Wilkie are within the Commissioner's authority and**
8 **discretion and should be approved.**

9 The Wilkie Agreement is likewise authorized by law and within the discretion of the
10 Commissioner. Insurance Code section 1037, subdivisions (d) and (e) authorize the compromise
11 and settlement of claims "upon such terms and conditions as the commissioner shall deem to be
12 most advantageous to the estate..." and allow settlements to be paid (upon Court approval where,
13 as here, the amount exceeds \$20,000). The discretion of the Commissioner in such matters has
14 long been recognized and approved. (See, e.g. *In re Executive Life Ins. Co.* (1995) 32 Cal.App.
15 4th 344, 358, 401.) As such, the Commissioner's settlement of her allowed claim and the early
16 hardship partial distribution to Wilkie called for by the Wilkie Agreement are well within the
17 discretion of the Commissioner and consistent with prior Court action. (See Holloway Decl.
18 ¶¶ 16-18.)

18 **III.**

19 **CONCLUSION**

20 Accordingly, the Commissioner respectfully requests, that this Court issue an Order:

21 1. Authorizing the Commissioner to transfer a total of approximately \$60,028,780 of
22 the net assets of the estate of CastlePoint to the state insurance guaranty funds or similar entities
23 in the amounts set forth in Exhibit A to the Holloway Declaration, provided that prior to any such
24 distribution, the state insurance guaranty fund in question has executed and delivered to the
25 Commissioner an agreement, substantially in the form set forth in Exhibit C to the Holloway
26 Declaration, to return the distributed assets as required to pay claims of secured creditors and

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1 claims falling within the priorities established in Insurance Code section 1033, subdivisions (a)(1)
2 and (a)(2);

3 2. Authorizing and ratifying Commissioner's settlement with Wilkie as set forth in
4 the Wilkie Agreement, attached as Exhibit D to the Holloway Declaration, and authorizing the
5 Commissioner to consummate the Wilkie Agreement and make the early hardship partial
6 distribution to Wilkie described therein; and

7 3. Authorizing the Commissioner to take any and all action necessary to carry out the
8 Order requested herein.

9 Dated: August 16, 2022

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