

1 XAVIER BECERRA
Attorney General of California
2 LUCY F. WANG (State Bar No. 199772)
Acting Supervising Deputy Attorney General
3 455 Golden Gate, Suite 11000
San Francisco, California 94102-7004
4 Telephone: (415) 510-4400
Facsimile: (415) 703-5480
5 Email: Lucy.Wang@doj.ca.gov

6 CYNTHIA J. LARSEN (State Bar No. 123994)
ORRICK, HERRINGTON & SUTCLIFFE LLP
7 400 Capitol Mall, Suite 3000
Sacramento, California 95814-4497
8 Telephone: (916) 447-9200
Facsimile: (916) 329-4900
9 Email: cjlarsen@orrick.com

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

**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
18 STATE OF CALIFORNIA,

19 Applicant,

20 v.

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

23 Respondents.

Case No. CPF-16-515183

Reservation No. 06180813-06

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

**Date: August 13, 2019
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Ethan P. Schulman**

1 any statements or arguments that may be made in support of the Application at the hearing on this
2 matter, and the pleadings, records and files in this proceeding.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 19, 2019

XAVIER BECERRA
ATTORNEY GENERAL OF CALIFORNIA
LUCY F. WANG
DEPUTY ATTORNEY GENERAL

CYNTHIA J. LARSEN
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 

CYNTHIA J. LARSEN

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

1 which are entitled to the second-highest (Class 2) priority. (Plan at pp. 10-11; Ins. Code §
2 1033(a)(1)-(2).) The Plan transactions also established continuous claims administration services
3 for CastlePoint from AmTrust and National General.

4 From the Conservation Date through March 31, 2017 (the “Conservation Period”), the
5 Commissioner oversaw the administration and payment of claims while simultaneously working
6 with state insurance guaranty associations (“IGAs”) to prepare for the transition of claims
7 administration responsibilities to the IGAs upon liquidation. On January 12, 2017, the
8 Commissioner filed with the Court a *Conservator’s Report to the Court Concerning the*
9 *Conservation of CastlePoint* (“Conservator’s Report”), along with accompanying exhibits on
10 January 18, 2017, to advise the Court and interested parties of material activities undertaken by
11 the Conservator during the Conservation Period and to lay out, at a high level, the Conservator’s
12 expectations for the orderly liquidation of CastlePoint.

13 Consistent with the Conservator’s Report, upon the application of the Commissioner the
14 Court entered its Liquidation Order for CastlePoint on March 30, 2017, and the Liquidation Order
15 became effective on April 1, 2017 (“Liquidation Date”). Shortly thereafter, the Commissioner
16 filed an *Application for Order Approving Financial Report and Expenses of Administration* that
17 set forth a financial report and a report on the expenses incurred by the Commissioner during the
18 Conservation Period (“Conservation Period Application”). On July 18, 2017, the Court issued an
19 Order granting the Commissioner’s Conservation Period Application.

20 In May 2018, the Commissioner filed an *Application for Order Approving Financial*
21 *Report and Expenses of Administration*, which set forth a financial report and a report on the
22 expenses incurred by the Commissioner from the Liquidation Date through the end of 2017
23 (“2017 Liquidation Period Application”). The 2017 Liquidation Period Application was granted
24 by Order of this Court on June 7, 2018.

25 The Commissioner now seeks an order approving his current Application concerning 2018
26 matters and related estate administration matters for the reasons set forth in detail below.

1 **II. SUMMARY OF COMMISSIONER'S APPLICATION**

2 **A. Commissioner's Request for an Order Approving Financial Report and Expenses of**
3 **Administration**

4 **1. 2018 Status Report**

5 **a. Overview & Financial Report**

6 During 2018, a portion of the liquidation activities continued to be conducted at the home
7 office of CastlePoint in New Jersey, with oversight by the Commissioner as Liquidator, to
8 preserve the institutional knowledge held by the legacy employees of CastlePoint located in New
9 Jersey and New York. (Holloway Decl., ¶ 5.) However, by early 2019, the remaining liquidation
10 activities were transferred to and assigned to the staff of the Commissioner's Conservation and
11 Liquidation Office in San Francisco ("CLO") and, as of March 31, 2019, all remaining activities
12 were transferred to San Francisco and the CastlePoint home office was closed. (*Id.*)

13 The CLO and/or the CastlePoint home office accomplished the following tasks in 2018,
14 among others:

- 15
- 16 1. Opened and/or re-opened over 2,335 claim files for the Guaranty Associations for the
17 period of liquidation through December 31, 2018;
 - 18 2. Closed the sale of an affiliated receivable for \$7,900,000;
 - 19 3. Collected reinsurance balances of approximately \$3,700,000;
 - 20 4. Collected miscellaneous recoveries of approximately \$5,700,000;
 - 21 5. Mailed more than 15,000 additional proofs of claim ("POC's") to cover outstanding
22 checks to Class 2 and Class 7 creditors;
 - 23 6. Filed the tax return for the 2017 tax year and finalized the 2017 audit;
 - 24 7. Replicated the CastlePoint reinsurance calculator in the CLO office in San Francisco;
 - 25 8. Transitioned the reinsurance billings from New Jersey to the CLO office in San
26 Francisco; and

1 9. Transitioned the accounting function from New Jersey to the CLO office in San
2 Francisco.

3 (Holloway Decl., ¶ 6.)

4 A copy of the 2018 Financial Report is attached as Exhibit B to the Declaration of Joseph
5 Holloway for the approval of the Court. (Holloway Decl., ¶ 8, Ex. B.)

6 **b. The Proof of Claim of Eita Pruss**

7 As part of the Commissioner's claims handling functions on behalf of CastlePoint, the
8 CLO also handled, and directed its attorneys at Orrick on, a proof of claim filed in 2017 by
9 Claimant Eita Pruss ("Pruss POC") for \$5 million. (Holloway Decl., ¶ 9.) The \$5 million was
10 claimed by Ms. Pruss from CastlePoint pursuant to a settlement in her underlying personal injury
11 action against certain CastlePoint insureds. (*Id.*) Starting in late 2016, and continuing to present,
12 the claim of Ms. Pruss has required a considerable amount of the time of the CLO and its
13 attorneys. (*Id.*)

14 On June 27, 2018, the Commissioner, acting through the CLO, issued his determination
15 formally allowing the Pruss POC as a Class 2 (policyholder priority) claim under California
16 Insurance Code Section 1033(a) for \$4 million, representing the full \$5 million policy limits of
17 the CastlePoint policy less credit for \$1 million that was paid to Ms. Pruss by the New York
18 Liquidation Bureau ("Commissioner's Determination"). The Commissioner rejected the claims
19 of Ms. Pruss that she was entitled to have the \$4 million paid in cash on a priority or preferential
20 basis because of alleged misrepresentations made regarding the availability of the \$5 million in
21 cash at the time of the underlying settlement by counsel for CastlePoint and CastlePoint's
22 insureds. Since the Commissioner rejected Ms. Pruss' request for a preferential or priority
23 payment in his Determination, the Commissioner provided notice to Ms. Pruss of her rights to
24 apply to the Court for an order to show cause pursuant to Insurance Code section 1032 as her
25 exclusive judicial remedy to challenge the Commissioner's Determination.

26 ///

1 On July 26, 2018, counsel for Ms. Pruss submitted for filing an application for an OSC
2 (“OSC Application”) and accompanying declaration to challenge the Commissioner’s rejection of
3 the payment of the Pruss POC on a priority or preferential basis as sought. Also in 2018,
4 Ms. Pruss filed two lawsuits in New York against AmTrust and others seeking to recover
5 amounts in connection with the unpaid settlement. The first of which (referred to as “Pruss II”)
6 was stayed by the presiding Judge in New York, thereby prompting Ms. Pruss to also file with
7 this Court an *Application for Leave to Pursue Action in New York* (“Application for Leave”) on
8 October 30, 2018 to authorize her to continue to pursue the lawsuits pending in New York. Ms.
9 Pruss’ claims against CastlePoint at issue in her OSC Application and the lawsuits in New York
10 all arise from the settlement of Ms. Pruss’ personal injury lawsuit against CastlePoint’s insureds
11 in 2016.

12 Following additional briefing from Ms. Pruss, AmTrust (which agreed to participate in the
13 proceedings), and the Commissioner, a hearing on the Application for Leave was held on
14 December 4, 2018. The Court entered an order on January 16, 2019 (“January 2019 Order”) that
15 among other things: (1) continued the hearing on the Application for Leave, (2) confirmed the
16 temporary stay of Ms. Pruss’ prosecution of the pending actions in New York, and (3) established
17 procedures and a schedule for a hearing on Ms. Pruss’ pending OSC Application. Under the
18 January 2019 Order, the issues to be determined in connection with the Application for Leave and
19 OSC Application were as follows: “(a) Whether Ms. Pruss is entitled to immediate and full
20 distribution on her allowed claim on a priority or preferential basis; and (b) Whether the Court’s
21 injunctions shall continue to preclude further prosecution of the Pruss Actions following the
22 disposition of the OSC.” (January 2019 Order, ¶ 3.)

23 The related discovery and briefing stemming from the January 16, 2019 Order, as
24 modified by a March 26, 2019 Order, were completed, and the matter was heard before Judge
25 Kahn on June 4, 2019. Following the hearing, the Court posted entries on the docket denying the
26 OSC Application of Ms. Pruss, and granting in part and deferring in part the Application for
27

1 Leave filed by Ms. Pruss. Following further briefing on the matter, a hearing will be held before
2 Judge Kahn on August 28, 2019 to address whether the claims of Ms. Pruss against AmTrust in
3 Pruss II and III, and against counsel named in Pruss II, will be permitted to proceed in New York,
4 or whether they will be required to proceed before the Liquidation Court in California.

5 **c. TruPS Claim**

6 The Commissioner also oversaw and directed its attorneys in connection with a motion
7 brought by interested third-party Movants¹ on November 20, 2018. (Holloway Decl., ¶ 10.) By
8 the motion, Movants requested clarification from this Court that the standing injunctions entered
9 in connection with the CastlePoint insolvency do not prohibit or stay the continued prosecution of
10 a civil action they filed in the Supreme Court of the State of New York, Index No. 655881/2017
11 against certain named defendants, including AmTrust. The motion brought by Movants was filed
12 following the agreement of the Movants, Commissioner, and defendants to a stipulation and
13 proposed order setting the briefing schedule and hearing for this matter. This matter has also
14 required a considerable amount of the time of the CLO and its attorneys. (*Id.*)

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

22 In the New York action, Movants have been seeking payment on the TruPS. However,
23 because the specific Tower Group companies that issued the TruPS are likely insolvent and
24 unable to pay any of the sizable amounts due on the TruPS, the Movants named a broad array of
25

26 ¹ “Movants” comprise non-parties Alesco Preferred Funding VIII, Ltd., Alesco Preferred Funding XI, Ltd., Alesco
27 Preferred Funding XII, Ltd., Alesco Preferred Funding XIV, Ltd., Hildene Opportunities Master Fund II, Ltd., NFC
Partners, LLC, Wolf River Opportunity Fund LLC, Wolf River Partner Fund, and WT Holdings, Inc.

1 defendants (Officers, Directors, affiliates, and third parties) and asserted a number of alternative
2 claims and liability theories. While CastlePoint is not a defendant in the New York action, the
3 asserted claims and liability theories encroach on claims that are (or were) owned by CastlePoint
4 and have already been released in exchange for the significant value received by the CastlePoint
5 estate under the Plan.

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

15 Ultimately, the Commissioner concluded that the Movants' tort claims appear either to
16 have been released by the Commissioner,² or to be unreleased claims that still belong to the
17 Commissioner, as Conservator and then Liquidator of the CastlePoint estate, and are enjoined by
18 the Court's prior orders. Any loss in investment value thereafter suffered by Movants, apart from
19 direct breach of contract claims against Issuers, appear to be "merely incidental" to claims
20 belonging to the Commissioner for loss of assets belonging to the estate. (*Avikian v. WTC*
21 *Financial Corp.* (2002) 98 Cal. App. 4th 1108, 1116.)

22 The Court issued an order on May 16, 2019 finding that all but one (breach of contract) of
23 the ten causes of action brought by Movants in New York "are barred by the outstanding
24 injunctions issued by this Court and releases approved by this Court in the underlying CastlePoint
25

26 ² 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 proceedings.” (May 16, 2019 Order at p. 2.) On May 31, 2019, the Movants filed a
2 Motion for Reconsideration of this Court’s May 16, 2019 Order. A hearing has been scheduled
3 for August 13, 2019.

4 **2. Expenses of Administration**

5 In 2018, the CastlePoint estate paid expenses totaling \$5,677,105. (Holloway Decl., ¶ 7,
6 Ex. A, ¶ 11.) Of that total, \$1,733,231 was paid in payroll³ and benefits to CastlePoint
7 employees, while \$3,307,790 was paid to the CLO for professional services (of which \$211,426
8 is for legal fees paid to Orrick for legal services in connection with the liquidation during 2018).
9 (*Id.*) Other significant sources of fees paid to the CLO for professional services include for CLO
10 claims administration (\$1,522,457), reinsurance administration (\$709,448), management
11 expenses (\$170,769), and INS Consultants (\$376,950). (*Id.*) A full breakdown of all expenses
12 paid during 2018 related to the liquidation can be found in Exhibit A to the Declaration of Joseph
13 Holloway.

14 The Court’s Liquidation Order authorizes the Commissioner, acting as Liquidator, to fix
15 and pay the administrative expenses of the liquidation from the assets of CastlePoint, subject to
16 the Court’s oversight and approval as specified. (*See* Liquidation Order, ¶¶ 3, 15-18.) These
17 provisions were entered pursuant to California Insurance Code sections 1035 and 1036, which
18 grant the Commissioner the power to fix all administrative costs (§ 1035) and the compensation
19 of outside attorneys (§ 1036), with the approval of the Court, and to have those expenses paid by
20 the liquidation estate. The Commissioner believes that the administrative costs and legal fees
21 incurred were necessary to the efficient and orderly administration of CastlePoint during 2018 for
22 the continuing liquidation of CastlePoint.

23
24 ³ As of the Conservation Date, July 28, 2016, CastlePoint had 26 employees and an annual payroll of \$3.93 million.
25 Since then, the Liquidator has reduced the number of employees and payroll costs. By March 31, 2017, only 10
26 CastlePoint employees remained and annual payroll had been cut to \$1.85 million. By March 31, 2018, only 7
27 employees remained, and the annual payroll had been cut to \$1.35 million. As of December 31, 2018, only 6
28 employees remained, and the annual payroll had been cut to \$1.32 million. (Holloway Decl. ¶ 7, Ex. A, ¶ 13.) Page
4 of Exhibit A to the Holloway Declaration (labelled Chart IV), shows the general reduction in payroll through the
Conservation Period and into the liquidation up until December 31, 2018.

1 **Commissioner's Request for an Order Approving Certain Estate Administration**
2 **Matters**

3 1. **Commissioner's Request for Approval of Its Records Retention and**
4 **Destruction Plan**

5 With the insolvency of CastlePoint, the Commissioner inherited over 10,000 boxes of
6 CastlePoint files.⁴ (Holloway Decl., ¶ 14.) The cost to store these boxes, some of which date as
7 far back as 1997, is substantial and reduces the remaining value of the estate each month. (*Id.*)
8 Accordingly, the Commissioner seeks approval of the Court to implement a records retention and
9 destruction plan pursuant to which all boxes over seven years old, and that have not been
10 accessed from storage in the past seven years, may be destroyed, and box destruction may
11 continue on an ongoing basis consistent with this plan. (*Id.*) By implementing this plan, the
12 Commissioner will substantially reduce an ongoing and substantial cost to the estate.⁵ (*Id.*)

13 There are presently approximately 10,427 boxes of CastlePoint documents being held in
14 storage by GRM Information Management Services, Inc. ("GRM") in New Jersey. (Holloway
15 Decl., ¶ 16.) According to the most recent invoice covering April 2019, storage costs are now
16 more than \$27,500 per month. (*Id.* at ¶ 16, Ex. C.) At this rate, annual storage costs will exceed
17 \$330,000.⁶ (*Id.*) The costs paid by the CLO to GRM are reflected within the "CLO-Claims" line
18 item on Chart III of Exhibit A to the Declaration of Joseph Holloway. (*Id.*)

19 The vast majority of these boxes, 9,022 of the 10,427, were created over seven years ago
20 and have not been accessed in over seven years.⁷ (Holloway Decl., ¶ 18.) There is no inventory
21 listing the contents of the boxes, but the Commissioner expects that the boxes contain claim files,
22

23 ⁴ A limited number of boxes have been added to storage following the Conservation Date. (Holloway Decl., ¶ 14.)

24 ⁵ It is unknown whether CastlePoint previously had a records retention policy in place. It appears that CastlePoint
25 either did not have a policy or was not actively implementing the policy. (Holloway Decl., ¶ 15.)

26 ⁶ In connection with the free claims administration services provided by AmTrust, AmTrust paid storage costs
27 through the Liquidation Date. As of April 1, 2017, the Commissioner assumed responsibility for these costs. In
28 connection with the Addendum to Commercial Lines Agreement by and between CastlePoint and AmTrust dated
August 15, 2018, the Commissioner reimbursed AmTrust for storage costs incurred after April 1, 2017, which totaled
approximately \$408,000. (Holloway Decl., ¶ 17.)

⁷ In an abundance of caution, the Commissioner does not seek to destroy any boxes that were accessed within the
past seven years regardless of the date they were originally added into storage. (Holloway Decl., ¶ 19.)

1 litigation files, and old insurance policies.⁸ (*Id.*) To make the boxes useful in any capacity, there
2 would need to be an electronic, box-level inventory that includes such details as policy
3 years/numbers and claim numbers. (*Id.*) Such an expensive exercise would be a waste of the
4 assets of the estate given the unlikely event that information in one of the boxes will be needed at
5 this point in the insolvency of CastlePoint. (*Id.*) While the Commissioner takes pause with
6 respect to the destruction of legacy insurance policies, the Commissioner believes that there is an
7 extremely remote risk that (1) there is a claimant with an incurred loss that is thus far unreported,
8 (2) is actually covered under an old policy in one of these boxes, *and* (3) would not be paid if the
9 boxes were destroyed. (Holloway Decl., ¶ 20.) Indeed, it would be virtually impossible to find
10 such a policy in any event absent the creation of a cost-prohibitive inventory. (*Id.*) The
11 Commissioner must balance this remote concern with the known and material cost to continue to
12 store the current quantity of boxes. (*Id.*)

13 The Commissioner plans to destroy all boxes that were created before, or last accessed
14 before, June 1, 2012, and then continue with the document destruction accordingly on an ongoing
15 basis. (Holloway Decl., ¶ 21.) GRM estimates that it can only destroy approximately 500 boxes
16 per week, so once the instruction is given to GRM, the reduction of boxes in storage may take
17 several months to complete. (*Id.*) The Commissioner plans to start this process as soon as
18 possible following the approval of the Court. (*Id.*)

19 **2. Commissioner's Request For Approval of Handling of Outstanding**
20 **(Uncashed) Checks**

21 During the course of administering the CastlePoint liquidation, the Commissioner
22 identified approximately \$15 million in checks that had been issued by CastlePoint prior to the
23 conservation that had not been cashed. (Holloway Decl., ¶ 22.) The Commissioner has
24 determined that the reissuance of these checks for the full amount would create an impermissible
25 preference pursuant to the Conservation and Liquidation Orders entered by this Court and

26 _____
27 ⁸ There is only general information regarding the contents of the boxes written on the outside of the boxes
28 themselves. (Holloway Decl., ¶ 18.)

1 California Insurance Code Section 1034 as the recipient of the re-issued check would thereby
2 automatically receive 100% of the amount owed to them. (*Id.*; *see also* Conservation Order, ¶ 21;
3 Liquidation Order, ¶ 22; Ins. Code §§ 1020(d), 1034.) A preference exists where it enables a
4 creditor to get a greater percentage of his claim than other creditors in the same class. (Ins. Code
5 § 1034(a); Holloway Decl., ¶ 22.)

6 Accordingly, the Commissioner voided the checks in the general ledger and mailed proof
7 of claim forms (POC's) for the outstanding checks. (Holloway Decl., ¶ 23.) Pursuant to the POC
8 process, recipients may submit the completed POC along with support for their filing, which will
9 be handled as a Class 2 or Class 7 claim as appropriate in the normal course of the liquidation,
10 and thereby payable at the same time that other similarly situated class members receive any
11 disbursements on their claims. (*Id.*) As discussed below, the Commissioner does not expect any
12 payments to be made on Class 7 claims. The Commissioner seeks approval of the foregoing
13 procedures.

14 The Commissioner mailed over 15,000 POCs over the course of three mailings in
15 connection with the approximately \$15 million in outstanding checks. (Holloway Decl., ¶ 24.)
16 To date, the Commissioner has received approximately 127 POCs totaling approximately
17 \$2,625,253 in response to its mailing of POCs for uncashed checks. (*Id.*) The Commissioner
18 suspects that a number of the outstanding checks were actually cashed by recipients prior to
19 conservation but were not voided and appropriately accounted for in the system by CastlePoint,
20 so the issue may therefore be largely clerical. (*Id.*) Absent the filing of a POC, the check payee
21 has no right to the underlying funds, and thus such underlying funds remain the property of the
22 estate. (*Id.*)

23 **3. Commissioner's Request For Approval of Treatment of *De Minimis* Claims**
24 **(Under \$100)**

25 In connection with the mailings of the POC's for uncashed checks discussed above, the
26 Commissioner identified approximately 10,499 outstanding checks that would be classified as
27

1 Class 2 claims for amounts less than \$100, and approximately 596 outstanding checks that would
2 be classified as Class 7 claims for amounts less than \$100. (Holloway Decl., ¶ 25.) Given the
3 hourly billing rate charged by the Commissioner's CLO, the Commissioner does not believe that
4 it is an appropriate use of the time and assets of the estate to solicit POCs for claims of less than
5 \$100, and then incur the resulting expenses associated with the review and processing of such
6 claims, all of which work would be charged against the assets of the estate, ⁹ (*Id.*) Accordingly,
7 the CLO did not include POC's for checks under \$100 in the three mailings. (Holloway Decl., ¶
8 26.)

9 The Commissioner therefore seeks ratification of his decision to classify potential claims
10 for outstanding checks under \$100 as *de minimis* and not to mail POC forms soliciting such
11 claims. (*Id.*) The request as to outstanding checks that constitute Class 7 claims is further
12 supported by the request in Section II (B)(4) below, as the Commissioner does not expect there to
13 be any funds available to pay Class 7 claims. The Commissioner notes that in response to earlier
14 POC mailings following the liquidation, and not in connection with the uncashed checks, the
15 Commissioner has received POC's in return for less than \$100. (*Id.*) The CLO has entered these
16 POC's into its accounting system, and these claims will be paid (pro rata) in the future to the
17 extent assets are available. (*Id.*) The Commissioner is not seeking approval to avoid processing
18 any POC's that are actually submitted, including for amounts under \$100. (*Id.*)

19 **4. Commissioner's Request For Approval of Deferral of the Review and**
20 **Determination of Class 7 Claims**

21 The remaining assets of the CastlePoint estate must be awarded and distributed in
22 accordance with the statutory priorities set forth in Insurance Code section 1033. (Holloway
23 Decl., ¶ 27.) Class 7 claims are general creditor claims with a low priority status in liquidation.
24 (*Id.*; Ins. Code § 1033(a)(7).) It is a virtual certainty that there will be no funds available in the
25 CastlePoint liquidation to make any pro-rata payments on allowed Class 7 claims, and thus the

26 _____
27 ⁹ The CLO billing rate for claims handling is over \$200 per hour, therefore even 30 minutes spent on the solicitation
or evaluation of a *de minimis* claim would not be cost effective. (Holloway Decl., ¶ 25.)

1 Commissioner is not currently making claims determinations with respect to any Class 7 claims
2 received to date. (Holloway Decl., ¶ 27.)

3 Based on the Commissioner's current evaluation of the insolvent estate of CastlePoint,
4 including its known assets and liabilities, the Commissioner has determined that it is extremely
5 unlikely that there will be sufficient assets to pay Class 7 liabilities prior to the eventual closure of
6 the estate. (Holloway Decl., ¶ 28.) Rather, the Commissioner expects that the assets of the estate
7 will be exhausted by Class 1 claims for administrative expenses and Class 2 policyholder claims.
8 (*Id.*) Pursuant to currently available information and projections, the Commissioner expects that
9 the estate will have assets sufficient to pay roughly 50 cents on the dollar for each approved Class
10 2 claim. (*Id.*) The Commissioner anticipates that Class 7 claimants will ultimately be sent a letter
11 advising them that there are no assets to distribute to their class. (*Id.*)

12 The Commissioner believes that it is appropriate to defer the evaluation and determination
13 of Class 7 POCs until such time, if ever, that the Commissioner anticipates having sufficient
14 funds to distribute any percentage of recovery to this class. (*Id.*) Accordingly, the Commissioner
15 seeks approval of the Court to avoid the unnecessary time and expense of evaluating claims that
16 will likely not be paid. (*Id.*)

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.)
25

26 ///

1 **B. 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 2018 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., ¶ 12.)

18 **C. The Estate Administration Matters For Which Approval is Sought Are Within the**
19 **Commissioner's Authority**

20 Upon entry of the Conservation Order, the Commissioner, as required by statute, took
21 “possession of the property and business” of the conserved insurer and received the authority “to
22 do such acts as are necessary or expedient to collect, conserve or protect [the conserved
23 company's] assets, property and business, and to carry on and conduct the business and affairs [of
24 the conserved company] or so much thereof as to him or her may seem appropriate.” (Ins. Code
25 § 1037(a).) Further, section 1037 provides that the Commissioner's authority extends beyond the
26 powers and actions enumerated in the section and is not a limitation on his authority: “The
27 enumeration, in this article, of the duties, powers and authority of the commissioner in

1 proceedings under this article shall not be construed as a limitation upon the commissioner, nor
2 shall it exclude in any manner his or her right to perform and do such other acts not herein
3 specifically enumerated, or otherwise provided for, which the commissioner may deem necessary
4 or expedient for the accomplishment or in aid of the purpose of such proceedings.” (Ins. Code
5 §1037.)

6 The Commissioner is vested with “broad discretion” to conduct the liquidation of an
7 insolvent insurer and to “exercise[] the state’s police power to carry forward the public interest to
8 protect policyholders and creditors of the insolvent insurer.” (*In re Executive Life Ins. Co.* (1995)
9 32 Cal. App. 4th 344, 356.) The Court must grant deference to the Commissioner’s actions
10 unless they constitute an abuse of discretion, i.e. “shall be reasonably related to the public interest
11 and shall not be arbitrary or improperly discriminatory.” (*See Carpenter v. Pacific Mut. Life Ins.*
12 *Co. of Cal.* (1937) 10 Cal.2d 307, 329 [74 P.2d 761]; *See also Garamendi v. Golden Eagle* (2005)
13 128 Cal.App.4th 452, 466 [27 Cal.Rptr.3d 239, 249].) The Commissioner’s handling of the estate
14 administration matters discussed above in Section II (B) is within the broad discretion vested in
15 him by statute and by prior Orders of this Court.

16 IV. CONCLUSION

17 Based on the foregoing, including the within Memorandum of Points and Authorities, the
18 Commissioner respectfully requests that the Court approve and ratify the 2018 Financial Report
19 and the expenses of administration paid by the Commissioner during 2018, as set forth in the
20 Holloway Declaration and its accompanying exhibits, and that the Court approve and ratify the
21 estate administration matters set forth above. At the hearing on this Application, the
22 Commissioner, through counsel, will be prepared to answer any questions that the Court may

23 ///

24 ///

25 ///

26 ///

1 have regarding the status of the liquidation, the expenses of administration incurred to in 2018,
2 and the administration of the estate.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 19, 2019

XAVIER BECERRA
ATTORNEY GENERAL OF CALIFORNIA
LUCY F. WANG
DEPUTY ATTORNEY GENERAL

CYNTHIA J. LARSEN
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 
CYNTHIA J. LARSEN

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