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Insurance Commissioner of the State of California
in his Capacity as Conservator of
CastlePoint National Insurance Company

FILED
San Francisco County Superior Court

SEP 13 2016

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

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

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
mk
**[PROPOSED] 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**

1 The Court has reviewed the Motion For Order Approving Conservation and Liquidation
2 Plan For CastlePoint National Insurance Company (the "Motion") of Insurance Commissioner
3 Dave Jones, as Conservator of CastlePoint National Insurance Company ("CastlePoint"), has
4 conducted the September 13, 2016 hearing to consider the Motion (the "Hearing"), and has
5 considered the pleadings, filings and evidence in this proceeding, including all matters and
6 information adduced by the Conservator in support of the Conservation and Liquidation Plan
7 (also referred to as the "Plan") as well as all objections and comments provided by persons
8 interested in the Plan.

9 The matter has now been fully briefed and argued, and the Court makes the following
10 findings:

11 **Notice, Opportunity to be Heard, and Consent to Jurisdiction**

12 1. The Conservator has provided proper, timely, and adequate notice of the Hearing,
13 the Motion, and all related matters to all parties entitled to such notice, including policyholders,
14 contract holders, creditors, the shareholder of CastlePoint, and all other interested parties entitled
15 to notice.

16 2. All interested persons had a full and fair opportunity to present any comments,
17 suggestions, objections, or other matters relating to the Conservation and Liquidation Plan.

18 3. All persons and entities filing comments, support or objections to the Plan or
19 appearing at the Hearing have consented to the exclusive jurisdiction of the Court on all matters
20 relating to CastlePoint and its assets.

21 **Approval of Conservation and Liquidation Plan**

22 4. Based upon the Motion and the evidence adduced in support thereof, this Court
23 finds that the Conservation and Liquidation Plan, the Conservation Agreement, and the
24 accompanying Conservation Transaction Agreements are fair, just, reasonable, and equitable to
25 policyholders, creditors, and the shareholder of CastlePoint, as well as other interested parties,
26 and do not discriminate unfairly in favor of or against any class of policyholder, creditor, or
27 shareholder.

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1 5. All provisions of the Conservation and Liquidation Plan are within the sound
2 discretion of the California Insurance Commissioner acting as Conservator of CastlePoint. No
3 provision of the Plan, Conservation Agreement, or Conservation Transaction Agreements
4 referenced therein violates any requirement of law, and all requirements of due process have been
5 met.

6 6. The terms of the Plan, Conservation Agreement, and Conservation Agreements do
7 not materially prejudice the rights of CastlePoint's reinsurers, or other counterparties to
8 CastlePoint's reinsurance contracts, and there is no basis for those parties to terminate or avoid
9 their material contractual obligations as a result of the transactions approved by this Order.

10 7. Moreover, the tax restructuring provisions of the Conservator's Plan expressly
11 satisfy all of the requirements of Internal Revenue Code section 382(l)(5) and are approved in
12 their entirety. The Court accordingly finds and orders as follows:

13 a. CastlePoint may incur tax liabilities as a result of operating income from
14 reserve reductions, which tax liabilities may be offset by net operating loss carryforwards
15 (also known as "NOLs") that CastlePoint has accumulated.

16 b. It is in the best interest of CastlePoint's policyholders and creditors to
17 preserve the NOLs to offset existing and/or future income that could otherwise create
18 federal tax liability.

19 c. The NOLs are the valuable property of CastlePoint, within the exclusive
20 jurisdiction of this Court, and are under the control of the Conservator.

21 d. To preserve CastlePoint's tax attributes (NOLs), to protect CastlePoint
22 from exposure to any future tax liabilities of the non-insurance company members of the
23 Tower Tax Group¹, and to facilitate the Conservation Agreement and Conservation
24 Transaction Agreements, the Plan properly provides for the restructuring of CastlePoint's
25 equity ownership pursuant to federal tax law, and specifically Internal Revenue Code
26 section 382(l)(5).

27 _____
28 ¹ Any defined terms used in this Order that are not expressly defined herein shall have the meaning set forth in the Conservation and Liquidation Plan, the Motion, or the Memorandum of Points and Authorities in Support of the Motion.

1 e. Pursuant to section 382(l)(5)(A), the ownership change will not extinguish
2 CastlePoint's NOLs since (1) prior to the ownership change, CastlePoint was under the
3 jurisdiction of this Court in a Title 11 or similar proceeding, and (2) the historical
4 shareholders and creditors of CastlePoint immediately before the ownership change will
5 own at least fifty percent of the corporation's stock immediately after the ownership
6 change. Specifically, the transfer will result in the historical shareholders and creditors of
7 CastlePoint having a 100% ownership of CastlePoint after the ownership change.

8 8. The tax restructuring provisions of the Plan are not an abuse of the Conservator's
9 discretion, are not arbitrary, are consistent with statute, do not alter any existing standing orders,
10 and do not unfairly discriminate among CastlePoint's policyholders, creditors and other interested
11 parties because assets will be distributed in accordance with the mandatory statutory priority
12 scheme set forth in Insurance Code section 1033.

13 Good cause appearing, **IT IS HEREBY ORDERED** that:

14 9. The Conservation and Liquidation Plan and the accompanying Conservation
15 Agreement and Conservation Transaction Agreements are hereby fully and finally approved and
16 enforceable in accordance with the foregoing and in accordance with their provisions, said
17 provisions being hereby incorporated into this Order.

18 10. All transactions contemplated by the Conservation and Liquidation Plan,
19 Conservation Agreement, and Conservation Transaction Agreements, and all integrated
20 agreements, may be immediately consummated, closed, or performed upon entry of this Order.
21 The Conservator and the respective parties to the foregoing agreements are hereby authorized to
22 do all acts and sign all ancillary agreements and other documents reasonably necessary to close
23 the transactions contemplated by such agreements, including, but not limited to, the transfer of
24 assets, the execution of bills of sale, execution of documents of title, the entry into contracts and
25 the payment of such fees and expenses as may be necessary or appropriate to the closing of the
26 contemplated transactions. The Conservator is expressly authorized to take all actions, pay all
27 expenses, and execute all documents he deems necessary or appropriate in order to effectuate the
28 consummation of the transactions contemplated by and approved in this Order without further

1 approval of this Court. To the extent the Conservator believes it to be necessary, he may
2 negotiate and propose modifications to the Court with respect to the Conservation and
3 Liquidation Plan that are consistent with the intent and spirit of the Plan.

4 11. Based on the foregoing findings regarding the tax restructuring provisions of the
5 Conservator's Plan:

6 a. On the Effective Date, or as soon thereafter as practicable but not later than
7 October 15, 2016, ACP Re will cause CastlePoint's shareholder, Specialty Underwriter's
8 Alliance, Inc., to deliver its stock in CastlePoint to the Conservator for cancellation.

9 b. The Conservator will cancel the existing stock and ownership of
10 CastlePoint and transfer it to CastlePoint's historical creditors by way of re-issuance of
11 new CastlePoint stock to the Commissioner, as trustee for the benefit of historical
12 shareholders and creditors of CastlePoint.

13 c. The transfer or sale of the capital stock of CastlePoint pursuant to the Plan
14 satisfies the provisions of Internal Revenue Code section 382(1)(5) and all of CastlePoint's
15 tax attributes (NOLs) are accordingly preserved.

16 d. On the Effective Date, the Conservator is authorized to execute the Trust
17 Agreement to create the Trust that will hold the new CastlePoint Stock. The Trust will
18 hold the reissued CastlePoint stock for the sole benefit of CastlePoint's historical
19 shareholders and creditors, together with any other assets of CastlePoint that the
20 Conservator determines can or should be managed in the Trust to ensure that maximum
21 value is realized for the benefit of CastlePoint's policyholders and creditors.

22 e. The Conservator will administer the Trust and distribute its assets in a
23 manner that effectuates the priorities of payment set forth in Insurance Code section
24 1033(a).

25 f. CastlePoint is conclusively deemed for all purposes, including under all
26 applicable provisions of the Internal Revenue Code and regulations of the United States
27 Treasury promulgated thereunder, to be deconsolidated from the Tower Tax Group.

28 g. CastlePoint is permitted to file stand-alone tax returns for 2016 forward.

1 12. All other provisions of the Motion, to which reference is hereby made for further
2 detail, are hereby found to be reasonable and are in all things approved.

3 13. Based on the foregoing, all objections or potential objection to the Conservation
4 and Liquidation Plan that are inconsistent with the foregoing findings and rulings are hereby
5 overruled.

6 **Continuing Jurisdiction of the Court and Continuation of Injunctions**

7 14. All executory portions of the Conservation Transaction Agreements are also
8 hereby approved and made valid, binding, and enforceable in the event of a future liquidation and
9 insolvency of CastlePoint, if not otherwise terminated.

10 15. This Court shall retain jurisdiction of this action to supervise the implementation
11 of the Conservation and Liquidation Plan, to resolve disputes in the manner provided for in the
12 Plan, to adjudicate all third party claims, to make any orders or findings necessary to implement
13 this Order or the Plan.

14 16. All prior injunctions and other orders of this Court, except to the extent expressly
15 modified herein, are reaffirmed and remain in full force and effect. All powers and authority
16 granted to the Conservator by this Order are in addition to and not in limitation of the powers of
17 the Conservator under the California Insurance Code and the applicable case law.

18 17. The Conservator is expressly authorized to do all things necessary or appropriate
19 to carry out the provisions of the Conservation and Liquidation Plan, Conservation Agreement
20 and Conservation Transaction Agreements.

21 18. All third parties, including, without limitation, banks, savings and loan
22 associations, depositories, custodians, securities issuers, third party lenders or mortgage holders,
23 and landlords and transfer agents, are instructed to use their best efforts and to cooperate with the
24 Conservator to ensure that the asset transfers authorized herein are accomplished.

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1 **Provisions Regarding CastlePoint in Conservation**

2 19. This Order is not an order of liquidation for CastlePoint. The Conservator may
3 seek an order to liquidate CastlePoint at such time as the Conservator determines such liquidation
4 is advisable. Such application for an order of liquidation shall be made to this Court, and may be
5 made on an *ex parte* basis, subject to subsequent notice and a full hearing before this Court.

6 20. The California Insurance Guarantee Association's obligations and the obligations
7 of similar state insurance guaranty associations and funds in other states shall not be affected,
8 relieved, excused or otherwise modified by this Order.

9 21. The Conservator is authorized to use the assets of CastlePoint to satisfy liabilities
10 of CastlePoint pursuant to the Conservation and Liquidation Plan, in the order of priority
11 established in Insurance Code Section 1033(a).

12 22. Except as otherwise provided under the Conservation Agreement or the
13 Conservation Transaction Agreements, all liabilities of CastlePoint of any kind or nature shall be
14 retained by CastlePoint ("Retained Liabilities"). All creditors of CastlePoint and other interested
15 parties (except for the Conservator, the Commissioner, and their affiliates) are hereby expressly
16 enjoined from asserting or prosecuting, without the prior approval of this Court, any legal
17 proceeding against the Michael Karfunkel 2005 Family Trust, AmTrust Financial Services, Inc.,
18 National General Holdings Corp., or any of their respective affiliates, predecessors, successors,
19 parent companies, shareholders, assigns, officers, directors, agents, attorneys, accountants,
20 auditors, employees or other representatives, any claim arising out of (1) Retained Liabilities,
21 (2) the management or operations of CastlePoint or its affiliates prior to the closing of the
22 transactions contemplated by the Conservation Agreement and the Conservation Transaction
23 Agreements, or (3) the Plan, Conservation Agreement, or Conservation Transaction Agreements.
24 Holders of claims based on any Retained Liabilities shall have recourse only to the assets of
25 CastlePoint in accordance with the statutory priorities under Section 1033.

26 23. Except as otherwise provided under the Conservation Agreement or the
27 Conservation Transaction Agreements, all creditors of CastlePoint and other interested parties
28 (except for the Conservator, the Commissioner, and their affiliates) are hereby expressly enjoined

1 from pursuing, without prior approval of this Court, against Tower Group International, Ltd.
2 ("TGI") and its subsidiaries' other agents, attorneys, accountants, auditors and representatives,
3 any claim or action in connection with the business or affairs of CastlePoint or the insurance
4 companies later merged into and with CastlePoint that (1) arises out of any acts or omissions of
5 such persons occurring after the consummation of the series of transactions by which ACP Re,
6 Ltd. acquired TGI and its affiliated insurance companies, and (2) may adversely affect the assets
7 or operations of CastlePoint, the companies merged with and into CastlePoint, or the Plan.


8 24. All claims against CastlePoint based on Retained Liabilities shall be presented
9 after entry of this Order and closing of the Plan in accordance with instructions to be provided by
10 the Conservator and the Court.

11 25. In the event a claim against CastlePoint is rejected, either in whole or in part, the
12 claimant shall have recourse to this Court through an order to show cause proceeding as set forth
13 in section 1032 of the California Insurance Code subject to the time deadlines set forth therein.

14 Service of Order

15 ~~27. 26.~~ This Order shall be served on all parties who have requested service herein and on
16 such other persons and by such means as the Conservator deems appropriate and calculated to
17 provide reasonable notice of the entry of this Order.

18
19 Dated: 9/13/16


HONORABLE HAROLD E. KAHN
JUDGE OF THE SUPERIOR COURT

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21
22 26. Within 20 days of the date of this Order, any
23 interested party may submit to the Conservator requests for
24 information related to the financial condition of
25 CastlePoint and/or the Constituent Companies, and the
26 Conservator shall respond to all such requests within
27 20 days of receipt of the request. Nothing in this Order
28 shall preclude parties making informal requests from
later seeking leave of the Court to serve formal discovery.