

1 KAMALA D. HARRIS  
Attorney General of the State of California  
2 ANNE MICHELLE BARR  
Supervising Deputy Attorney General  
3 MARGUERITE C. STRICKLIN (State Bar No. 103161)  
Deputy Attorney General  
4 1515 Clay Street, 20<sup>th</sup> Floor  
Oakland, California 94612-0550  
5 Telephone: (510) 622-2146  
Facsimile: (510) 622-2270  
6 Email: Marguerite.Stricklin@doj.ca.gov

7 THOMAS J. WELSH (State Bar No. 142890)  
PATRICK B. BOCASH (State Bar No. 262763)  
8 ORRICK, HERRINGTON & SUTCLIFFE LLP  
400 Capitol Mall, Suite 3000  
9 Sacramento, California 95814-4497  
Telephone: (916) 447-9200  
10 Facsimile: (916) 329-4900  
Email: tomwelsh@orrick.com  
11 pbocash@orrick.com

12 Attorneys for Applicant Dave Jones,  
Insurance Commissioner of the State of California **EXEMPT from filing fees per Govt.  
Code § 6103**

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

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

Case No.  
**VERIFIED APPLICATION FOR EX  
PARTE ORDER APPOINTING  
INSURANCE COMMISSIONER AS  
CONSERVATOR; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**  
[Ins. Code § 1011]  
**Date: July 27, 2016**  
**Time: 11:00 a.m.**  
**Dept: 302**  
**Judge: Hon. Harold E. Kahn**

1 Applicant Dave Jones, Insurance Commissioner of the State of California (the  
2 “Commissioner”), hereby respectfully requests that he be appointed Conservator in the above-  
3 captioned action pursuant to Insurance Code section 1011,<sup>1</sup> based upon the following facts:

4 1. The Commissioner is the duly elected Insurance Commissioner of the State of  
5 California.

6 2. Respondent CastlePoint National Insurance Company (“CastlePoint”) is a  
7 corporation duly organized and existing under and by virtue of the laws of the State of California,  
8 with its statutory office in San Francisco, California.

9 3. CastlePoint is a property & casualty insurer wholly owned by Specialty  
10 Underwriters Alliance, Inc., a Delaware Corporation, which is in turn owned by Tower Group  
11 Inc., also a Delaware Corporation.

12 4. CastlePoint is an affiliate of an insurance holding company group that, prior to the  
13 consummation of several mergers described below, consisted of ten insurance companies  
14 domiciled in six different states, including the following insurers:

15 a. CastlePoint,

16 b. Tower Insurance Company of New York, an insurance company organized under the  
17 laws of New York,

18 c. Tower National Insurance Company, an insurance company organized under the laws  
19 of Massachusetts,

20 d. Hermitage Insurance Company, an insurance company organized under the laws of  
21 New York,

22 e. CastlePoint Florida Insurance Company, an insurance company organized under the  
23 laws of Florida,

24 f. North East Insurance Company, an insurance company organized under the laws of  
25 California,

26 g. Massachusetts Homeland Insurance Company, an insurance company organized under  
27 the laws of Massachusetts,

28 \_\_\_\_\_  
<sup>1</sup> Unless otherwise stated, all statutory references are to the California Insurance Code.

- 1 h. Preserver Insurance Company, an insurance company organized under the laws of New  
2 Jersey,
- 3 i. York Insurance Company of Maine, an insurance company organized under the laws of  
4 California, and
- 5 j. CastlePoint Insurance Company, an insurance company organized under the laws of  
6 New York (the foregoing insurers collectively referred to as the “Tower Insurance  
7 Companies”<sup>2</sup>).

8 5. The Tower Insurance Companies were collectively admitted and authorized to  
9 transact insurance in all 50 states and wrote a variety of multi-line property and casualty  
10 insurance, with an emphasis on workers’ compensation and commercial multi-peril, as well as a  
11 significant personal lines business.

12 6. On October 7, 2013, Tower Group International, Ltd. (Bermuda) (“Tower  
13 International”), which at the time was the ultimate parent company of the Tower Insurance  
14 Companies, announced that the Tower Insurance Companies aggregate loss reserves for incurred  
15 policyholder liabilities as of June 30, 2013, were strengthened (increased) by approximately \$365  
16 million and Tower International was also recording a \$215 million goodwill impairment. On  
17 November 14, 2013, Tower International announced that it would be restating its previously filed  
18 audited annual consolidated financial statements for 2011 and 2012, which included financial  
19 results for the Tower Insurance Companies, and the prior statements “should no longer be relied  
20 upon.” These events resulted in a rating downgrade by both AM Best and Fitch Ratings, and  
21 Tower International’s stock price declined from over \$21 per share to under \$4 in just three  
22 months. Facing a significant drop in its stock price, material weaknesses in its accounting  
23 systems and controls, and ongoing doubt as to the sufficiency of the loss reserves for the Tower  
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25 <sup>2</sup> Prior to September of 2014, the group of Tower Insurance Companies also included an eleventh company, Kodiak  
26 Insurance Company (“Kodiak”), which was a wholly owned subsidiary of Hermitage Insurance Company. Pursuant  
27 to an *Order Approving Dissolution* entered by the New Jersey Insurance Commissioner on September 12, 2014,  
28 Kodiak was dissolved through a multi-step process that included the assumption of any residual insurance liabilities  
by CastlePoint and the distribution of its remaining surplus to its shareholder, Hermitage Insurance Company. As a  
result of this transaction, effectively all of the net assets and liabilities of Kodiak remained within the group of Tower  
Insurance Companies. Pursuant to the *Order Approving Dissolution* any policyholder claims or other liabilities that  
may arise in the future from Kodiak’s prior business remain the responsibility of the Tower Insurance Companies,  
and thus CastlePoint.

1 Insurance Companies, Tower International began considering options for a sale.

2           7.       On September 15, 2014, Tower International and its subsidiaries, including the  
3 Tower Insurance Companies, were acquired by ACP Re, Ltd (“ACP Re”), a privately owned  
4 Bermuda-domiciled reinsurer that is beneficially owned by the Michael Karfunkel Family 2005  
5 Trust (“Karfunkel Family Trust”). Pursuant to this transaction, ACP Re immediately entered into  
6 several related post-closing transactions with AmTrust Financial Services, Inc. (“AmTrust”<sup>3</sup>), a  
7 publicly traded Delaware insurance holding company; and National General Holdings Corp  
8 (“National General”<sup>4</sup>), a publicly traded Delaware insurance holding company, under which  
9 certain operating assets of the Tower Insurance Companies were sold to AmTrust (commercial  
10 lines insurance assets) and to National General (personal lines insurance assets). Also as part of  
11 the purchase transaction, the Tower Insurance Companies’ aggregate policyholder loss reserves  
12 and unearned premium reserves as of September 15, 2014 were ceded to an affiliated reinsurer,  
13 CastlePoint Reinsurance Company, Ltd of Bermuda (“CP Re”), and operating subsidiaries of  
14 AmTrust and National General took over claims administration for all claims and liabilities that  
15 were assumed by CP Re. Finally, affiliates of AmTrust and National General entered into a \$250  
16 million aggregate stop loss reinsurance agreement with CP Re, under which these reinsurers  
17 would (in exchange for a reinsurance premium of \$56 million payable in September 2019), agree  
18 to pay up to \$250 million in additional policyholder claims that remained unpaid after CP Re’s  
19 payment of claims equal to the Tower Insurance Companies’ loss reserves and unearned premium  
20 reserves as of September 15, 2014. In turn, such reinsurers retroceded 100% of their liability  
21 under the stop loss reinsurance agreement to ACP Re pursuant to a stop loss retrocession  
22 agreement. All of the foregoing transactions closed on September 15, 2014.

23           8.       During the 15 months following the closing date, the Tower Insurance Companies’  
24 financial condition continued to deteriorate. As of the closing date, the Tower Insurance  
25 Companies’ aggregate loss reserves for insurance liabilities were, subject to further evaluation,  
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27 <sup>3</sup> All references to AmTrust in this pleading refer to AmTrust Financial Services, Inc., or to one or more of its  
operating affiliates.

28 <sup>4</sup> All references to National General in this pleading refer to National General Holdings Corp., or to one or more of  
its operating affiliates.

1 recorded at approximately \$1.383 billion. This amount already included approximately \$568  
2 million of adverse development on accident years 2013 and prior. During 2015, the Tower  
3 Insurance Companies' consulting actuaries determined that such loss reserves should be increased  
4 by more than \$400 million. CastlePoint increased its estimate of carried reserves by more than  
5 \$500 million at year-end 2015.

6 9. On December 9, 2015, the Commissioner appointed David E. Wilson to conduct a  
7 targeted examination of CastlePoint, Preserver Insurance Company and Tower Insurance  
8 Company of New York, pursuant to section 729 *et seq.* These were the three Tower Group  
9 Insurance Companies that held a certificate of authority to transact insurance in California, so the  
10 Commissioner had the statutory authority to examine the financial condition of these companies.

11 10. Early in 2016, the Tower Insurance Companies, along with Tower International,  
12 ACP Re, and its affiliates, began working with the six domiciliary insurance regulators of the  
13 Tower Insurance Companies (in the states of Maine,<sup>5</sup> Florida, New Jersey, New York and  
14 Massachusetts) to develop a plan to address the increasingly distressed financial condition of the  
15 Tower Insurance Companies in a manner that would best protect policyholders and other  
16 creditors. After extensive discussions with the Commissioner and other regulators the parties  
17 decided that the best course of action was to adopt and implement a plan to conduct an orderly  
18 and efficient conservation and liquidation of the Tower Insurance Companies on a consolidated  
19 basis by merging each of the individual Tower Insurance Companies with and into CastlePoint,  
20 with the Commissioner immediately thereafter applying to the superior court for an order placing  
21 the newly constituted CastlePoint into statutory conservation. The primary purpose of this  
22 consolidation was to allow for an efficient and orderly conservation process by obviating the need  
23 for ten receivership proceedings (one for each of the ten Tower Insurance Companies) in six  
24 different domiciliary states. In addition, the consolidation will permit the Commissioner, in his  
25 capacity as statutory conservator of CastlePoint, to quickly enter into and seek approval of  
26 agreements that will assist the Commissioner in conducting the runoff and eventual liquidation of  
27 CastlePoint in an organized and efficient manner. Any such agreements will be promptly  
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<sup>5</sup> The Tower Insurance Companies domiciled in Maine were subsequently redomesticated to California.

1 submitted to the court for approval.

2 11. During the several days prior to this Application, each of the Tower Insurance  
3 Companies merged with and into CastlePoint, with CastlePoint being the sole surviving insurance  
4 company and the successor in interest to the all assets and liabilities of the Tower Insurance  
5 Companies. These mergers occurred with the consent and approval of the Boards of Directors for  
6 each company, as well as with the advance approval of each of the applicable domiciliary state  
7 insurance regulators, including the Commissioner, the Florida Insurance Commissioner, the  
8 Maine Superintendent of Insurance,<sup>6</sup> Massachusetts Insurance Commissioner, the Commissioner  
9 of the New Jersey Department of Banking and Insurance, and the Superintendent of the New  
10 York Department of Financial Services (collectively, the “Regulator Group”).

11 12. As noted above, the Commissioner appointed David E. Wilson as special deputy  
12 examiner in December 2015, to conduct a targeted financial examination of the Tower Insurance  
13 Companies admitted in California. Upon completion of the examination, and in conjunction with  
14 financial examination results from the other Tower Insurance Companies, the Commissioner  
15 determined that the aggregate loss and loss adjustment expense reserves of the Tower Insurance  
16 Companies, which are now entirely the responsibility of CastlePoint by virtue of the mergers,  
17 were deficient by hundreds of millions of dollars and that its mandatory statutory surplus was  
18 impaired. Based on the results of that examination, the Commissioner has determined, and  
19 CastlePoint’s management and shareholder have agreed, that CastlePoint is in such condition that  
20 the further transaction of business by it will be, and is, hazardous to its policyholders, creditors  
21 and the public, and such condition is a ground for conservation under section 1011(d). Formal  
22 conservation is therefore necessary and appropriate, and the Commissioner has therefore filed this  
23 Application for an order appointing him as Conservator of CastlePoint.

24 **WHEREFORE**, the Commissioner prays that this Court issue the following orders (for  
25 all purposes in the requested order, the term “CastlePoint,” wherever used and used in whatever  
26 context or reference, shall mean and refer to CastlePoint National Insurance Company, as the  
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28 <sup>6</sup> The Maine Superintendent of Insurance approved only the redemestications of the two Maine companies to California, after which those two companies were merged with and into CastlePoint.

1 survivor by merger with the Tower Insurance Companies, and shall be deemed to include all of  
2 the following predecessor entities: the pre-merger CastlePoint National Insurance Company,  
3 Tower Insurance Company of New York, Tower National Insurance Company, Hermitage  
4 Insurance Company, Kodiak Insurance Company, CastlePoint Florida Insurance Company, North  
5 East Insurance Company, Massachusetts Homeland Insurance Company, Preserver Insurance  
6 Company, York Insurance Company of Maine, and CastlePoint Insurance Company):

7 1. Appointing the Commissioner as Conservator (hereinafter the “Conservator”) of  
8 CastlePoint and directing him to conduct the business of CastlePoint or so much thereof as he  
9 deems appropriate; and authorizing him, in his discretion, to pay or defer payment of some or all  
10 proper claims, expenses, liabilities and obligations of CastlePoint, in whole or in part, accruing  
11 prior or subsequent to his appointment as Conservator;

12 2. Authorizing the Conservator to assume or reject, or to modify, any executory  
13 contract, including without limitation, any lease, rental or utilization contract or agreement  
14 (including any schedule to any such contract or agreement), and any license or other arrangement  
15 for the use of computer software or business information systems, to which CastlePoint is a party  
16 or as to which it agrees to accept an assignment of such contract; directing the Conservator to  
17 effect any such assumption or rejection or modification of any executory contract not later than  
18 120 days after the date of the Order Appointing Conservator, unless such date is extended by  
19 application to and further order of this Court; ordering that all executory contracts that are not  
20 expressly assumed by the Conservator shall be deemed rejected;

21 3. Authorizing the Conservator to take possession of all of the assets of CastlePoint,  
22 including books, records and property, both real and personal, accounts, safe deposit boxes, rights  
23 of action, and all such assets as may be in the name of CastlePoint, wheresoever situated;

24 4. Vesting title to all property and assets of CastlePoint, including deposits,  
25 securities, contracts, rights of actions, books, records and other assets of every type and nature,  
26 and including both those presently in CastlePoint’s possession and those which may be  
27 discovered hereafter, wheresoever situated, in the Commissioner in his or her official capacity as  
28 Conservator of CastlePoint and/or his successor in office, in his or her official capacity as

1 Conservator; and authorizing the Conservator to deal with the same in his own name as  
2 Conservator or in the name of CastlePoint, and enjoining all persons from interfering with the  
3 Conservator's possession and title thereto;

4 5. Granting the Conservator all the powers of the directors, officers, and managers of  
5 CastlePoint, whose authorities are suspended except as such powers may be redelegated by the  
6 Conservator;

7 6. Authorizing the Conservator to terminate compensation arrangements with  
8 employees, to enter into new compensation arrangements with employees, including  
9 arrangements containing retention incentives, and authorizing the Conservator to hire employees  
10 on such terms and conditions as he deems reasonable;

11 7. Except upon the express authorization of the Conservator, enjoining CastlePoint,  
12 its officers, directors, agents and employees from transacting any of the business of CastlePoint,  
13 whether in the State of California or elsewhere, or from disposing of, using, transferring, selling,  
14 assigning, canceling, alienating, hypothecating, diminishing, impairing, waiving, limiting or  
15 concealing in any manner or any way, or assisting any person in any of the foregoing, of the  
16 property or assets of CastlePoint or property or assets in the possession of CastlePoint, of any  
17 nature or kind, including intangible assets, tax assets and attributes, claims or causes of action,  
18 until further order of this Court and further, enjoining such persons from obstructing or interfering  
19 with the Conservator's conduct of his or her duties as Conservator;

20 8. Enjoining all persons from instituting, prosecuting, or maintaining any action at  
21 law or suit in equity, and matters in arbitration, including but not limited to actions or proceedings  
22 to compel discovery or production of documents or testimony and matters in arbitration, except in  
23 matters before either the California Workers Compensation Appeals Board or equivalent  
24 administrative boards or organizations performing such functions in other states in which  
25 CastlePoint issued workers compensation policies, against CastlePoint or against the Conservator,  
26 and from attaching, executing upon, redeeming of or taking any other legal proceedings against  
27 any of the property of CastlePoint, and from doing any act interfering with the conduct of said  
28 business by the Conservator, except after an order from this Court obtained after reasonable



1 notice to the Conservator;

2 9. Directing CastlePoint and all officers, directors, agents and employees of  
3 CastlePoint to deliver to, and immediately make available to, the Conservator all assets, books,  
4 records, accounts, records, tax returns, information, computers, tapes, discs, writings, other  
5 recordings of information, equipment and other property of CastlePoint, wheresoever situated, in  
6 said persons custody or control and further, directing the aforesaid to disclose verbally, or in  
7 writing if requested by the Conservator, the exact whereabouts of the foregoing items if such  
8 items are not in the possession custody or control of said persons;

9 10. Directing all officers, directors, trustees, employees or agents of CastlePoint, or  
10 any other person, firm, association, partnership, corporate parent, holding company, affiliate or  
11 other entity in charge of any aspect of CastlePoint's affairs, either in whole or in part, and  
12 including but not limited to banks, savings and loan associations, financial or lending institutions,  
13 brokers, stock or mutual associations, or any parent, holding company, subsidiary or affiliated  
14 corporation or any other representative acting in concert with CastlePoint, shall cooperate with  
15 the Conservator in the performance of his or her duties;

16 11. Authorizing the Conservator to pay all reasonable costs of taking possession of  
17 and conserving CastlePoint (including but not limited to Commissioner's pre-conservation costs  
18 in examining CastlePoint's financial condition, and preparing to take possession and conserve  
19 CastlePoint) out of the funds and assets of the CastlePoint;

20 12. Authorizing the Conservator to pay all reasonable costs of operating CastlePoint as  
21 Conservator (including direct and allocated direct costs, direct and allocated general and  
22 administrative costs and overhead, and all other allocated costs) out of any and all funds and  
23 assets of CastlePoint; and if there are insufficient funds, to pay for the costs out of the Insurance  
24 Fund pursuant to section 1035;

25 13. Directing that all funds and assets, including certificates of deposit, bank accounts,  
26 and mutual fund shares of CastlePoint, in various financial depository institutions, including  
27 banks, savings and loan associations, industrial loan companies, mutual funds or stock  
28 brokerages, wheresoever situated, be vested in the Conservator and subject to withdrawal upon

1 his order only;

2 14. Ordering all persons who maintain records for CastlePoint, pursuant to written  
3 contract or any other agreement, to maintain such records and to deliver to the Conservator such  
4 records upon his request;

5 15. Directing all agents of CastlePoint, and all brokers who have done business with  
6 CastlePoint, to make all remittances of all funds collected by them or in their hands that are  
7 payable to CastlePoint directly to the Conservator;

8 16. Directing all persons having possession of any lists of policyholders or escrow  
9 holders of CastlePoint to deliver such lists to the Conservator; and that all persons are enjoined  
10 from using any such lists or any information contained therein without the consent of the  
11 Conservator;

12 17. Authorizing the Conservator to initiate such equitable or legal actions or  
13 proceedings in this or other states as may appear necessary to him to carry out his functions as  
14 Conservator;

15 18. Authorizing the Conservator to appoint and employ special deputies, estate  
16 officers and managers, other professionals, clerks and assistants and to give each of them such  
17 power and authority as he deems necessary, and authorizing the Conservator to compensate these  
18 persons from the assets of CastlePoint as he shall deem appropriate;

19 19. Authorizing the Conservator to divert, take possession of and secure all mail of  
20 CastlePoint, in order to screen such mail, and to effect a change in the rights to use any and all  
21 post office boxes and other mail collection facilities used by CastlePoint;

22 20. Directing that CastlePoint and its officers, directors, agents, servants, employees,  
23 successors, assigns, affiliates, and other persons or entities under their control and all persons or  
24 entities in concert or participation with CastlePoint, and each of them, shall turn over to  
25 Conservator all records, documentation, charts and/or descriptive materials of all funds, assets,  
26 property (owned beneficially or otherwise), and all other assets of CastlePoint wheresoever  
27 situated, and all books and records of accounts, title documents and other documents in their  
28 possession or under their control, which relate, directly or indirectly to assets or property owned

1 or held by CastlePoint or to the business or operations of CastlePoint;

2 21. Except upon further order of the Court issued after a hearing in which the  
3 Conservator has received reasonable notice, enjoining all persons from obtaining preferences,  
4 judgments, attachments or other liens, or making any levy against CastlePoint or its assets or  
5 property, and from executing or issuing or causing the execution or issuance of any court  
6 attachment, subpoena, replevin, execution or other process for the purpose of impounding or  
7 taking possession of or interfering with or creating or enforcing a lien upon any property or assets  
8 owned or in the possession of CastlePoint or the Conservator, wheresoever situated, and from  
9 doing any act interfering with the conduct of said business by the Conservator;

10 22. Except upon further order of the Court issued after a hearing in which the  
11 Conservator has received reasonable notice, enjoining all persons from accelerating the due date  
12 of any obligation or claimed obligation; exercising any right of set-off; taking, retaining, retaking  
13 or attempting to retake possession of any real or personal property; withholding or diverting any  
14 rent or other obligation; doing any act or other thing whatsoever to interfere with the possession  
15 of or management by the Conservator of the property and assets, owned or controlled by  
16 CastlePoint or in the possession of CastlePoint or in any way interfering with the Conservator or  
17 interfering in any manner during the pendency of this proceeding with the exclusive jurisdiction  
18 of this Court over CastlePoint and its assets;

19 23. Directing that any and all provisions of any agreement entered into by and between  
20 any third party and CastlePoint, including by way of illustration, but not limited to, the following  
21 types of agreements (as well as any amendments, assignments, or modifications thereto)—  
22 financial guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,  
23 mortgages, indemnification agreements, subrogation agreements, subordination agreements,  
24 pledge agreements, assignments of rents or other collateral, financial statements, letters of credit,  
25 leases, insurance policies, guaranties, escrow agreements, management agreements, real estate  
26 brokerage and rental agreements, servicing agreements, attorney agreements, consulting  
27 agreements, easement agreements, license agreements, tax sharing agreements, franchise  
28 agreements, or employment contracts that provide in any manner that selection, appointment or

1 retention of a conservator, receiver or trustee by any court, or entry of any order such as hereby  
2 made, shall be deemed to be, or otherwise operate as, a breach, violation, event of default,  
3 termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation—  
4 shall be stayed, and the assertion of any and all rights and remedies relating thereto shall also be  
5 stayed and barred, except as otherwise ordered by this Court, and this Court shall retain  
6 jurisdiction over any cause of action that has arisen or may otherwise arise under any such  
7 provision;

8         24. The Conservator is authorized to invest and reinvest CastlePoint’s assets and funds  
9 in such a manner as he deems suitable for the best interest of CastlePoint’s creditors. However,  
10 no investment or reinvestment shall be made exceeding the sum of \$100,000 without first  
11 obtaining permission of this Court, except the Conservator may make investments or  
12 reinvestments in excess of \$100,000, but not exceeding \$5,000,000 per investment or  
13 reinvestment, without prior approval if such investments or reinvestments are made pursuant to  
14 any provisions of the existing investment guidelines and investment programs of CastlePoint that  
15 the Conservator determines are prudent and appropriate to continue. Such investment guidelines  
16 shall be applicable only to non-pledged and or unencumbered assets in the estate;

17         25. Authorizing the Conservator to pay out of the funds and assets of CastlePoint all  
18 costs and fees incurred in preparing for, bringing and maintaining this action, including the  
19 reasonable expenses incurred by the Regulator Group prior to the filing of this application to  
20 accomplish the several mergers of affiliated insurers into CastlePoint, and for such other actions  
21 and activities as are necessary to carry out his functions as Conservator. Such payments may  
22 include reimbursements for third party advisory and consulting services incurred by a member of  
23 the Regulator Group in preparation for conservation of CastlePoint;

24         26. Authorizing the Conservator to pay such priority liabilities during conservation as  
25 the Commissioner, as statutory conservator, shall determine appropriate and to immediately  
26 reserve against the full payment of such expenses; and

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27. Enjoining all persons from the waste of the assets of CastlePoint;

Dated: July 27, 2016


KAMALA D. HARRIS  
Attorney General of the State of California

By: \_\_\_\_\_  
MARGUERITE C. STRICKLIN  
Deputy Attorney General

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

Dated: July 27, 2016

THOMAS J. WELSH  
PATRICK B. BOCASH  
Orrick, Herrington & Sutcliffe LLP

By:  \_\_\_\_\_  
THOMAS J. WELSH

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

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**VERIFICATION**

I, David E. Wilson, state that I am the Special Deputy Insurance Commissioner and Chief Executive Officer of the Insurance Commissioner's Conservation & Liquidation Office, and, since December 9, 2015, have been the duly appointed Special Insurance Examiner of CastlePoint National Insurance Company, Tower Insurance Company of New York and Preserver Insurance Company; that I make this verification in my official capacity; that I have read the foregoing Verified Application for Ex Parte Order Appointing Insurance Commissioner As Conservator; and that the facts stated therein are true of my own knowledge except as to matters which are therein stated on information and belief and, as to those matters, I believe them to be true.

Executed on this the 26th day of July, 2016, at San Francisco, California.

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

  
\_\_\_\_\_  
DAVID E. WILSON  
Special Deputy Insurance Commissioner

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. AN IMMEDIATE CONSERVATION ORDER IS REQUIRED**

3 The Insurance Commissioner of the State of California is authorized by section 1011 to  
4 obtain an *ex parte* order appointing him Conservator of entities regulated by him. Section 1011  
5 states in part:

6  
7 The superior court of the county in which the principal office of a person described  
8 in Section 1010 is located, upon the filing by the commissioner of the verified  
9 application showing any of the conditions in this subdivision exist, . . . , shall issue  
10 its order vesting title to all of the assets of that person, wheresoever situated, in the  
11 commissioner or his or her successor in office, in his or her official capacity, and  
12 direct the commissioner forthwith to take possession of all of its books, records,  
13 property, real and personal, and assets, and to conduct, as conservator, the business  
14 of the person, or so much thereof as to the commissioner may seem appropriate,  
15 and enjoining the person and its officers, directors, agents, servants, and employees  
16 from the transaction of its business or disposition of its property until any of the  
17 following further order of the court:

18 . . .  
19 (d) That the person is found, after an examination, to be in a condition that makes  
20 its further transaction of business hazardous to its policyholders, or creditors, or to  
21 the public.

22 Sections 1010 *et seq.*, which authorize, inter alia, conservation and liquidation, provide  
23 that these provisions “. . . apply to all persons . . . subject to examination by the commissioner.”  
24 (Cal. Ins. Code § 1010.) The Commissioner is authorized by section 1011 to obtain an *ex parte*  
25 order appointing him Conservator of CastlePoint, which he is mandated by law to regulate. As an  
26 officer of this State, the Commissioner, as Conservator, exercises the State’s police power to  
27 promote the public interest and protect policyholders and creditors of the insurer. (*Quackenbush*  
28 *v. Mission Ins. Co.* (1996) 46 Cal.App.4th 458, 465-466 [54 Cal.Rptr.2d 112]; *In re Executive*  
*Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356 [38 Cal.Rptr.2d 453].)

29 In obtaining an *ex parte* order pursuant to section 1011, the Commissioner need only show  
30 that he has determined and found that one of the conditions enumerated exists. (*Financial*  
31 *Indemnity Co. v. Super. Ct.* (1955) 45 Cal.2d 395, 402 [289 P.2d 233]; *Rhode Island Ins. Co. v.*  
32 *Downey* (1949) 95 Cal.App.2d 220, 230-231 [212 P.2d 965].) Under the insolvency and  
33 delinquency provisions of the Insurance Code, the issuance of an order under section 1011 is

1 mandatory. (*Financial Indemnity Co. v. Super. Ct., supra* at 402.) The seized company may  
2 apply for and have a full hearing after such order pursuant to Section 1012 to contest whether  
3 grounds for conservation exist or to show that all grounds for conservation have been cured or  
4 removed. (*Rhode Island Ins. Co. v. Downey, supra* at 235-36.)

5 Section 1020 provides that the court shall issue orders and injunctions as may be  
6 necessary to, among other things, prevent waste of assets, obtaining of preferences, and  
7 interference with the commissioner of the conservatorship proceeding.

8 Here, CastlePoint has been found by the Commissioner upon examination to be in  
9 hazardous condition within the meaning of the Insurance Code. Moreover, by virtue of the  
10 foregoing financial condition, CastlePoint does not comply with the requirements for the issuance  
11 to it of a certificate of authority to transact insurance business in this state. Under these  
12 circumstances, the issuance of a conservation order in this state is plainly required to protect  
13 policyholders, creditors and the public.

14 **II. CONCLUSION**

15 For each and all of the foregoing reasons, the Insurance Commissioner of the State of  
16 California respectfully urges that the requested relief be granted and that the proposed  
17 Conservation Order for CastlePoint be issued forthwith.

18 Dated: July 27, 2016

KAMALA D. HARRIS  
Attorney General of the State of California

21 By: \_\_\_\_\_  
22 MARGUERITE C. STRICKLIN  
Deputy Attorney General

23 Attorneys for Applicant Dave Jones,  
24 Insurance Commissioner of the  
25 State of California



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Dated: July 27, 2016

THOMAS J. WELSH  
PATRICK B. BOCASH  
Orrick, Herrington & Sutcliffe LLP



By: \_\_\_\_\_  
THOMAS J. WELSH

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