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12 Attorneys for Applicant Dave Jones,
Insurance Commissioner of the State of California
13 in his Capacity as Liquidator of
CastlePoint National Insurance Company

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

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

18 DAVE JONES, INSURANCE
COMMISSIONER OF THE STATE OF
19 CALIFORNIA,

20 Applicant,

21 v.

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

23 Respondents.
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Case No. CPF-16-515183

Reservation No. 03130412-06

**INSURANCE COMMISSIONER'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF TRANSACTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION**

Date: April 12, 2018

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Harold E. Kahn

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

03/16/2018

Clerk of the Court

BY: VANESSA WU

Deputy Clerk

1 **INSURANCE COMMISSIONER’S NOTICE OF MOTION AND MOTION**
2 **FOR APPROVAL OF TRANSACTION**

3 PLEASE TAKE NOTICE that on April 12, 2018, at 9:30 a.m., or as soon thereafter as
4 may be heard in the above-entitled Court, located at 400 McAllister Street, San Francisco, CA
5 94103, Dave Jones, Insurance Commissioner (“Commissioner”) of the State of California, as the
6 statutory Liquidator of the estate of CastlePoint National Insurance Company (“CastlePoint”),
7 will and hereby does move the Court for an Order granting the *Insurance Commissioner’s Motion*
8 *for Approval of Transaction* (“Motion”) and approving and finding that the requested Transaction
9 (as specified and defined in the accompanying Memorandum of Points and Authorities, but in
10 sum involving the discounting and immediate payment of a long-term contractual account
11 receivable) is reasonable, appropriate and necessary.

12 This Motion is made pursuant to the Commissioner’s authority under California Insurance
13 Code section 1037(d) to seek Court approval for transactions involving real or personal property
14 of the liquidating insurer, CastlePoint, where the market value of the property exceeds \$20,000,
15 and pursuant to the broad duties, powers, and authority of the Commissioner to act as necessary
16 or expedient to serve the interests of the liquidation estate and creditors. This Motion is based on
17 the content of this Notice of Motion and Motion, and is supported by the concurrently filed
18 Memorandum of Points and Authorities annexed hereto, the Declaration of David E. Wilson, and
19 all other pleadings, papers and records filed with the Court, and the facts and circumstances stated
20 therein, as well as all evidence and arguments to be presented at the hearing on April 12, 2018.

21 PLEASE TAKE FURTHER NOTICE that pursuant to California Code of Civil Procedure
22 sections 1005(b) & (c), any opposition to the Motion must be in writing, must be filed with the
23 Court and served on all persons and entities who have requested notice of these proceedings, as
24 reflected on the attached proof of service, and on counsel for the Commissioner at the address set
25 forth in the upper left-hand corner of the first page hereof no later than nine (9) court days before
26 the hearing (i.e., March 29, 2018), and served on counsel for the Commissioner by personal
27 delivery, facsimile transmission, express mail or other means consistent with the provisions of
28 California Code of Civil Procedure sections 1010, 1011, 1012, and 1013 that is reasonably

1 calculated to ensure delivery no later than the close of the next business day after the opposition is
2 filed with the Court.

3 **WHEREFORE**, the Commissioner respectfully requests that the Court enter an Order,
4 substantially in the form lodged with the Motion, approving the Transaction and confirming the
5 Commissioner's authority to enter into all necessary agreements and take all actions necessary to
6 effectuate the Transaction.

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9 Dated: March 16, 2018

XAVIER BECERRA
Attorney General of California

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12 By: 

MARGUERITE C. STRICKLIN
Deputy Attorney General

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

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16
17 Dated: March 16, 2018

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

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19
20 By: 

THOMAS J. WELSH

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

1 **INSURANCE COMMISSIONER’S MEMORANDUM OF POINTS &**
2 **AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF**
3 **TRANSACTION**

4 Dave Jones, Insurance Commissioner (“Commissioner”) of the State of California, as the
5 statutory Liquidator of the estate of CastlePoint National Insurance Company (“CastlePoint”),
6 hereby submits this Memorandum of Points and Authorities in support of the *Insurance*
7 *Commissioner’s Motion for Approval of Transaction* (“Motion”).

8 **I. INTRODUCTION**

9 The Commissioner, in his capacity as the statutory Liquidator of the estate of CastlePoint,
10 has the discretion and authority to manage the liquidation and assets of CastlePoint, an insolvent
11 insurer undergoing statutory liquidation in this proceeding, as necessary and as he determines to
12 be in the best interests of the estate to protect policyholders, claimants and other parties-in-
13 interest. On behalf of CastlePoint, the Commissioner has the opportunity to resolve an illiquid,
14 long term account receivable of approximately \$11 million by discounting the receivable and
15 obtaining an immediate \$8.4 million in cash on the terms described in detail below (the
16 “Transaction”). As the value of the property at issue in the Transaction exceeds \$20,000, the
17 Commissioner seeks the Court’s approval of the Transaction pursuant to California Insurance
18 Code section 1037(d). As the Commissioner explains herein, he has determined that the terms of
19 the proposed Transaction are fair and reasonable and that completing the Transaction is in the
20 best interests of the CastlePoint estate and its creditors. On that basis, the Commissioner
21 recommends that the Court approve the Transaction and authorize the Commissioner to take all
22 actions necessary to effectuate the Transaction forthwith.

23 **II. FACTUAL BACKGROUND**

24 **A. The CastlePoint Conservation and Liquidation**

25 CastlePoint was placed into conservation on July 28, 2016. On September 13, 2016, the
26 Court approved the Commissioner’s Conservation and Liquidation Plan for CastlePoint (the
27 “Plan”), and the Commissioner undertook to implement the provisions of the Plan. The Court
28 entered its Liquidation Order for CastlePoint on March 30, 2017, and the Order became effective
on April 1, 2017.

1 **B. The Transaction**

2 Prior to CastlePoint being placed into Conservation, CastlePoint, along with CastlePoint
3 Bermuda Holdings Ltd. (“Holdings”), a company incorporated in Bermuda, and CastlePoint
4 Reinsurance Company Ltd. (“CPRé”), a Bermuda entity with its entire issued share owned by
5 Holdings, were all members of an affiliated group of companies. Declaration of David Wilson In
6 Support Of Insurance Commissioner’s Motion For Approval Of Transaction (“Wilson Decl.”),
7 ¶ 6. CastlePoint (directly and through its several predecessors by merger) and CPRé were parties
8 to a reinsurance agreement under which CPRé had assumed liability to pay all claims accruing
9 under CastlePoint’s policies, in exchange for the transfer from CastlePoint of materially all of
10 CastlePoint’s assets that supported its liability reserves. *Id.* After the full implementation of the
11 Plan, CastlePoint was no longer affiliated with Holdings, CPRé or any other prior affiliate. *Id.*

12 One of the court-approved agreements entered into to effectuate the Plan was an
13 agreement to commute (settle and terminate) the in-force reinsurance agreement between
14 CastlePoint and CPRé (“Commutation Agreement”). *Id.*, ¶ 7. Pursuant to the Commutation
15 Agreement, CPRé was released from all reinsurance obligations to CastlePoint in exchange for
16 CPRé’s agreement to pay all of its tangible net assets to CastlePoint over time, after certain
17 priority obligations were paid or reserved against and after such periodic payments were approved
18 by CPRé’s regulator in Bermuda. *Id.* CPRé has made periodic payments to CastlePoint under the
19 Commutation Agreement since the implementation of the Plan. *Id.* As of September 30, 2017,
20 CPRé’s financial statements show the estimated amount that CastlePoint may expect to receive in
21 the future under the Commutation Agreement to be approximately \$11.3 million. *Id.*, ¶ 8.
22 CastlePoint has booked an account receivable in that amount. *Id.* This CastlePoint account
23 receivable is an illiquid asset that is subject to considerable uncertainty regarding the final amount
24 that will be realized and the timing for receiving payments. *Id.*

25 Near the end of 2017, Acumen Management Ltd. (“Acumen”), a company incorporated in
26 Bermuda that specializes in acquiring insurance run-off operations, expressed interest in
27 acquiring the entire issued capital of CPRé from Holdings, but subject to CastlePoint and CPRé
28 contemporaneously agreeing on a final amount due to CastlePoint under the Commutation

1 Agreement. *Id.*, ¶ 9. Based on that inquiry, the Commissioner’s staff undertook a detailed
2 financial and collection risk analysis to evaluate the uncertainty associated with CastlePoint’s
3 accounts receivable due from CPRe in order to determine a range of reasonable values for
4 compromising and accelerating CastlePoint’s receipt of funds due from CPRe. *Id.*, ¶ 10. The
5 Commissioner then engaged in arms-length negotiations with CPRe and Acumen, and those
6 negotiations resulted in an agreement in principle with respect to CPRe’s participation in the
7 Transaction with CastlePoint, subject to approval of the Court. *Id.*

8 Under the proposed Transaction, Acumen will pay CastlePoint \$8,400,000 in full and final
9 settlement of all amounts owing under the Commutation Agreement (“Settlement Amount”). *Id.*,
10 ¶ 11. The Settlement Amount remains subject to minor adjustment pursuant to a true-up process
11 that will be completed following the completion of CPRe’s financial statements for the year
12 ended December 31, 2017. *Id.* That financial reporting and true-up process should be completed
13 prior to the hearing on the Motion, and the Commissioner will report to the Court if the
14 Settlement Amount has been adjusted. *Id.*

15 III. DISCUSSION AND LEGAL AUTHORITY

16 California Insurance Code Section 1037(d) requires the Commissioner to seek approval of
17 the Court for transactions involving real or personal property where the market value of the
18 property exceeds \$20,000. Specifically, section 1037(d) provides that the Commissioner:

19 [s]hall have authority without notice, to acquire, hypothecate,
20 encumber, lease, improve, sell, transfer, abandon, or otherwise
21 dispose of or deal with, any real or personal property of that person
22 at its reasonable market value, or, in cases other than acquisition,
23 sale, or transfer on the basis of reasonable market value, upon such
24 terms and conditions as the commissioner may deem proper.
25 However, no transaction involving real or personal property shall
be made where the market value of the property involved exceeds
the sum of twenty thousand dollars (\$20,000) without first
obtaining permission of the court, and then only in accordance with
any terms that court may prescribe.

26 (Cal. Ins. Code § 1037(d).)

27 The Commissioner is vested with substantial discretion to conduct the liquidation of an
28 insolvent insurer subject to certain statutory limitations and the limitation “that the exercise of

1 discretion be neither arbitrary nor improperly discriminatory.” *In re Executive Life Ins. Co.*
2 (1995) 32 Cal.App.4th 344, 356 (citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal. 2d
3 307, 329.) His decisions as to matters concerning an insolvent insurer are reviewed by the Court
4 on an abuse of discretion standard. (*In re Executive Life, supra*, 32 Cal.App.4th at 358.) The
5 Commissioner has carefully considered the Transaction at issue and believes and represents that,
6 given an estate of this size and the complexity and uncertainty surrounding the current amount
7 due from CPRe to CastlePoint, approval of the Transaction is necessary, reasonable, and
8 appropriate and in the best interests of the CastlePoint estate. Wilson Decl., ¶ 12.

9 The risks evaluated by the Commissioner include that the final amount and timing of
10 payments of the approximately \$11 million owed by CPRe to CastlePoint under the Commutation
11 Agreement is currently subject to significant uncertainty. *Id.*, ¶ 13. In short, fixing the
12 Settlement Amount at \$8.4 million, and receiving the full amount in cash at closing of the
13 Transaction, will eliminate all future risk associated with this illiquid asset. *Id.* The
14 Commissioner therefore seeks the approval of the Court to resolve the approximately \$11 million
15 illiquid account receivable, which will not be paid in full for many years, for an immediate
16 payment of \$8.4 million (subject to the true-up process). This cash will then be immediately
17 available for the benefit of CastlePoint’s policyholders and claimants as the Commissioner
18 continues to manage the liquidation and prepare for a future distribution to claimants. *Id.*, ¶ 14.

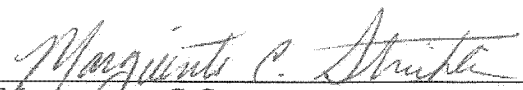
19 IV. CONCLUSION

20 Based on the foregoing, the Commissioner respectfully requests that the Court
21 grant the Motion and enter the proposed order approving the Transaction and authorizing
22 the Commissioner to enter into all agreements and transactions necessary to effectuate the
23 Transaction.

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Dated: March 16, 2018

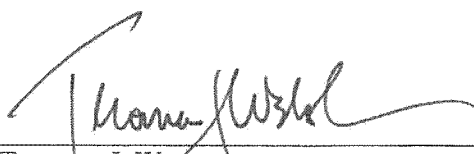
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Dated: March 16, 2018

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