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

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

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

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

Case No. CPF-16-515183
**NOTICE OF APPLICATION AND
APPLICATION FOR ORDER
AUTHORIZING FIRST INTERIM
DISTRIBUTION ON ALLOWED
CLASS 2 POLICYHOLDER CLAIMS
AND THIRD EARLY ACCESS
DISTRIBUTION TO STATE
INSURANCE GUARANTY FUNDS AND
APPROVING FINANCIAL REPORT,
FINANCIAL STATEMENT AND
EXPENSES OF ADMINISTRATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

**Date: December 9, 2024
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Richard B. Ulmer, Jr.**

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

2 PLEASE TAKE NOTICE that on December 9, 2024, at 9:30 a.m., in Department 302 of
3 the San Francisco Superior Court, 400 McAllister Street, San Francisco, California 94102, before
4 the Honorable Richard B. Ulmer, Jr., the Insurance Commissioner of the State of California, as
5 the statutory and Court-appointed Liquidator (“Commissioner”) of CastlePoint National
6 Insurance Company (“CastlePoint” or “CastlePoint estate”), will and does hereby apply to the
7 Court for an order granting the within application (“Application”). The Application seeks an
8 order of the Court granting: (1) authorization for the Commissioner’s first interim distribution on
9 allowed Class 2 policyholder claims in the amount of approximately \$3,561,587 in assets of the
10 insolvent CastlePoint estate representing 25 percent of each allowed Class 2 policyholder claim,
11 as itemized in Exhibit A (Proposed First Interim Distribution on Allowed Class 2 Policyholder
12 Claims) attached to the Declaration of Joseph Holloway in support of this Application
13 (“Holloway Decl.”); (2) authorization for the Commissioner’s third early access distribution to
14 state insurance guaranty funds in the amount of approximately \$16,438,395 in assets of the
15 CastlePoint estate, representing a distribution of approximately 25 percent of amounts paid by
16 such funds for which they could assert a claim against the Commissioner, as itemized in Exhibit
17 B attached to the Holloway Declaration, Exhibit B (Proposed Third Early Access Distribution to
18 Insurance Guaranty Funds); and (3) approval of the 2023 financial report and financial statement
19 for the CastlePoint estate attached to the Holloway Declaration as Exhibit C, and the expenses of
20 administration of the CastlePoint estate for 2023 as reflected therein in the amount of \$3,054,853
21 (Holloway Decl., ¶ 5, Ex. C.).

22 This Application is made pursuant to California Insurance Code sections 1010 et seq.,
23 including but not limited to sections 1016, 1035, 1035.5, 1036, 1037, and related provisions of
24 Part 2, Chapter 1, Article 14 of the Insurance Code and pursuant to the Liquidation Order for
25 CastlePoint dated March 30, 2017 (“Liquidation Order”) and upon the Commissioner’s broad
26 authority and discretion thereunder to manage the CastlePoint estate and conduct its liquidation.

1 This Application is made upon the grounds that the Commissioner, in his capacity as the
2 liquidator of CastlePoint, has demonstrated that his proposal to make a first interim distribution to
3 policyholders on allowed claims and a third early access distribution of CastlePoint assets to state
4 insurance guaranty funds pursuant to Insurance Code section 1035.5, as described above, is a
5 lawful and appropriate exercise of his discretion and should be approved and authorized. In
6 addition, the Commissioner has demonstrated that the financial report and financial statement for
7 2023, and the 2023 expenses of administration incurred by the Commissioner, constitute a lawful
8 and appropriate exercise of his discretion to secure and manage the CastlePoint estate and its
9 liquidation and should be approved.

10 This Application is based on this Notice, the Application itself, the Commissioner's
11 memorandum of points and authorities in support hereof, and the Holloway Declaration in
12 support of this Application and the exhibits thereto, the pleadings, records and files in this action,
13 and such oral argument and additional evidence as may be received by the Court, including at the
14 hearing on the Application.

15
16 Dated: October 11, 2024

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21
22
23 By: /s/ Cynthia J. Larsen
CYNTHIA J. LARSEN

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION**
2 **FOR ORDER AUTHORIZING FIRST INTERIM DISTRIBUTION ON ALLOWED**
3 **CLASS 2 POLICYHOLDER CLAIMS AND THIRD EARLY ACCESS DISTRIBUTION**
4 **TO STATE INSURANCE GUARANTY FUNDS AND APPROVING FINANCIAL**
5 **REPORT, FINANCIAL STATEMENT AND EXPENSES OF ADMINISTRATION OF**
6 **CASTLEPOINT NATIONAL INSURANCE COMPANY IN LIQUIDATION**

7 **I.**

8 **INTRODUCTION AND BACKGROUND**

9 CastlePoint National Insurance Company (“CastlePoint”) was placed into conservation on
10 July 28, 2016 (the “Conservation Date”) and the Commissioner was appointed as its statutory
11 Conservator.¹ From the Conservation Date through March 31, 2017 (the “Conservation Period”),
12 the Commissioner, as Conservator, oversaw the administration of the CastlePoint estate while
13 simultaneously working with state insurance guaranty funds to prepare for the transition of claims
14 administration responsibilities to the funds upon liquidation.² The Court entered a Liquidation
15 Order for CastlePoint on March 30, 2017, and the Liquidation Order became effective on April 1,
16 2017 (“Liquidation Date”).

17 The Commissioner was appointed as liquidator of CastlePoint by the Court on March 30,
18 2017, pursuant to Insurance Code sections 1011 and 1016, respectively. As liquidator, the
19 Commissioner was directed to liquidate and wind up the business affairs of CastlePoint in
20 accordance with the applicable provisions of the Insurance Code. (Liquidation Order ¶ 4.)

21 ///

22 ¹ On September 13, 2016, the Court approved the Commissioner’s *Plan of Conservation & Liquidation for*
23 *CastlePoint National Insurance Company* (the “Plan”), and the Commissioner undertook to implement the provisions
24 of the Plan. Under the Plan, CastlePoint entered into a number of Conservation Transaction Agreements, which,
25 among other things, brought \$200 million (net of certain advances) of additional liquidity into the estate and provided
26 for runoff administration services through AmTrust North America, Inc. (collectively with AmTrust Financial
27 Services, Inc., “AmTrust”) and National General Management Corp. (“National General”). The Plan also ordered
28 and preserved the statutory claim priorities contained in Insurance Code section 1033(a) under which expenses of
administration have the highest (Class 1) priority, followed by claims for policy benefits, which are entitled to the
second-highest (Class 2) priority. (Plan at pp. 10-11; Ins. Code § 1033(a)(1)-(2).) The Plan transactions also
established continuous claims administration services for CastlePoint from AmTrust and National General. In 2019
the Commissioner transitioned the accounting functions for the estate from legacy CastlePoint employees in New
Jersey to the CLO office in San Francisco.

² On January 12, 2017, the Commissioner filed with the Court a *Conservator’s Report to the Court Concerning the*
Conservation of CastlePoint (“Conservator’s Report”), along with accompanying exhibits on January 18, 2017, to
advise the Court and interested parties of material activities undertaken by the Conservator during the Conservation
Period and to lay out, at a high level, the Conservator’s expectations for the orderly liquidation of CastlePoint.

1 The purpose of this Application is to obtain the Court’s authorization for the
2 Commissioner’s proposed first interim distribution of CastlePoint estate funds of approximately
3 \$3,561,587 on allowed Class 2 policyholder claims and his third early access distribution of
4 approximately \$16,438,395 to state insurance guaranty funds due to payments made by them for
5 which the CastlePoint estate is obligated. The factual and legal basis for first interim distribution
6 and the third early access distribution are set forth below under Sections II and III, respectively.
7 Section IV, which is applicable to both distributions, demonstrates that the 2023 financial
8 statement for CastlePoint shows that the CastlePoint estate has ample funds to make both
9 distributions at the current time. Section V then provides the Commissioner’s report to the Court
10 on the status and finances of the CastlePoint estate and its liquidation and requests the Court’s
11 approval of the report, and financial statement for 2023 and expenses of administration of the
12 CastlePoint estate for the same period. Section IV sets forth legal authorities authorizing the
13 relief sought by the Commissioner in his Application.

14 **II.**
15 **PROPOSED FIRST INTERIM DISTRIBUTION ON CLASS 2 POLICYHOLDER**
16 **CLAIMS FOR POLICY BENEFITS**

17 The Commissioner as liquidator was directed in the Liquidation Order entered pursuant to
18 Insurance Code section 1016 “to liquidate and wind up the business of CastlePoint and act in all
19 ways and exercise all powers necessary for the purpose of carrying out this Order and the
20 liquidation provisions of the Insurance Code, Insurance Code sections 1010 *et seq.*” (Liquidation
21 Order, paragraph 6.) The Commissioner currently projects that the final distribution of all assets
22 of the CastlePoint estate and completion of the CastlePoint liquidation will not occur until the
23 year 2030 and that there will not be adequate estate funds to permit distribution to any priority
24 class set forth in Insurance Code section 1033 having a distribution priority lower than Class 2.
(Holloway Decl., ¶ 6.)

25 The Liquidation Order required all claims against CastlePoint, or seeking any of the assets
26 of CastlePoint, to be filed with the Commissioner no later than December 31, 2017 (“Claims Bar
27

1 Date”). Claims already pending against CastlePoint were deemed filed with the Commissioner
2 no later than Claims Bar Date. (Holloway Decl., ¶ 6.) The Commissioner conducted a review of
3 claims, and determined that certain claims for policy benefits under insurance policies should be
4 allowed as Class 2 claims under the priority of claims provisions contained in Insurance Code
5 section 1033(a)(2). (*Ibid.*) The 30-day deadline to seek court review after denial of a claim for
6 policy benefits has long since passed and the Commissioner’s decisions on the Class 2 claims are
7 final. (Ins. Code, § 1032; Holloway Decl., ¶ 6.) These allowed Class 2 claims have been
8 identified by claim number for purposes of this Application, with the full allowed amount, as well
9 as an amount representing 25 percent of the full allowed amount, provided to the Court in the
10 Holloway Declaration (Holloway Decl., ¶ 6, Ex. A.).

11 The Commissioner now seeks Court approval to make an interim distribution on
12 policyholder claims of 25 percent of the allowed amount of each claim, for a total interim
13 distribution of approximately \$3,561,587. Such a distribution permits claimants to receive
14 without further delay a portion of the funds to which they are entitled even though the final
15 distribution of the estate cannot yet occur because the full amount that will ultimately be available
16 for distribution to Class 2 claimants is not yet known and is not expected to be known until the
17 year 2030 (Holloway Decl., ¶ 6.) However, as established in detail in Section IV hereof, the
18 financial condition of the CastlePoint estate, as shown in the financial statement of CastlePoint
19 National Insurance Company as of December 31, 2023, a true and correct copy of which is
20 attached to the Holloway Declaration as Exhibit C (“Financial Statement”), readily permits the
21 distributions for which approval is sought in this Application. Accordingly, the 25 percent
22 interim distribution on allowed Class 2 policyholder claims is within the sound discretion of the
23 Commissioner in his role as liquidator of the CastlePoint estate and the Commissioner requests
24 that this distribution be approved.

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26 ///

1 **III.**
2 **PROPOSED THIRD EARLY ACCESS DISTRIBUTION TO STATE INSURANCE**
3 **GUARANTY FUNDS**

4 Insurance Code section 1035.5, subdivision (a), provides that the Commissioner, in his
5 role as liquidator, may apply for and obtain Court approval of a proposal to disburse the insurer's
6 assets to state insurance guaranty funds. (Ins. Code, § 1035.5, subd. (a).) Such proposed
7 distributions are to be in "amounts estimated at least equal to the payment made or to be made by
8 the associations for which such associations could assert a claim against the commissioner"
9 pursuant to the provisions of Insurance Code section 1035.5, subdivision (c). (Holloway Decl.,
10 ¶ 7.)

11 By Order dated September 15, 2022, the Court approved a first early access distribution to
12 state insurance guaranty funds in the amount of \$60,028,780 in net assets of the CastlePoint estate
13 and the Commissioner expeditiously distributed the approved amount. By Order dated
14 November 6, 2023 the Court subsequently approved a second early access distribution to state
15 guaranty funds in the amount of \$30,075,159 in net assets of the CastlePoint estate. The
16 Commissioner expeditiously distributed this amount. The Commissioner now has concluded that
17 the CastlePoint estate possesses sufficient assets to make a third early access distribution of
18 \$16,438,395 to 31 state insurance guaranty funds or similar entities, after reserving for amounts
19 described in Insurance Code section 1035.5, subdivision (b)(1). (Holloway Decl., ¶¶ 8-11,
20 Ex. B.)

21 With respect to reserving required by Insurance Code section 1035.5, subdivision (b)(1),
22 the Commissioner's proposal contains appropriate provisions for the payment of administrative
23 costs, for the payment of the claims of secured creditors to the extent of the value of security held,
24 and for claims falling within the priorities established in Insurance Code section 1033,
25 subdivision (a)(1)-(4). After reserving for payment of such liabilities, the CastlePoint estate has
26 ample funds to make a third early access distribution to insurance guaranty funds in the total
27 amount of \$16,438,395, as well as the distribution of \$3,561,587 on Class 2 policyholder claims

28 ///

1 discussed above, as established by the 2023 Financial Statement attached as Exhibit C to the
2 Holloway Declaration, discussed in detail in Section IV hereof.

3 The appropriate amount to be distributed at this time to each state guaranty was
4 determined by the Commissioner in the following manner. The Commissioner calculated the
5 “ultimate loss” to each state guaranty fund, which consists of the amounts paid by the guaranty
6 fund on behalf of policyholders, as well as claims reserves and administrative expenses. The
7 Commissioner has then applied a “maximum cap” for the distribution of a uniform percentage of
8 each guaranty funds’ ultimate loss. Statutory releases of funds from CastlePoint to state guaranty
9 funds, as well as statutory deposits of CastlePoint to be released to state guaranty funds, were
10 then offset, along with any premium or other credits where appropriate, pursuant to Insurance
11 Code section 1035.5, subdivision (d)³. (Holloway Decl., ¶ 11.) Utilizing this methodology, the
12 Commissioner proposes to distribute and pay each of the 31 guaranty funds the amounts set forth
13 in Exhibit A. If closure of the CastlePoint estate is delayed, the Commissioner may seek approval
14 of additional early access distributions when such liabilities and contingencies become known
15 and are quantified. (Holloway Decl., ¶ 11.)

16 In accordance with Insurance Code section 1035.5, subdivision (b)(4), with respect to the
17 state insurance guaranty funds receiving a distribution, the Commissioner has already requested
18 and received from each fund an executed “early access agreement” (EA Agreement) to return the
19 distributed assets as required to pay claims of secured creditors and claims falling within the
20 priorities established in Insurance Code section 1033, subdivisions (a)(1) and (a)(2). (Holloway
21 Decl., ¶ 12.) A true and correct copy of the template EA Agreement required to be signed by all
22 state guaranty funds receiving a distribution is attached to the Holloway Declaration as Exhibit D.
23 In accordance with the requirements of Insurance Code section 1035.5, subdivision (e), notice as
24 required therein of the Commissioner’s Application was given to the insurance guaranty funds

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26 _____
27 ³ There are no statutory deposits in certain states. Accordingly, for those states, the Commissioner will distribute the
applicable amounts without applying an Insurance Code section 1035.5, subdivision (d) offset for statutory deposits.

1 and insurance commissioners of each of the states at least thirty days prior to the submission of
2 the Application to the Court. (Holloway Decl., ¶ 12.)

3 In summary, the Commissioner has satisfied the requirements of Insurance Code section
4 1035.5 for distributions of estate assets to state insurance guaranty funds. Thus the distributions
5 set forth in Exhibit B to the Holloway Declaration are a lawful and appropriate exercise of the
6 Commissioner's discretion and he requests that they be approved.

7 **IV.**

8 **THE 2023 FINANCIAL STATEMENT OF THE CASTLEPOINT ESTATE**
9 **DEMONSTRATES THAT IT CONTAINS AMPLE FUNDS FOR THE DISTRIBUTIONS**
10 **FOR WHICH APPROVAL IS SOUGHT**

11 A review of the 2023 Financial Statement of the CastlePoint estate shows that the
12 CastlePoint estate contains ample funds to make the distributions for which approval is sought
13 and that they are thus within the sound discretion of the Commissioner and should be approved.

14 Specifically, CastlePoint estate had accrued administrative expenses as of year-end 2023
15 of \$7,013,500 and liability for secured claims of \$105,500, for a total for the two categories of
16 \$7,119,000, (See Holloway Decl., ¶ 9; Ex. C (Statement of Assets and Liabilities) page 1). As of
17 December 31, 2023, the Commissioner has retained a total of \$184,158,300 in readily available
18 funds, consisting of cash and cash equivalents, participation in pooled investments, and non-
19 pooled short-term investments. (See Holloway Decl., ¶ 9, Ex. C.) The Net Assets shown in
20 Exhibit C have not materially changed since year-end 2023. (Holloway Decl., ¶ 9.)

21 As shown in Exhibit A, the Commissioner's proposed first interim distribution on allowed
22 Class 2 policyholder claims would result in a distribution on allowed Class 2 policyholder claims
23 in the aggregate amount of \$3,561,587, representing 25 percent of the full amount of each
24 allowed claim. (See Holloway Decl., ¶ 10, Ex. A (setting forth the amount to be paid on each
25 allowed Class 2 policyholder claim).) As shown in Exhibit B to the Holloway Declaration, the
26 Commissioner's proposed third early access distribution to a total of 31 guaranty funds would
27 receive, after the offset of statutory credits under Insurance Code section 1035.5, subdivision (d),

1 an aggregate amount of \$16,438,395 in amounts paid on claims under CastlePoint policies and
2 related loss adjustment expenses. (See Holloway Decl., ¶ 10, Ex. B (setting forth the amounts,
3 with applicable offsets, to be paid by the Commissioner to 31 state guaranty funds).) The
4 Commissioner’s contemplated distribution to these state insurance guaranty funds would result in
5 the pro rata payment to each guaranty fund of a uniform percentage of paid losses and loss
6 adjustment expenses. Subtracting the amount of both the proposed distribution on allowed Class
7 2 policyholder claims of \$3,561,587 and the proposed distribution to state insurance guaranty
8 funds of \$16,438,395, which together total \$19,999,982, and the above total amount of
9 \$7,119,000 for administrative expenses and secured claims, from the cash assets in the estate of
10 \$184,158,300, it is clear that the remaining cash assets in the estate in the amount of
11 \$157,039,318 are more than sufficient to cover both secured claims and administrative costs.
12 (See Holloway Decl., ¶ 10, Ex. C, Statement of Cash Flows.)

13 **V.**

14 **PROPOSED APPROVAL OF THE FINANCIAL REPORT, FINANCIAL STATEMENT,**
15 **AND EXPENSES OF ADMINISTRATION FOR 2023**

16 **A. OVERVIEW OF APPROVAL PROCESS**

17 Shortly after the Liquidation Order was entered by the Court, the Commissioner filed an
18 Application for Order Approving Financial Report and Expenses of Administration that set forth
19 a financial report and a report on the expenses incurred by the Commissioner during the
20 Conservation Period, which the Court granted on July 18, 2017. The Commissioner subsequently
21 sought and received approval by Order dated June 7, 2018 for the financial report and expenses of
22 administration for the 2017 liquidation period (which covered the Liquidation Date through the
23 end of 2017).

24 In June 2019, the Commissioner filed an Application for Order Approving Financial
25 Report, Expenses of Administration, and Estate Administration Matters (“2018 Application”),
26 which sought approval for the financial report and expenses incurred by the Commissioner in
27

1 2018, along with the request for approval of certain routine estate administration matters for the
2 efficient and orderly handling of the estate. The 2018 Application was granted by Order of this
3 Court on August 13, 2019.

4 In June 2020, the Commissioner filed his Amended Application for Order Approving
5 Financial Report and Expenses of Administration (“2019 Application”), which sought approval
6 for the financial report and expenses incurred by the Commissioner in 2019 as well as certain
7 estate administration matters to enhance the efficiency and orderly handling of the estate. The
8 2019 Application was approved by Order of the Court on June 17, 2020.

9 In December 2021, the Commissioner filed his Application for Order Approving Financial
10 Report and Expenses of Administration concerning the 2020 financial report and expenses of
11 administration (“2020 Application”). The 2020 application was approved by Order of the Court
12 on December 20, 2021. In August 2022, the Commissioner filed his application for Order
13 Authorizing Early Access Distribution and Wilkie Settlement Agreement. That Application was
14 approved by Order of the Court on September 15, 2022.

15 On October 11, 2023, the Commissioner filed his Application for Order Approving
16 Second Early Access Distribution to State Guaranty Funds and his Financial Report and expenses
17 of administration concerning 2021 and 2022. That application was approved by the Court on
18 November 6, 2023.

19 In addition to seeking authorization for an interim distribution on Class 2 policyholder
20 claims and a third early access distribution to state insurance guaranty funds, the Commissioner
21 now seeks approval of his 2023 financial report and financial statement as well as his expenses of
22 administration of the CastlePoint estate for the year 2023.

23 **B. CASTLEPOINT ESTATE LIQUIDATION ACTIVITIES DURING 2023**

24 Since early 2019, all remaining liquidation activities have been assigned to the staff of the
25 Commissioner’s Conservation and Liquidation Office in San Francisco (“CLO”) and, as of

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1 March 31, 2019, the CastlePoint home office in New Jersey was closed. (Holloway Decl., ¶ 13.)

2 During 2023 the Commissioner and CLO conducted the following actions, among others:

3 1. Continued to open and/or re-open claim files for state guaranty associations, now
4 totaling over 3,225 claim files since the Liquidation Date through December 31, 2023;

5 2. Billed \$3.3 million of reinsurance recoverables in 2023;

6 3. Collected for the CastlePoint estate reinsurance balances of approximately \$4.1
7 million in 2023;

8 4. Collected for the CastlePoint estate miscellaneous recoveries in 2023 of
9 approximately \$1 million;

10 5. Planned and executed a complex early access distribution in a total amount of
11 approximately \$30 million in net assets of the CastlePoint estate to state insurance guaranty
12 funds;

13 6. Filed on behalf of the CastlePoint estate the tax return for the 2022 tax years and
14 finalized the 2022 audits;

15 7. Secured an additional addendum to the administrative services agreements with
16 AmTrust and National General thru December 31, 2024; and

17 8. Handled the specific matters described further herein below.

18 (Holloway Decl., ¶¶ 13-15.)

19 In addition to the above activities, the Commissioner and his staff and counsel also
20 applied for Court authorization in 2023 for the complex early access distribution of over \$30
21 million in net assets of the CastlePoint estate, as described above, to satisfy amounts which the
22 guaranty funds paid but for which the CastlePoint estate was liable and obtained an Order from
23 the Court granting such authorization. (Holloway Decl., ¶¶ 15-16.)

24 **C. FINANCIAL STATEMENT AND EXPENSES OF ADMINISTRATION**

25 The 2023 Financial Statement of the CastlePoint liquidation estate were prepared under
26 the direction of Joseph Holloway as Chief Executive Officer of the CLO and Liquidation

1 Manager of CastlePoint, and consists of the following subparts: Statement of Assets and
2 Liabilities; Statement of Changes in Net Assets in Liquidation; and Statement of Cash Flows. In
3 addition, a Statement of Income and Expenses (Monthly) is attached to the Financial Statement.
4 (Holloway Decl., ¶ 17, Ex. C.) A copy of the 2023 Financial Statement for the CastlePoint estate
5 is attached to the Holloway Declaration as Exhibit C.

6 The Financial Statement reflects the following expenses of administration. For 2023, the
7 CastlePoint estate incurred and paid expenses totaling \$3,819,426. (Holloway Decl., Ex. C, ¶ 20.)
8 Of that total, \$164,641 was paid for various office expenses. (*Ibid.*) Also of that expenses total,
9 \$599,931 was paid for professional fees, not including CLO personnel. (Holloway Decl., ¶ 20.)
10 Within that total for professional fees, \$557,098 was paid for legal expenses (including \$50,653
11 for fees paid to Orrick for legal services in connection with the liquidation during 2023),
12 \$542,228 was paid for necessary consultants and contractors other than attorneys, and \$3,054,853
13 was paid to the CLO for professional fees, which included amounts allocated to the CastlePoint
14 estate attributable to the CLO's Accounting, Claims, Information Technology, Reinsurance,
15 Estate Trust and Executive Departments. (*Ibid.*) A full breakdown of all expenses incurred
16 during 2023 related to the liquidation is attached as part of Exhibit C to the Holloway
17 Declaration. (Holloway Decl., Ex. C.)

18 The Court's Liquidation Order authorizes the Commissioner, acting as Liquidator, to fix
19 and pay the administrative expenses of the liquidation from the assets of CastlePoint, subject to
20 the Court's oversight and approval as specified. (See Liquidation Order, ¶¶ 3, 19.) These
21 expenses were incurred pursuant to Insurance Code sections 1035 and 1036, which grant the
22 Commissioner the power to fix all administrative costs (§ 1035) and the compensation of outside
23 attorneys (§ 1036), with the approval of the Court, and to have those expenses paid by the
24 liquidation estate. The Commissioner believes that the expenses incurred were necessary to the
25 efficient and orderly administration of CastlePoint during 2020 for the continuing liquidation of

26 ///

1 CastlePoint. (Holloway Decl., ¶ 19.) As discussed in more detail below, the expenses incurred
2 were a lawful and appropriate exercise of the Commissioner’s discretion and should be approved.

3 **VI.**

4 **DISCUSSION**

5 **A. THE RELIEF THE COMMISSIONER SEEKS IS AUTHORIZED BY LAW**

6 **1. The Proposed Interim Distribution on Allowed Class 2 Policyholder Claims Is**
7 **Within the Commissioner’s Authority and Discretion and Should be**
8 **Authorized.**

9 Pursuant to Insurance Code section 1016, the Court may enter a liquidation order
10 appointing the Commissioner as liquidator and ordering the “winding up and liquidation of the
11 business of the insurer.” (Ins. Code, § 1016, subd. (a).) The Court entered such an Order herein
12 on March 30, 2017, appointing the Commissioner as liquidator with broad powers and discretion
13 to carry out the process of liquidation and winding up of the CastlePoint estate. Specifically, the
14 Court directed the Commissioner “to liquidate and wind up the business of CastlePoint and to act
15 in all ways and exercise all powers necessary for the purposes of carrying out this Order and the
16 liquidation provisions of the Insurance Code, Insurance Code sections 1010 *et seq.*” (Liquidation
17 Order, ¶ 15.) The Liquidation Order further provided in paragraph 15 that “The Liquidator is
18 authorized, in his discretion, without permission of the Court and without notice, to pay or defer
19 payment of some or all claims, expenses, liabilities, and/or obligations of CastlePoint, in whole or
20 part, accruing prior and/or subsequent to his appointment as Liquidator.”

21 Thus the Commissioner is vested with full authority and discretion to pay allowed claims
22 against the insurer according to the priorities set forth in Insurance Code section 1033. The
23 proposed interim distribution of 25 percent of the final amount of allowed Class 2 policyholder
24 claims is a fully authorized and is an appropriate exercise of the Commissioner’s discretion as
25 liquidator of CastlePoint for the reasons set forth hereinabove, and should be approved by the
26 Court. (See Holloway Decl., ¶¶ 4-7, Ex. A.)

27 ///

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

4 Insurance Code section 1035.5 provides as follows:

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

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

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

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

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

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

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

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

 (c) The commissioner's proposal shall provide for disbursements to the
 associations in amounts estimated at least equal to the claim payments made or to be made
 by the associations for which such associations could assert a claim against the
 commissioner, and shall further provide that if the assets available for disbursement from
 time to time do not equal or exceed the amount of the claim payments made or to be made
 by the associations, then disbursements shall be in the amount of available assets. The
 reserves of the insolvent insurer on the date of the order of liquidation shall be used for
 purposes of determining the pro rata allocation of funds among eligible associations.

 (d) The commissioner shall offset the amount disbursed to any entity or person
 performing a function in any other state similar to that function performed by the

1 California Insurance Guarantee Association, or the California Life and Health Insurance
2 Guarantee Association, by the amount of any statutory deposit, premiums, or any other
asset of the insolvent insurer held in that state.

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

9 As explained in the Holloway Declaration and Exhibits B through D thereto, the proposal
10 for early access partial distributions to state insurance guaranty funds for which the
11 Commissioner seeks court approval in this application fully satisfies the statutory provisions of
12 Insurance Code section 1035.5. (See generally Holloway Decl., ¶¶ 7-12.) First, the
13 Commissioner will retain readily available assets of CastlePoint in the amount of at least
14 \$157,039,318 to fund the estate's accrued administrative expenses and claims of secured creditors
15 totaling only \$7,135,136 at year end 2021, and the remaining available assets are more than
16 sufficient to fund such future expenses. (See Ins. Code, § 1035.5, subd. (b)(1).) Secondly, the
17 Commissioner proposes to disburse, on a pro rata basis, to each of the guaranty funds eligible for
18 a distribution, funds which the Commissioner has determined to be the "available assets" of the
19 estate, pursuant to Insurance Code section 1035.5, subdivisions (b)(2) and (c). Third, the
20 proposal provides for an equitable allocation of certain assets to the state insurance guaranty
21 funds, pursuant to Insurance Code section 1035.5, subdivision (b)(3). Fourth, disbursement of the
22 assets will be subject to an agreement by each of the state insurance guaranty funds to, if
23 necessary, return assets previously disbursed to pay claims of secured creditors, pursuant to
24 Insurance Code section 1035.5, subdivision (b)(4). Fifth, disbursements of the assets will also be
25 subject to an agreement by each of the state insurance guaranty funds to make a full report to the
26 Commissioner accounting for all assets disbursed to each fund, all disbursements made
27 therefrom, and any interest earned by the guaranty fund on the assets, as required by Insurance
28 Code section 1035.5, subdivision (b)(5). Finally, the Commissioner will offset the amount
disbursed to any state insurance guaranty fund by the amount of any statutory deposit, premiums,

1 or any other asset that CastlePoint held in that state, pursuant to Insurance Code section 1035.5,
2 subdivision (d). Notice of this application has been given in accordance with the provisions of
3 Insurance Code section 1035.5, subdivision (e). (See Holloway Decl., ¶¶ 7-12.)

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

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

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

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

(See *Carpenter v. Pacific Mut. Life Ins. Co.*, *supra*, 10 Cal.2d 307 [seizure of insurance company
by Commissioner may lawfully be made without court order and trial court had power to ratify

1 and confirm Commissioner’s actions]; *Garris v. Carpenter* (1939) 33 Cal.App.2d 649
2 [Commissioner exercises very broad judgment and discretion in performance of duties].) Judicial
3 approval of the Commissioner’s proposal will ensure that the conduct of the business and the
4 winding down of CastlePoint are conducted efficiently and in the best interests of its
5 policyholders and creditors.

6 **3. The Commissioner’s Expenses of Administration Constitute an Appropriate**
7 **Exercise of the Commissioner’s Discretion and Should be Approved, and His**
8 **Request for an Order Approving The 2023 Financial Report, and Financial**
9 **Statement and Expenses of Administration Should be Granted.**

9 The Commissioner is vested with broad discretion to conduct the liquidation of an
10 insolvent insurer subject to certain statutory limitations and the limitation “that the exercise of
11 discretion be neither arbitrary nor improperly discriminatory.” (*In re Executive Life Ins. Co.*
12 (1995) 32 Cal.App.4th 344, 356, citing *Carpenter v. Pacific Mut. Life Ins. Co.*, *supra*, 10 Cal.2d
13 at p. 329.) His decisions as to matters concerning an insolvent insurer are reviewed by the Court
14 on an abuse of discretion standard. (*In re Executive Life*, at p. 358.)

15 Insurance Code sections 1035 and 1036 require the Commissioner to seek approval of the
16 Court for the payment of administrative costs (§ 1035) and legal fees (§ 1036) from the assets of
17 CastlePoint. Specifically, section 1035, subdivision (a) provides that “all expenses of taking
18 possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the
19 business and property of [CastlePoint]...shall be fixed by the commissioner, subject to the
20 approval of the court, and shall be paid out of the assets of [CastlePoint] to the department.” (Ins.
21 Code, § 1035, subd. (a).) Similarly, section 1036 states that “compensation of any counsel
22 outside of California state service who is employed...to represent the commissioner as receiver
23 shall be fixed by the commissioner, subject to the approval of the court. Compensation of
24 counsel representing the commissioner as receiver shall be paid from the assets of [CastlePoint].”
25 (Ins. Code, § 1036.)

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1 The expenses and professional fees incurred by the Commissioner during 2023 were
2 appropriate for a receivership of this size and complexity, and were necessary, reasonable, and an
3 appropriate exercise of the Commissioner’s discretion to secure and manage the CastlePoint
4 estate and its liquidation. (Holloway Decl., ¶¶ 19, 22.)

5 **VII.**

6 **CONCLUSION**

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

8 1. Authorizing the Commissioner to distribute a total of approximately \$3,561,587
9 from the net assets of the CastlePoint estate on allowed Class 2 policyholder claims as itemized in
10 Exhibit A to the Holloway Declaration;

11 2. Authorizing the Commissioner to distribute a total of approximately \$16,438,395
12 of the net assets of the CastlePoint estate to the state insurance guaranty funds or similar entities
13 as itemized in exhibit B to the Holloway Declaration, provided that prior to any such distribution,
14 the state insurance guaranty fund in question has executed and delivered to the Commissioner an
15 agreement, substantially in the form set forth in Exhibit D to the Holloway Declaration, to return
16 the distributed assets as required to pay claims of secured creditors and claims falling within the
17 priorities established in Insurance Code section 1033, subdivisions (a)(1) and (a)(2);

18 3. Approving the Commissioner’s 2023 financial report, Financial Statement, and
19 expenses of administration of the CastlePoint estate; and

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

Dated: October 11, 2024

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