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13 in his Capacity as Conservator of  
CastlePoint National Insurance Company  
14

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 CITY AND COUNTY OF SAN FRANCISCO  
17

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.  
24  
25  
26  
27  
28

Case No. CPF-16-515183

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION FOR ORDER OF  
LIQUIDATION FOR CASTLEPOINT  
NATIONAL INSURANCE COMPANY**

(Insurance Code § 1016)

[Hearing date and time set by Court Order  
of January 26, 2017]

**Date: March 30, 2017  
Time: 2:00 p.m.  
Dept: 302  
Judge: Hon. Harold E. Kahn**

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Insurance Commissioner Dave Jones, in his capacity as the statutory Conservator (“Conservator”) of CastlePoint National Insurance Company in Conservation (“CastlePoint”), hereby submits this Memorandum of Points and Authorities in support of his Application For Order Of Liquidation For CastlePoint National Insurance Company (the “Application”).

## **I. INTRODUCTION**

On July 28, 2016 (“Conservation Date”), California Insurance Commissioner Dave Jones was appointed by this Court as the statutory Conservator of CastlePoint, based on the Commissioner’s determination and the Court’s finding in its *Order Appointing Insurance Commissioner As Conservator And Restraining Orders* (“Conservation Order”)<sup>1</sup> that CastlePoint was operating in a hazardous financial condition. Acting under the authority granted to him by the Court’s Conservation Order and the Insurance Code, the Conservator immediately took possession of CastlePoint and all of its assets and has been operating CastlePoint’s insurance business since the Conservation Date. (Wilson Liq. Decl., ¶ 8.) As indicated in the Commissioner’s original application for a Conservation Order, the financial condition of CastlePoint was dire, and the company would inevitably end up in liquidation. (*Ibid.*)

The Conservator promptly sought the Court’s approval of his *Plan of Conservation and Liquidation For CastlePoint National Insurance Company* (the “Plan”), which the Court approved by its Order dated September 13, 2016 (“Plan Order”). (Wilson Liq. Decl., *supra*, ¶ 9.) Pursuant to the approved Plan, the Conservator executed a number of transactions on behalf of CastlePoint which, among other things, brought additional liquidity of \$200 million (net of certain advances) into the CastlePoint estate, commuted a number of complex reinsurance arrangements, established continuous claim administration services for the estate at no cost to CastlePoint, and effected a tax deconsolidation of CastlePoint from its prior affiliated taxpayer group. (*Ibid.*) The central benefit of the Plan transactions, particularly the infusion of \$200 million in additional funds, was to create a smooth and efficient path for an orderly liquidation of CastlePoint. Those transactions closed on September 20, 2016. (*Ibid.*)

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<sup>1</sup> A true and correct copy of the Conservation Order is attached as Exhibit A to the Declaration of David E. Wilson in Support of Application for Liquidation Order (“Wilson Liq. Decl.”), which has been filed concurrently herewith.

1 In addition to implementing the complex transactions provided for under the Plan, the  
2 Conservator has also been supervising the administration and payment of insurance claims under  
3 CastlePoint's insurance policies. (Wilson Liq. Decl., *supra*, ¶ 10.) Under the terms of those  
4 policies, CastlePoint had unpaid insurance liabilities totaling over \$1 billion on the Conservation  
5 Date. (*Ibid.*) During the conservation period, the Conservator has supervised a portfolio of  
6 approximately 9,000 insurance claims. (*Ibid.*) The administration of these claims has been  
7 conducted pursuant to the Conservator's "*Procedures For Claims Administration and Payments*  
8 *During Conservation*," the core purpose of which is to equalize the treatment of insurance  
9 claimants paid during the conservation period and those that will be paid after liquidation. (*Ibid.*)

10 As described both in the Conservator's July 29, 2016 *Motion for Order Approving*  
11 *Conservation and Liquidation Plan* and more recently in the Conservator's January 12, 2017  
12 *Report To The Court Concerning The Conservation Of CastlePoint National Insurance Company*,  
13 the Conservator has anticipated that CastlePoint would need to transition into formal liquidation  
14 around the end of the first quarter of 2017 since well before the Conservation Date. That time has  
15 come. CastlePoint is statutorily insolvent, with negative capital and surplus (i.e., negative  
16 "equity") of more than \$281 million as of December 31, 2016. (Wilson Liq. Decl., *supra*, ¶¶ 13-  
17 14.) Moreover, absent the entry of the requested liquidation order and the triggering of the  
18 obligation of the state insurance guaranty associations ("IGAs") to assume immediately the  
19 administration and payment of CastlePoint's remaining insurance claims, CastlePoint will run out  
20 of cash to pay claims by mid-2017. (*Id.*, ¶ 14.) Thus, as the Commissioner originally projected,  
21 entry of a liquidation order for CastlePoint is required and is essential to the protection of  
22 CastlePoint's policyholders and creditors.

23 The Conservator has therefore determined – according to the provisions of Insurance  
24 Code section 1016, the statute authorizing entry of a liquidation order – that "it would be futile to  
25 proceed as conservator with the conduct of [CastlePoint's] business" beyond March 31, 2017, and  
26 harmful to CastlePoint's policyholders and creditors. (Wilson Liq. Decl., *supra*, ¶ 14) The

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28 ///

1 Conservator has therefore submitted an Application to the Court seeking a Liquidation Order to  
2 take effect on April 1, 2017.<sup>2</sup>

3 In the Application, the Conservator seeks entry of a liquidation order to implement this  
4 next phase of the orderly wind up and liquidation of CastlePoint. In pertinent part, under the  
5 proposed Liquidation Order the Conservator asks the Court to:

- 6 1. Find that CastlePoint is insolvent (this is necessary to trigger the IGAs statutory  
7 obligations to begin administering and paying CastlePoint's policy related claims);
- 8 2. Find that the Commissioner has duly determined that it would be futile for him to  
9 proceed as Conservator (this will establish the statutory grounds under Insurance Code  
10 section 1016 for entry of a liquidation order);
- 11 3. Order that the Commissioner's status as Conservator is terminated; that he is  
12 appointed Liquidator of CastlePoint under Insurance Code section 1016; that the  
13 Liquidator is vested with legal title to hold all of CastlePoint's assets for the benefit of  
14 policyholders and creditors, that the Liquidator shall conduct an orderly and efficient  
15 liquidation and wind up of CastlePoint, and that the Liquidator shall be authorized to  
16 act in all ways and exercise all powers necessary for the purpose of carrying out the  
17 liquidation;
- 18 4. Order, pursuant to Insurance Code section 1037, that the Liquidator be charged with  
19 appropriate and necessary powers to collect, liquidate, and administer CastlePoint's  
20 assets and adjust claims from its creditors and policyholders;
- 21 5. Order, pursuant to Insurance Code section 1019, that the rights and liabilities of  
22 claimants, policyholders, shareholders, members and all other persons interested in the  
23 assets of CastlePoint are "fixed" as of the date of entry of the order;
- 24 6. Order, pursuant to Insurance Code section 1020, that the Conservation Order's  
25 restraining orders and injunctions necessary to an orderly conservation and liquidation,  
26 including orders against certain actions that would undermine the effectiveness of the

27  
28 <sup>2</sup> For the purposes of providing a clean transition for accounting and financial reporting purposes, the Conservator requests that, should the Court grant the Conservator's Application, that the Liquidation Order expressly be made effective on April 1, 2017 in order to close-out the conservation period on March 31, 2017.

1 CastlePoint's liquidation shall continue in full forces and effect, as supplemented; and  
2 7. Order, pursuant to Insurance Code section 1021, subdivision a, that all claims against  
3 CastlePoint, wherever or however such assets may be owned or held, be filed no later  
4 than a "claims bar date" of December 31, 2017.

5 For all of the reasons set forth in the Application and described herein, the entry of the  
6 proposed Liquidation Order for CastlePoint is necessary, appropriate and essential to the  
7 protection of CastlePoint's policyholders and creditors from further financial harm. The  
8 Conservator respectfully requests that his Application be granted and that the Court enter the  
9 proposed *Liquidation Order for Castle Point National Insurance Company*, in the form submitted  
10 with the Application.

## 11 **II. FACTUAL BACKGROUND**

### 12 **A. Pre-Conservation Regulatory Activities**

13 CastlePoint is the survivor of the merger of ten insurance companies, domiciled in six  
14 states and owned by Tower Group International, Ltd (collectively, the "Tower Insurance  
15 Companies").<sup>3</sup> (Wilson Liq. Decl., *supra*, ¶ 5.) The Tower Insurance Companies, collectively,  
16 were admitted in all 50 states and wrote a variety of multi-line property and casualty insurance,  
17 with an emphasis on workers' compensation and commercial multi-peril, as well as a significant  
18 personal lines business. (Plan MPA,<sup>4</sup> at p. 5). Due to the ongoing financial struggles of the  
19 Tower Insurance Companies over several years, the Commissioner, prior to his formal  
20 appointment as Conservator, began discussions with regulators in each of the Tower Insurance  
21 Companies' domiciliary states (together with the Commissioner, the "Regulator Group")<sup>5</sup> to  
22 develop a plan that would address the deteriorating financial condition of the Tower Insurance  
23 Companies while protecting policyholders and creditors. (Wilson Liq. Decl., *supra*, ¶ 7.) As part

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24  
25 <sup>3</sup> The nine other insurers that merged with and into CastlePoint are: Tower Insurance Company of New York, Tower  
26 National Insurance Company, Hermitage Insurance Company, CastlePoint Florida Insurance Company, North East  
27 Insurance Company, Massachusetts Homeland Insurance Company, Preserver Insurance Company, York Insurance  
28 Company of Maine, and CastlePoint Insurance Company. A tenth company, Kodiak Insurance Company, was  
dissolved several years ago, but its residual insurance liabilities were assumed by CastlePoint. (Plan MPA, p. 1 n. 3.)

<sup>4</sup> Memorandum of Points And Authorities In Support Of Motion For Order Approving Conservation And Liquidation  
Plan For CastlePoint National Insurance Company ("Plan MPA").

<sup>5</sup> In addition to California, the Regulator Group involved in these discussions included regulators from Florida,  
Maine, Massachusetts, New Jersey, and New York.

1 of the multi-state examination into the Tower Insurance Companies, the Regulator Group retained  
2 outside counsel, actuaries, and other professionals, for which the Tower Insurance Companies  
3 agreed to pay a portion of the costs.<sup>6</sup> Ultimately, the Regulator Group determined that the best  
4 course of action was to merge the Tower Insurance Companies with and into CastlePoint, and to  
5 place CastlePoint into conservation in California. (*Ibid.*)

6 **B. The Conservation Order**

7 The Insurance Commissioner filed his Conservation Application with the Court on  
8 July 27, 2016, outlining the Tower Insurance Companies' financial struggles and the pre-  
9 conservation merger of the companies into CastlePoint. (Wilson Liq. Decl., *supra*, ¶ 8.) On July  
10 28, 2016, the Court issued its Conservation Order. The Conservation Order granted the  
11 Conservator numerous powers, including, among others, the authority to take possession of and  
12 manage CastlePoint's assets and records; to assume, reject, or modify executory contracts; to  
13 initiate necessary legal proceedings; to terminate and enter into compensation and benefits  
14 arrangements with CastlePoint employees; and to pay all reasonable costs of conserving  
15 CastlePoint out of CastlePoint assets. (*See Id.*, Ex. A.) Upon taking control of CastlePoint, the  
16 Conservator promptly notified all interested parties that CastlePoint had been placed into  
17 statutory conservation.

18 **C. The Conservation & Liquidation Plan**

19 The Conservator promptly sought the Court's approval to implement the Conservation and  
20 Liquidation Plan that was negotiated with various interested parties. (Wilson Liq. Decl., *supra*,  
21 ¶ 9.) The Plan provided for a number of beneficial transactions designed to provide the liquidity  
22 and certainty necessary to an orderly and efficient wind up and eventual liquidation of  
23 CastlePoint. The Court approved the Plan following a hearing on September 13, 2016. (*Ibid.*)  
24 Following the Court's approval of the Plan, the Conservator closed on several related transactions  
25 that provided for, among other things:

26  
27  
28 <sup>6</sup> The fees and costs incurred during the pre-conservation period and Conservation Period will be outlined in the  
Conservator's Application For Approval Of Administrative Expenses, which will be filed following the close of the  
Conservation Period.



- 1       • The payment of \$200 million into the CastlePoint estate, net of certain pre-closing  
2       advances and the reconciliation of intercompany balances between CastlePoint and the  
3       counterparties to these transactions;
- 4       • The execution of two Administrative Services Agreements by CastlePoint with  
5       AmTrust Financial Services Inc. and with National General Holdings Company for the  
6       continuity of claims servicing and payment processing at no cost to the CastlePoint  
7       estate;
- 8       • The cancellation of existing CastlePoint stock and execution of a Trust Agreement to  
9       create a trust to hold new CastlePoint stock (this aspect of the Plan effected a tax  
10      deconsolidation of CastlePoint from its prior affiliated taxpayer group, which included  
11      a number of non-insurance companies that are not controlled by either CastlePoint or  
12      the Conservator); and
- 13      • The commutation of a series of reinsurance, retrocessional and stop loss agreements  
14      between or among CastlePoint, CastlePoint Reinsurance Company (a Bermuda  
15      reinsurance company that was an affiliate of CastlePoint), ACP Re, Ltd. and other  
16      companies, for the collective purpose of restoring CastlePoint's direct control of its  
17      policy liabilities and the recovery of related assets and reinsurance receivables to  
18      streamline and simplify the eventual liquidation process.

19    (*Ibid.*) These transactions were officially closed on September 20, 2016. (*Ibid.*)

20       **D.      Conservation Claims Administration and Payment**

21       Upon taking control over CastlePoint, the Conservator assumed responsibility for the  
22       oversight of all administration of claims on policies issued by CastlePoint and its predecessors.  
23       (Wilson Liq. Decl., *supra*, ¶ 10.) The Conservator developed and implemented “*Procedures For*  
24       *Claims Administration and Payments During Conservation*” (the “Conservation Procedures”), the  
25       purpose of which was to ensure equal treatment for claimants paid during conservation and those  
26       claimants paid after the entry of the proposed Liquidation Order. Pursuant to the Conservation  
27       Procedures, claims administered and paid by CastlePoint during the Conservation Period have  
28       been satisfied in two parts. (*Id.*, ¶ 11.) First, the CastlePoint estate pays accepted claims up to the

1 maximum amount that may be paid by statute by the insurance guaranty association (“IGA”) that  
2 will ultimately become responsible for administration and payment of the claim following  
3 CastlePoint’s liquidation (that is, the state IGA that would have administered the claim if  
4 CastlePoint were already in liquidation). (*Ibid.*) The relatively few claims that exceed the  
5 relevant IGA maximum amount<sup>7</sup> will also receive, in addition to the cash payment, the  
6 Conservator’s commitment to issue a pre-approved Class 2 priority proof of claim against the  
7 CastlePoint liquidation estate for the remaining amount of the claim up to the applicable policy  
8 limits. (*Ibid.*) Those pre-approved proofs of claim will be deemed filed and will be issued by the  
9 Conservator as Liquidator shortly after the entry of the Liquidation Order. (*Ibid.*)

10 **E. Preparation For Liquidation**

11 The closing of the Plan transaction and the infusion of \$200 million in additional cash  
12 allowed the Conservator time to work on all necessary administrative preparations for  
13 CastlePoint’s eventual liquidation. (Wilson Liq. Decl., *supra*, ¶ 9, 12.) As noted above, the entry  
14 of a liquidation order, with an accompanying judicial finding of insolvency, will trigger affected  
15 state IGAs to take over the administration of claims on CastlePoint policies. In anticipation of  
16 that event, the Conservator’s staff has been communicating and coordinating with the affected  
17 IGAs to prepare for the eventual transfer of files and claims administration duties to the IGAs at  
18 liquidation. (*Id.*, ¶ 12.) This work has primarily involved the assembly of large amounts of  
19 electronic claims data, including claims data located in several claims administration database  
20 systems, as well as paperless claim files, so that copies of this claims information can be  
21 delivered on a timely basis to the IGAs that will become responsible for claim payments when the  
22 Liquidation Order is entered. (*Ibid.*)

23 Because CastlePoint is the successor by merger with nine other insurance companies, the  
24 claims data and claims files were spread across a number of different data systems controlled by  
25 vendors (“third party administrators”). (Wilson Liq. Decl., *supra*, ¶ 12.) The Conservator’s staff  
26 has also worked on ensuring that the claims data meets or has been converted to meet the  
27

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28 <sup>7</sup> As of the date of this Conservator’s Report, there had been just four resolved claims in excess of the applicable statutory IGA cap, and less than 50 claims with the apparent potential to exceed such IGA caps.

1 Uniform Data Standards (UDS) used by all of the IGAs. (*Ibid.*) That work has generally  
2 progressed smoothly and the Conservator believes that the IGAs will receive the data and claim  
3 files necessary to assume their respective claims administration duties without undue delays in  
4 claim payments. (*Ibid.*)

5 With respect to workers' compensation insurance claims, the Conservator has also made  
6 preparations to pre-fund the payment of all open indemnity (wage replacement) claims for up to  
7 two months after entry of the Liquidation Order to prevent harm to the injured workers who  
8 depend on the timely payment of their benefits under CastlePoint's workers' compensation  
9 policies. (Wilson Liq. Decl., *supra*, ¶ 12.) The IGAs that benefit from this pre-funding of post-  
10 liquidation indemnity payments will either reimburse the CastlePoint estate for such payments, or  
11 the advances will be offset from future distributions to the IGAs.

#### 12 **F. CastlePoint's Insolvency**

13 In order to trigger the IGAs' statutory obligations to take over administration and payment  
14 of CastlePoint insurance policy claims, the Court is required to make a finding that CastlePoint is  
15 insolvent. (*See, e.g.*, Ins. Code § 1062.1, subd. (b) (defining an "insolvent insurer" as a company  
16 "against which an order of liquidation *with a finding of insolvency* has been entered by a court of  
17 competent jurisdiction.")). In the Application, supporting declarations and evidence, the  
18 Conservator has demonstrated CastlePoint's insolvency in two ways.

19 First, CastlePoint is "statutorily insolvent" under the Insurance Code because the statutory  
20 accounting principles as applied to CastlePoint show that the company has negative capital and  
21 surplus of \$281 million as of December 31, 2016. (Wilson Liq. Decl., *supra*, ¶ 13, Ex B.) This is  
22 \$50 million worse than the negative surplus of \$231 million at September 30, 2016. (*Ibid.*)  
23 Pursuant to Insurance Code sections 11600 and 700.01-700.05, CastlePoint is required to have  
24 capital and surplus of not less than \$5,000,000. Pursuant to Insurance Code section 985,  
25 CastlePoint is statutorily insolvent because (1) its minimum paid-in capital, as required by the  
26 Insurance Code, has been impaired, and (2) it is unable to meet its financial obligations when they  
27 are due. (Ins. Code § 985.)  
28

1 Second, CastlePoint is also insolvent because its available liquid assets are not adequate to  
2 permit the company to continue to meet its insurance claim payment obligations on a timely  
3 basis, as and when they come due for payment. (Wilson Liq. Decl., *supra*, ¶ 14.) Absent the  
4 issuance of the requested liquidation order, CastlePoint will run out of cash to pay claims by mid-  
5 2017. (*Ibid.*) The simple fact that CastlePoint is literally running out of cash to meet its claim  
6 payment obligations, in combination with the company's technical statutory or balance sheet  
7 insolvency, provides an ample factual basis for the Court to make a judicial finding of  
8 CastlePoint's insolvency.

### 9 **III. AUTHORITY FOR LIQUIDATION OF CALIFORNIA INSURANCE** 10 **COMPANIES**

11 Impaired and insolvent insurance companies are precluded from seeking relief in  
12 bankruptcy. (11 U.S.C., § 109(b)(2) ["A person may be a debtor under chapter 7 of this title only  
13 if such person is not . . . a domestic insurance company"].) Instead, California, like most states,  
14 has statutory proceedings subjecting impaired and insolvent insurers to orderly conservation,  
15 rehabilitation and/or liquidation. California's insurance liquidation proceedings are codified in  
16 Insurance Code sections 1010, *et seq.* The following summarizes California's statutory scheme  
17 pertinent to the conservation and liquidation.

#### 18 **A. Conservation.**

19 Pursuant to Insurance Code section 1011, the Commissioner is authorized to obtain an *ex*  
20 *parte* order appointing him Conservator of insurers regulated by him whenever he finds certain  
21 enumerated conditions exist, including that an insurer is "found, after an examination, to be in  
22 such condition that its further transaction of business will be hazardous to its policyholders, or  
23 creditors, or to the public" or that "a domestic insurer does not comply with the requirements for  
24 the issuance to it of a certificate of authority, or that its certificate of authority has been revoked."  
25 (Ins. Cod § 1011, subd. (d) & (h).) On July 28, 2016, this Court appointed the Commissioner as  
26 Conservator of CastlePoint.

1 As Conservator, the Commissioner was authorized to take possession of the insurer's  
2 assets and business and to conduct so much of its business as he deemed appropriate, to appoint  
3 deputy commissioners, and to employ legal counsel and clerks and assistants, in addition to being  
4 granted broad authority and powers concerning the conserved insurer and the handling of its  
5 assets and liabilities. (Ins. Code §§ 1011, 1035, 1036 & 1037.) The order appointing the  
6 Commissioner to act as Conservator continues "in force and effect until, on the application either  
7 of the commissioner or of [*i.e.*, the insurance company], it shall, after a full hearing, appear to the  
8 court that the ground for the order directing the commissioner to take title and possession does  
9 not exist or has been removed and that the person can properly resume title and possession of its  
10 property and the conduct of its business." (Ins. Code § 1012.) Neither CastlePoint nor the  
11 Commissioner have filed or intend to file such an application.

12 **B. Liquidation.**

13 If, at any time after conservation, it appears to the Commissioner that it would be futile to  
14 proceed as Conservator, he may apply to the Court for an order to liquidate and wind up the  
15 insurer's business. The Insurance Code provides, in relevant part:

16 If at any time after the issuance of an order under section 1011, or if at the time of  
17 instituting any proceeding under this article, it shall appear to the commissioner  
18 that it would be *futile to proceed as conservator with the conduct of the business*  
19 *of that person* [*i.e.*, the insurance company], he or she may apply to the court for  
20 an order to liquidate and wind up the business of the person. Upon a full hearing  
of that application, the court may make an order directing the winding up and  
liquidation of the business of that person by the commissioner, as liquidator, for  
the purpose of carrying out the order to liquidate and wind up the business of that  
person.

21 (Ins. Code. § 1016, subd. (a) [*emphasis added*].) A liquidation ensures that the estate's  
22 assets will be distributed pro rata in accordance with the priorities established in  
23 Insurance Code section 1033.

24 An order appointing a liquidator is appropriate here because CastlePoint is insolvent and it  
25 is futile for the Commissioner to proceed as the Conservator with the conduct of CastlePoint's  
26 business. As noted above, CastlePoint is insolvent on a statutory accounting basis, as it has  
27 negative capital and surplus of \$281 million at December 31, 2016, and it is quickly running out  
28 of the cash it needs to pay insurance claims as and when they become due. The Conservator has

1 also determined that there are no non-admitted assets, such as contingent assets or litigation  
2 claims, which could possibly make up that massive deficit in the company's asset and liquidity.  
3 The "futility" of continuing as Conservator is manifest and indisputable.

4 **C. Proposed Order.**

5 The California Insurance Code provides that, in aid of the conservation or liquidation  
6 proceedings for an insurer, a court "shall" issue whatever orders are necessary to carry out the  
7 conservatorship or liquidation, including "injunctions or orders as may be deemed necessary to  
8 prevent" certain occurrences including:

- 9 (a) Interference with the commissioner or the proceeding.  
10 (b) Waste of assets of such person.  
11 (c) The institution or prosecution of any actions or proceedings.  
12 (d) The obtaining of preferences, judgments, attachments, or other liens  
13 against such person or its assets.  
14 (e) The making of any levy against any such person or its assets.  
15 (f) The sale or deed for nonpayment of taxes or assessments levied by any  
16 taxing agency of property [provided certain conditions exist] ....  
17 (g) Any managing general agent or attorney in fact from withholding from the  
18 commissioner any books, records, accounts, documents or other writing relating  
19 to the business of such person; provided, however, that, if by contract or  
20 otherwise any of the same are the property of such an agent or attorney, the same  
21 shall be returned when no longer necessary to the commissioner or at any time the  
22 court after notice and hearing shall so direct.

23 (Ins. Code § 1020.)

24 Further, Insurance Code section 1037, entitled "Powers of commissioner as conservator or  
25 liquidator," provides the following broad powers to the Commissioner as conservator or  
26 liquidator:

27 Upon taking possession of the property and business of any person in any  
28 proceeding under this article, the commissioner, exclusively and except as  
otherwise expressly provided by this article, either as conservator or liquidator:

- (a) Shall have authority to collect all moneys due that person, and to  
do such other acts as are necessary or expedient to collect, conserve, or  
protect its assets, property, and business, and to carry on and conduct the  
business and affairs of that person or so much thereof as to him or her may  
seem appropriate.

1 (b) Shall collect all debts due and claims belonging to that person, and  
2 shall have the authority to sell, compound, compromise, or assign, for the  
3 purpose of collection upon such terms and conditions as the commissioner  
4 deems best, any bad or doubtful debts.

5 (c) Shall have authority to compound, compromise or in any other  
6 manner negotiate settlements of claims against that person upon such terms  
7 and conditions as the commissioner shall deem to be most advantageous to  
8 the estate of the person being administered or liquidated or otherwise dealt  
9 with under this article.

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

20 (e) Shall have authority to transfer to a trustee or trustees, under a  
21 voting trust agreement, the stock of an insurer heretofore or hereafter issued  
22 to the commissioner as conservator or as liquidator in connection with a  
23 rehabilitation or reinsurance agreement, or any other proceeding under this  
24 article. This voting trust agreement shall confer upon the trustee or trustees  
25 the right to vote or otherwise represent that stock, and shall not be  
26 irrevocable for a period of more than 21 years.

27 (f) May, for the purpose of executing and performing any of the  
28 powers and authority conferred upon the commissioner under this article, in  
the name of the person affected by the proceeding or in the commissioner's  
own name, prosecute and defend any and all suits and other legal  
proceedings, and execute, acknowledge and deliver any and all deeds,  
assignments, releases and other instruments necessary and proper to  
effectuate any sale of any real and personal property or other transaction in  
connection with the administration, liquidation, or other disposition of the  
assets of the person affected by that proceeding; and any deed or other  
instrument executed pursuant to the authority hereby given shall be valid and  
effectual for all purposes as though it had been executed by the person  
affected by any proceeding under this article or by its officers pursuant to the  
direction of its governing board or authority. In cases where any real property  
sold by the commissioner under this article is located in a county other than  
the county wherein the proceeding is pending, the commissioner shall cause a  
certified copy of the order of his or her appointment, or order authorizing or  
ratifying the sale, to be filed in the office of the county recorder of the county  
in which that property is located.

(g) Shall have authority to invest and reinvest, in such manner as the  
commissioner may deem suitable for the best interests of the creditors of that  
person, such portions of the funds and assets of that person in his or her  
possession as do not exceed the amount of the reserves required by law to be  
maintained by that person as reserves for life insurance policies, annuity  
contracts, supplementary agreements incidental to life business, and reserves

1 for noncancellable disability policies, and which funds and assets are not  
2 immediately distributable to creditors. However, no investment or  
3 reinvestment shall be made which exceeds the sum of one hundred thousand  
4 dollars (\$100,000) without first obtaining permission of the court, and then  
only in accordance with any terms that court may prescribe. That permission  
shall not be required for any investment or reinvestment of those funds or  
assets in funds administered by the Treasurer.

5 The enumeration, in this article, of the duties, powers and authority of the  
6 commissioner in proceedings under this article shall not be construed as a  
7 limitation upon the commissioner, nor shall it exclude in any manner his or her  
8 right to perform and to do such other acts not herein specifically enumerated, or  
otherwise provided for, which the commissioner may deem necessary or  
expedient for the accomplishment or in aid of the purpose of such proceedings.

9 (Ins. Code § 1037.)

10 In addition to appointing the Commissioner the Liquidator of CastlePoint and setting a  
11 Claims Bar Date, the Proposed Order implements those portions of Insurance Code sections 1020  
12 and 1037 that are necessary for the Commissioner to effectively and efficiently liquidate  
13 CastlePoint. Most or all of the provisions of the Proposed Order are carried over from the  
14 Conservation Order and are standard in cases of insurance liquidations and conservatorships. The  
15 Commissioner respectfully submits that each of the provisions are necessary here and requests  
16 entry of the Proposed Order.

17 **IV. CONCLUSION**

18 For the reasons and based on the facts set forth in the Application, in this Memorandum,  
19 and the documents and information submitted in support of the Application, the Commissioner  
20 respectfully requests that the Court enter the proposed Liquidation Order for CastlePoint National  
21 Insurance Company, to take effect on April 1, 2017.

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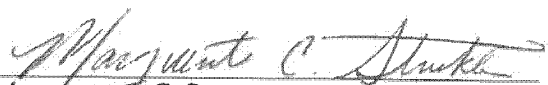


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Respectfully submitted,

Dated: February 17, 2017

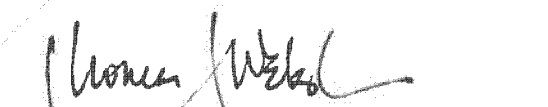
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Dated: February 17, 2017

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