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Deputy Clerk

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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  
Reservation No. [N/A]

**NOTICE OF APPLICATION AND  
APPLICATION FOR ORDER  
AUTHORIZING SECOND EARLY  
ACCESS DISTRIBUTION OF ASSETS  
TO STATE INSURANCE GUARANTY  
FUNDS AND APPROVING  
FINANCIAL REPORT, FINANCIAL  
STATEMENT AND EXPENSES OF  
ADMINISTRATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**Date: November 6, 2023  
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 November 6, 2023 at 9:30 a.m., 2023, in Department  
3 302 of the Sacramento Superior Court, 400 McAllister Street, San Francisco, California 94102,  
4 before the Honorable Richard B. Ulmer, Jr., the Insurance Commissioner of the State of  
5 California, as the statutory Liquidator (“Commissioner”) of CastlePoint National Insurance  
6 Company (“CastlePoint”) will, and hereby does, apply to the Court for an order granting the  
7 within application (“Application”) for an order: (1) authorizing an early access distribution of  
8 assets to state insurance guaranty funds pursuant to the Commissioner’s proposal described  
9 herein; and (2) approving the Commissioner’s 2021 and 2022 financial report for the CastlePoint  
10 estate, including its financial statements and the expenses of administration incurred and paid by  
11 the Commissioner in the conduct of the CastlePoint estate during 2021 and 2022.

12 This Application is made pursuant to California Insurance Code sections 1010 et seq.,  
13 including but not limited to sections 1016, 1035.5, 1035, 1036, 1037, and related provisions of  
14 Part 2, Chapter 1, Article 14 of the Insurance Code and pursuant to the Liquidation Order for  
15 CastlePoint dated March 30, 2017 (“Liquidation Order”) and upon the Commissioner’s broad  
16 authority and discretion thereunder to manage the insolvent CastlePoint estate and conduct its  
17 liquidation. This Application is made upon the grounds that the Commissioner, in his capacity as  
18 the Court-appointed liquidator of CastlePoint, has demonstrated his entitlement to the requested  
19 order authorizing his proposal to make a second early access distribution of CastlePoint assets to  
20 state insurance guaranty funds pursuant to Insurance Code Section 1035.5 and that the proposal is  
21 a lawful and appropriate exercise of his discretion. In addition, the Commissioner has  
22 demonstrated that the 2021 and 2022 CastlePoint financial report financial statements, and the  
23 expenses of administration incurred by the Commissioner for which approval is sought, constitute  
24 a lawful and appropriate exercise of his discretion to secure and manage the CastlePoint estate  
25 and its liquidation.

26 Accordingly, the Commissioner seeks: (1) Court authorization of his contemplated  
27 distribution of approximately \$30,075,159 in assets of the CastlePoint estate to state insurance  
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1 guaranty funds representing amounts paid for which they could assert a claim against the  
2 Commissioner, as itemized in Exhibit A (Proposed Distributions to Insurance Guaranty Funds  
3 from the CastlePoint Estate) to the Declaration of Joseph Holloway in support hereof (“Holloway  
4 Declaration”); and (2) Court approval of 2021 and 2022 Financial Reports attached to the  
5 Holloway Decl. as Exhibits B and C, respectively, and the expenses of administration of the  
6 CastlePoint estate as reflected therein in the amount of \$3,809,264 (2021) and \$3,929,470 (2022).

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

12  
13 Dated: October 11, 2023

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20 By: /s/ Cynthia J. Larsen

CYNTHIA J. LARSEN

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION**  
2 **FOR ORDER AUTHORIZING EARLY ACCESS DISTRIBUTION OF ASSETS TO**  
3 **STATE INSURANCE GUARANTY FUNDS AND APPROVING FINANCIAL REPORTS**  
4 **AND EXPENSES OF ADMINISTRATION OF CASTLEPOINT NATIONAL**  
5 **INSURANCE COMPANY IN LIQUIDATION**

6 **I.**

7 **INTRODUCTION AND BACKGROUND**

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

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

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22 <sup>1</sup> 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  
Services, Inc., “AmTrust”) and National General Management Corp. (“National General”). The Plan also ordered  
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.

27 <sup>2</sup> On January 12, 2017, the Commissioner filed with the Court a *Conservator’s Report to the Court Concerning the*  
28 *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 the Application currently before the Court (“Application”) is two-fold:  
2 First, to obtain the Court’s approval for a Commissioner’s proposed second early access  
3 distribution of funds of the CastlePoint estate in the total amount of \$30,075,159 to state  
4 insurance guaranty funds due to payments made by them for which the CastlePoint estate is  
5 obligated; and, secondly, to provide a report to the Court on the status and finances of the  
6 CastlePoint estate and its liquidation and request the Court’s approval of the report, the  
7 Commissioner’s 2021 and 2022 financial statements (“Financial Statements”) and expenses of  
8 administration of the CastlePoint estate for the same period.

9 **II.**

10 **PROPOSED EARLY ACCESS DISTRIBUTION TO STATE INSURANCE GUARANTY**  
11 **FUNDS**

12 In aid and fulfillment of the Commissioner’s role as Liquidator, Insurance Code section  
13 1035.5, subdivision (a) provides that the Commissioner may apply for and obtain Court approval  
14 of a proposal to disburse the insurer’s assets to state insurance guaranty funds. (Ins. Code,  
15 § 1035.5, subd. (a).) Such proposed distributions are to be in “amounts estimated at least equal to  
16 the payment made or to be made by the associations for which such associations could assert a  
17 claim against the commissioner” pursuant to the provisions of Insurance Code section 1035.5,  
18 subdivision (c).

19 The Liquidation Order directs the Commissioner to “liquidate and wind up the business of  
20 CastlePoint and to act in all ways and exercise all powers necessary for the purpose of carrying  
21 out this Order and the liquidation provisions of the Insurance Code, Insurance Code sections 1010  
22 et seq.” (Liquidation Order ¶ 4.) The currently projected time of final distribution of all assets of  
23 the CastlePoint estate is 2030. (Declaration of Joseph Holloway (“Holloway Declaration”) in  
24 support of Application for Order Authorizing Second Early Access Distribution to State Guaranty  
25 Funds and Approving Financial Report and Expenses of Administration, Holloway Decl., ¶ 5.)

26 By Order dated September 15, 2022, the Court approved a first early access distribution to  
27 state insurance guaranty funds in the amount of \$60,028,780 in net assets of the CastlePoint estate

1 and the Commissioner expeditiously distributed the approved amount. The methodology and  
2 procedures for the second distribution, for which authorization is currently being sought, were  
3 also utilized by the Commissioner with respect to the initial distribution authorized by the Court  
4 in 2022. The Commissioner has now concluded that the CastlePoint estate possesses sufficient  
5 funds to make a second early access distribution in the total sum of \$30,075,159 to 31 state  
6 insurance guaranty funds or similar entities, after reserving for amounts described in Insurance  
7 Code section 1035.5, subdivision (b)(1). (Holloway Decl., ¶ 8, Ex. A, Distribution Control Sheet-  
8 CNIC Tower.)

9 Specifically, pursuant to Insurance Code section 1035.5, subdivision (b)(1), the  
10 Commissioner's proposal contains appropriate provisions for the payment of administrative costs,  
11 for the payment of the claims of secured creditors to the extent of the value of security held, and  
12 for claims falling within the priorities established in Insurance Code section 1033, subdivision  
13 (a)(1)-(4). After reserving for payment of such liabilities, the CastlePoint estate clearly has  
14 sufficient funds to make a second early access distribution in the total amount of \$30,075,159.  
15 This is demonstrated by the Financial Statements for 2021 and 2022, true and correct copies of  
16 which are attached to the Holloway Declaration as Exhibits B and C respectively.

17 The CastlePoint estate had accrued administrative expenses as of year-end 2022 of  
18 \$7,013,500 and liability for secured claims of \$105,500, for a total for the two categories of  
19 \$7,119,000, (See Holloway Decl., ¶ 9; and Exhibit C thereto (Statement of Assets and Liabilities)  
20 page 1). As of December 31, 2022, the Commissioner has retained a total of \$204,433,300 in  
21 readily available funds, consisting of cash and cash equivalents, participation in pooled  
22 investments, and non-pooled short-term investments. (See Holloway Decl., Ex. C.) The Net  
23 Assets shown in Exhibit C have not materially changed, since year-end 2022. (Holloway Decl.,  
24 ¶ 9.)

25 As shown in Exhibit A to the Holloway Declaration, under the proposed distribution a  
26 total of thirty-one (31) guaranty funds are entitled, after the offset of statutory credits under  
27 Insurance Code section 1035.5, subdivision (d), to an aggregate amount of \$30,075,159 in  
28

1 amounts paid on claims under CastlePoint policies and related loss adjustment expenses. (See  
2 Holloway Decl., ¶ 10, Ex. A (setting forth the amounts, with applicable offsets, to be paid by the  
3 Commissioner to 31 state guaranty funds)). The Commissioner’s contemplated distribution to  
4 these state insurance guaranty funds would result in the pro rata payment to each guaranty fund of  
5 a uniform percentage of paid losses and loss adjustment expenses. Subtracting the proposed  
6 distribution to state insurance guaranty funds of \$30,075,159, and the above total amount of  
7 \$7,119,000 for administrative expenses and secured claims, from the cash assets in the estate of  
8 \$204,433,300, it is clear that the remaining cash assets in the estate in the amount of  
9 \$197,314,300 are more than sufficient to cover both secured claims as well as any future  
10 administrative costs and the like. (See Holloway Decl., Ex. C, Statement of Cash Flows.)

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

23 In accordance with Insurance Code section 1035.5, subdivision (b)(4), with respect to the  
24 state insurance guaranty funds receiving a distribution, the Commissioner has already requested  
25 and received from each fund an executed “early access agreement” (EA Agreement) to return the  
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27 <sup>3</sup> There are no statutory deposits in certain states. Accordingly, for those states, the Commissioner will distribute the  
28 applicable amounts without applying an Insurance Code section 1035.5, subdivision (d) offset for statutory deposits.

1 distributed assets as required to pay claims of secured creditors and claims falling within the  
2 priorities established in Insurance Code section 1033, subdivisions (a)(1) and (a)(2). (Holloway  
3 Decl., ¶ 13.) A true and correct copy of the template EA Agreement required to be signed by all  
4 state guaranty funds receiving a distribution is attached to the Holloway Declaration as Exhibit D.  
5 In accordance with the requirements of Insurance Code section 1035.5(e), notice as required  
6 therein of the Commissioner’s Application was given to the insurance guaranty funds and  
7 insurance commissioners of each the states at least thirty days prior to the submission of the  
8 Application to the Court. (Holloway Decl. ¶ 13).

9 As discussed in detail in Section IV(A)1 hereof, the Commissioner has satisfied the  
10 requirements of Insurance Code section 1035.5 for disbursements of assets to insurance guaranty  
11 funds and similar entities and the disbursements are a lawful and appropriate exercise of the  
12 Commissioner’s discretion.

### 13 III.

#### 14 **PROPOSED APPROVAL FINANCIAL REPORTS AND EXPENSES OF** 15 **ADMINISTRATION FOR 2021 AND 2022**

##### 16 A. **OVERVIEW OF APPROVAL PROCESS**

17 Shortly after the Liquidation Order was entered by the Court, thereafter, the  
18 Commissioner filed an *Application for Order Approving Financial Report and Expenses of*  
19 *Administration* that set forth a financial report and a report on the expenses incurred by the  
20 Commissioner during the Conservation Period, which the Court granted on July 18, 2017. The  
21 Commissioner subsequently sought and received approval by Order dated June 7, 2018 for the  
22 financial report and expenses of administration for the 2017 Liquidation Period (which covered  
23 the Liquidation Date through the 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 2018, along with the request for approval of certain routine estate administration matters for the  
28

1 efficient and orderly handling of the estate. The 2018 Application was granted by Order of this  
2 Court on August 13, 2019.

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

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

14 The Commissioner now seeks an order approving his current Application concerning 2021  
15 and 2022 financial reports and expenses of administration for the reasons set forth in detail below.

16 Since early 2019, all remaining liquidation activities have been assigned to the staff of the  
17 Commissioner’s Conservation and Liquidation Office in San Francisco (“CLO”) and, as of  
18 March 31, 2019, the CastlePoint home office in New Jersey was closed. (Holloway Decl., ¶ 14.)

19 **B. CASTLEPOINT ESTATE LIQUIDATION ACTIVITIES DURING 2021 AND 2022**

20 During 2021 and 2022 the Commissioner and CLO conducted the following actions,  
21 among others:

22 1. Continued to open and/or re-open claim files for state guaranty associations, now  
23 totaling over 3,205 claim files since the Liquidation Date through December 31, 2022;

24 2. Billed \$8.6 million of reinsurance recoverables in 2021 and \$2.7 million of  
25 reinsurance recoverables in 2022;

26 3. Collected for the CastlePoint estate reinsurance balances of approximately \$7.1  
27 million in 2021 and \$7.6 million in reinsurance recoverables in 2022;



1 **C. FINANCIAL STATEMENTS AND EXPENSES OF ADMINISTRATION**

2 Both the 2021 and 2022 Financial Statements of the CastlePoint liquidation estate were  
3 prepared under the direction of Joseph Holloway, Chief Executive Officer of the CLO and  
4 Liquidation Manager of CastlePoint, and each consists of the following documents for the  
5 respective year: Statement of Assets and Liabilities; Statement of Assets and Liabilities (with  
6 detail); Statement of Changes in Net Assets in Liquidation; and Statement of Cash Flows. In  
7 addition, a Statement of Income and Expenses (Monthly) is attached to each set of Financial  
8 Statements. (Holloway Decl., ¶ 19, Exhs. B and C.) Copies of the 2021 and 2022 Financial  
9 Statements for the CastlePoint estate are attached to the Holloway Declaration as Exhibits B and  
10 C respectively.

11 The Financial Statements reflect the following expenses of administration. For 2021, the  
12 CastlePoint estate incurred and paid expenses totaling \$3,809,264. (Holloway Decl., Ex. A,  
13 ¶ 20.) Of that total, \$124,738 was paid for various office expenses. (Id.) Also of that expenses  
14 total, \$890,603 was paid for professional fees, not including CLO personnel. (Holloway Decl.,  
15 ¶ 20.) Within that total for professional fees, \$557,098 was paid for legal expenses (including  
16 \$233,350 for fees paid to Orrick for legal services in connection with the liquidation during  
17 2021), \$557,098 was paid for necessary consultants and contractors other than attorneys, and  
18 \$2,793,923 was paid to the CLO for professional fees, which included amounts allocated to the  
19 CastlePoint estate attributable to the CLO's Accounting, Claims, IT, Reinsurance, Estate Trust  
20 and Executive Departments. (Id.) A full breakdown of all expenses incurred during 2021 related  
21 to the liquidation is attached as part of Exhibit B to the Holloway Declaration. (Holloway Decl.,  
22 Ex. B.)

23 For 2022, the CastlePoint estate incurred and paid expenses totaling \$3,929,470.  
24 (Holloway Decl., ¶ 21, Ex. C.) Of that total, \$114,669 was incurred for various office expenses  
25 and \$416,213 was incurred for professional fees, not including CLO personnel. (Holloway Decl.,  
26 ¶ 21, Ex. C.) Within the total for professional fees, \$143,867 was paid for legal expenses  
27 (including \$124,914 for fees incurred for Orrick for legal services in connection with the

1 liquidation during 2022), \$272,346 was incurred for necessary consultants and contractors not  
2 including attorneys, and \$3,398,588 was incurred for CLO professional fees, which included  
3 amounts allocated to the CastlePoint estate for the various CLO Departments described above.  
4 (Id.) A full breakdown of all expenses incurred during 2022 related to the liquidation is attached  
5 as part of Exhibit C to the Holloway Declaration. (Holloway Decl., Ex. C.)

6 The Court's Liquidation Order authorizes the Commissioner, acting as Liquidator, to fix  
7 and pay the administrative expenses of the liquidation from the assets of CastlePoint, subject to  
8 the Court's oversight and approval as specified. (See Liquidation Order, ¶¶ 3, 15-18.) These  
9 provisions were entered pursuant to California Insurance Code sections 1035 and 1036, which  
10 grant the Commissioner the power to fix all administrative costs (§ 1035) and the compensation  
11 of outside attorneys (§ 1036), with the approval of the Court, and to have those expenses paid by  
12 the liquidation estate. The Commissioner believes that the expenses incurred were necessary to  
13 the efficient and orderly administration of CastlePoint during 2020 for the continuing liquidation  
14 of CastlePoint. (Holloway Decl., ¶ 22.) As discussed in more detail below, the expenses incurred  
15 were a lawful and appropriate exercise of the Commissioner's discretion and should be approved.

#### 16 IV.

#### 17 DISCUSSION

#### 18 A. THE RELIEF THE COMMISSIONER SEEKS IS AUTHORIZED BY LAW

#### 19 1. The Proposed Early Access Distribution to State Insurance Guaranty Funds 20 is within the Commissioner's Authority and Discretion and Should be 21 Approved

22 Insurance Code section 1035.5 provides as follows:

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

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

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

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

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

8 (3) Equitable allocation of disbursements to each of the associations  
9 entitled thereto.

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

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

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

28 (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  
California Insurance Guarantee Association, or the California Life and Health Insurance  
Guarantee Association, by the amount of any statutory deposit, premiums, or any other  
asset of the insolvent insurer held in that state.

(e) Notice of such application shall be given to the associations in and to the  
commissioners of insurance of each of the states. Any such notice shall be deemed to  
have been given when deposited in the United States certified mails, first-class postage  
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  
given and provided further that the commissioner's proposal complies with paragraphs (1)  
and (4) of subdivision (b).

As explained in the Holloway Declaration and Exhibits A through D thereto, the proposal  
for early access partial distributions to state insurance guaranty funds for which the  
Commissioner seeks court approval in this application fully satisfies the statutory provisions of

1 Insurance Code section 1035.5. (See generally Holloway Decl., ¶¶ 9-13.) First, the  
2 Commissioner will retain available assets of CastlePoint in the amount of over \$271 million to  
3 fund the estate’s accrued administrative expenses and claims of secured creditors totaling only  
4 \$7,135,136 at year end 2021, and the remaining available assets are more than sufficient to fund  
5 such future expenses. (See Ins. Code, § 1035.5, subd. (b)(1).) Secondly, the Commissioner  
6 proposes to disburse, on a pro rata basis, to each of the guaranty funds eligible for a distribution,  
7 funds which the Commissioner has determined to be the “available assets” of the estate, pursuant  
8 to Insurance Code section 1035.5, subdivisions (b)(2) and (c). Third, the proposal provides for an  
9 equitable allocation of certain assets to the state insurance guaranty funds, pursuant to Insurance  
10 Code section 1035.5, subdivision (b)(3). Fourth, disbursement of the assets will be subject to an  
11 agreement by each of the state insurance guaranty funds to, if necessary, return assets previously  
12 disbursed to pay claims of secured creditors, pursuant to Insurance Code section 1035.5,  
13 subdivision (b)(4). Fifth, disbursements of the assets will also be subject to an agreement by each  
14 of the state insurance guaranty funds to make a full report to the Commissioner accounting for all  
15 assets disbursed to each fund, all disbursements made therefrom, and any interest earned by the  
16 guaranty fund on the assets, as required by Insurance Code section 1035.5, subdivision (b)(5).  
17 Finally, the Commissioner will offset the amount disbursed to any state insurance guaranty fund  
18 by the amount of any statutory deposit, premiums, or any other asset that CastlePoint held in that  
19 state, pursuant to Insurance Code section 1035, subdivision (d). Notice of this application has  
20 been given in accordance with the provisions of Insurance Code section 1035, subdivision (e).  
21 (See Holloway Decl., ¶¶ 9-13.)

22 Furthermore, apart from satisfying the statutory provisions provided for under the  
23 Insurance Code, the Commissioner’s proposal for a distribution to state insurance guaranty funds  
24 falls within the scope of his broad statutory discretion. The California Legislature has afforded to  
25 the Commissioner, acting in his capacity as the court-appointed liquidator of an insolvent insurer,  
26 substantial discretion under the Insurance Code to fashion appropriate procedures necessary to  
27 carry out his statutory duties. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824-825;

1 *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 329.) As the Court-appointed  
2 liquidator of CastlePoint, the Commissioner has the express authority to, among other things, take  
3 such actions as he deems necessary to “carry on and conduct the business and affairs” of the  
4 Company. (Ins. Code, § 1037, subd. (a).) Insurance Code section 1037, subdivisions (a) and (b)  
5 provide, in pertinent part, as follows:

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

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

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

16 (See *Carpenter, supra*, 10 Cal.2d 307 [seizure of insurance company by Commissioner may  
17 lawfully be made without court order and trial court had power to ratify and confirm  
18 Commissioner’s actions]; *Garris v. Carpenter* (1939) 33 Cal.App.2d 649 [Commissioner  
19 exercises very broad judgment and discretion in performance of duties].) Judicial approval of the  
20 Commissioner’s proposal will ensure that the conduct of the business and the winding down of  
21 CastlePoint are conducted efficiently and in the best interests of its policyholders and creditors.

22           **2. The Commissioner’s Expenses of Administration Constitute and Appropriate**  
23           **Exercise of the Commissioner’s Discretion and His Request for an Order**  
24           **Approving The 2021 and 2022 Financial Reports and Expenses of**  
25           **Administration of the CastlePoint Estate Should be Granted.**

26           The Commissioner is vested with broad discretion to conduct the liquidation of an  
27 insolvent insurer subject to certain statutory limitations and the limitation “that the exercise of  
28 discretion be neither arbitrary nor improperly discriminatory.” (*In re Executive Life Ins. Co.*

1 (1995) 32 Cal.App.4th 344, 356 (citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d  
2 307, 329).) His decisions as to matters concerning an insolvent insurer are reviewed by the Court  
3 on an abuse of discretion standard. (*In re Executive Life, supra*, 32 Cal.App.4th at 358.)

4 California Insurance Code Sections 1035 and 1036 require the Commissioner to seek  
5 approval of the Court for the payment of administrative costs (§ 1035) and legal fees (§ 1036)  
6 from the assets of CastlePoint. Specifically, section 1035(a) provides that “all expenses of taking  
7 possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the  
8 business and property of [CastlePoint]...shall be fixed by the commissioner, subject to the  
9 approval of the court, and shall be paid out of the assets of [CastlePoint] to the department.” (Ins.  
10 Code § 1035(a).) Similarly, section 1036 states that “compensation of any counsel outside of  
11 California state service who is employed...to represent the commissioner as receiver shall be  
12 fixed by the commissioner, subject to the approval of the court. Compensation of counsel  
13 representing the commissioner as receiver shall be paid from the assets of [CastlePoint].” (Ins.  
14 Code § 1036.)

15 The expenses and professional fees incurred by the Commissioner during 2021 and 2022  
16 were typical for a receivership of this size and complexity, and were necessary, reasonable, and  
17 an appropriate exercise of the Commissioner’s discretion to secure and manage the CastlePoint  
18 estate and its liquidation. (Holloway Decl., ¶¶ 19, 22.)

19 **V.**

20 **CONCLUSION**

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

22 1. Authorizing the Commissioner to transfer a total of approximately \$30,075,159 of  
23 the net assets of the estate of CastlePoint to the state insurance guaranty funds or similar entities  
24 in the amounts set forth in Exhibit A to the Holloway Declaration, provided that prior to any such  
25 distribution, the state insurance guaranty fund in question has executed and delivered to the  
26 Commissioner an agreement, substantially in the form set forth in Exhibit C to the Holloway  
27 Declaration, to return the distributed assets as required to pay claims of secured creditors and

1 claims falling within the priorities established in Insurance Code section 1033, subdivisions (a)(1)  
2 and (a)(2);

3 2. Authorizing and ratifying Commissioner's 2021 and 2022 Financial Statements  
4 and expenses of administration of the CastlePoint estate; and

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

7 Dated: October 11, 2023

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14  
15 Attorneys for Applicant Ricardo Lara,  
16 Insurance Commissioner of the State of  
17 California in his capacity as Liquidator of  
18 CastlePoint National Insurance Company