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**ENDORSED
FILED**
San Francisco County Superior Court

MAR 30 2017

CLERK OF THE COURT
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Deputy Clerk

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

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

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 CITY AND COUNTY OF SAN FRANCISCO

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

20 Applicant,

21 v.

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

23 Respondents.
24

Case No. CPF-16-515183

**[PROPOSED] LIQUIDATION ORDER
FOR CASTLEPOINT NATIONAL
INSURANCE COMPANY**

[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**

1 The Court has reviewed the Application For Order Of Liquidation For CastlePoint
2 National Insurance Company (“Application”) and supporting documents and evidence submitted
3 by Insurance Commissioner Dave Jones as Conservator of CastlePoint National Insurance
4 Company (“CastlePoint”), as well as all papers filed in opposition and reply to the Application.
5 On March 30, 2017, the Court held a hearing on the Application at which it heard argument from
6 the Commissioner and other interested parties.

7 Having considered the Application, the memorandum and declarations in support of or in
8 opposition to the Application, and all other documents and evidence submitted, and having heard
9 and considered the arguments presented to the Court, and upon good cause shown, the court
10 hereby finds that CastlePoint is statutorily and legally insolvent and that it would be futile for the
11 Commissioner to proceed as Conservator of CastlePoint and, therefore, sufficient grounds exist in
12 accordance with Insurance Code section 1016 for entry of this order of liquidation of CastlePoint.

13 **THEREFORE, IT IS HEREBY ORDERED:**

- 14 1. The Application is GRANTED;
- 15 2. CastlePoint is hereby found to be insolvent;
- 16 3. The Commissioner’s status as Conservator of CastlePoint is terminated. The
17 Insurance Commissioner is appointed Liquidator of CastlePoint as set forth in Insurance Code
18 section 1016, with (1) David E. Wilson to serve as the Special Deputy Insurance Commissioner in
19 charge of the CastlePoint liquidation and (2) Joseph Holloway, Jr., to serve as Liquidation
20 Manager for Special Deputy Insurance Commissioner Wilson (hereinafter, collectively with the
21 Commissioner, the “**Liquidator**”);
- 22 4. The Liquidator is directed to liquidate and wind up the business of CastlePoint and
23 to act in all ways and exercise all powers necessary for the purpose of carrying out this Order and
24 the liquidation provisions of the Insurance Code, Insurance Code sections 1010 *et seq*;
- 25 5. Title to all of the assets of CastlePoint, wherever situated and including any and all
26 assets held in the names of any company that is a predecessor by merger with CastlePoint,¹ shall

27 _____
28 ¹ The other insurers that previously merged with and into CastlePoint or are otherwise predecessor to CastlePoint
are: Tower Insurance Company of New York, Tower National Insurance Company, Hermitage Insurance Company,
CastlePoint Florida Insurance Company, North East Insurance Company, Massachusetts Homeland Insurance

1 be and hereby are vested in the Liquidator, in his official capacity as such, including without
2 limitation real and personal property, deposits, certificates of deposit, bank accounts, mutual
3 funds, securities, contracts, rights of actions, books, records and other assets of any and every
4 type and nature, wherever situated, presently in CastlePoint's possession and/or those which may
5 be discovered hereafter;

6 6. All funds and assets (including without limitation deposits, certificates of deposit,
7 bank accounts, securities, and mutual fund shares of CastlePoint) in various financial depository
8 institutions (including without limitation banks, savings and loan associations, industrial loan
9 companies, mutual funds and/or stock brokerages) wherever situated, are subject to withdrawal
10 only upon direction or order by the Liquidator;

11 7. The Liquidator is authorized to collect all moneys due to CastlePoint, and to do
12 such other acts as are necessary or expedient to collect, protect and liquidate CastlePoint's assets,
13 property and business;

14 8. The Liquidator is authorized to collect all debts due and claims belonging to
15 CastlePoint and to have the authority to sell, compound, compromise, or assign, for the purpose
16 of collection upon such terms and conditions as the Liquidator deems best, any bad or doubtful
17 debts;

18 9. The Liquidator is authorized to compromise or in any other manner negotiate
19 settlements of claims against CastlePoint upon such terms and conditions as the Liquidator shall
20 deem to be in the best interests of CastlePoint;

21 10. The Liquidator is authorized to collect all reinsurance due to CastlePoint and to
22 sell, compromise and negotiate commutation settlements, or assign its rights to reinsurance, upon
23 such terms and conditions as the Liquidator deems to be in the best interest of CastlePoint.

24 Commutation settlements greater than five million dollars shall require court approval.

25 Commutation settlements of five million dollars or less shall be reported to the Court in status
26 reports filed by the Liquidator;

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Company, Preserver Insurance Company, York Insurance Company of Maine, CastlePoint Insurance Company and
Kodiak Insurance Company.

1 11. The Liquidator is authorized, without permission of the Court and without notice,
2 to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of
3 or deal with, any real or personal property of CastlePoint at its reasonable market value, or, in
4 cases other than acquisition, sale, or transfer on the basis of reasonable market value, upon such
5 terms and conditions as the Liquidator may deem proper and to be in accordance with the
6 Liquidator's authority under the Insurance Code;

7 12. The Liquidator is authorized, for the purpose of executing and performing any of
8 the powers and authority conferred upon the Liquidator under Insurance Code sections 1010 *et*
9 *seq.*, in the name of CastlePoint or in the Liquidator's own name, to initiate, prosecute and/or
10 defend any and all suits and other legal proceedings, legal or equitable, and to execute,
11 acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary
12 and proper to effectuate any sale of any real and personal property or other transaction in
13 connection with the administration, liquidation or other disposition of the assets of CastlePoint, in
14 this or other states as may appear to him necessary to carry out his functions as Liquidator;

15 13. The Liquidator is authorized to divert, take possession of and secure all mail of
16 CastlePoint and to effect a change in the rights to use any and all post office boxes and other mail
17 collection facilities used by CastlePoint;

18 14. The Liquidator is authorized, without permission of the Court and without notice,
19 to invest and reinvest, in such manner as the Liquidator may deem suitable for the best interests
20 of the policyholders and/or creditors of CastlePoint, such portions of the funds and assets of
21 CastlePoint in his possession as do not exceed the amount of the reserves required by law to be
22 maintained by CastlePoint as reserves for insurance policies, and which funds and assets are not
23 immediately distributable to creditors upon such terms and conditions as the Liquidator may
24 deem proper and to be in accordance with the Liquidator's authority under the Insurance Code;
25 provided, however, the investment or reinvestment to be made does not exceed the sum of one
26 hundred thousand dollars (\$100,000), except that the Liquidator, without permission of the court
27 and without notice, may make investments or reinvestments in excess of \$100,000, but not
28 exceeding \$5,000,000 per investment or reinvestment, if such investments or reinvestments are

1 part of CastlePoint's existing investments or are made pursuant to the investment guidelines of
2 the Commissioner's Conservation & Liquidation Office (including investments and reinvestments
3 through an investment pool consisting exclusively of assets from conserved and/or liquidating
4 estates);

5 15. The Liquidator is authorized, in his discretion, without permission of the Court and
6 without notice, to pay or defer payment of some or all claims, expenses, liabilities and/or
7 obligations of CastlePoint, in whole or in part, accruing prior and/or subsequent to his
8 appointment as Liquidator;

9 16. The Liquidator is authorized to appoint, employ and compensate under his hand
10 and official seal, legal counsel, as his agents, and to employ special deputies, clerks and/or
11 assistants, and to give to each of them those powers that the Liquidator deems necessary;

12 17. The Liquidator is authorized to fix the costs of employing special deputy
13 commissioners, legal counsel, clerks, and/or assistants, and all expenses of taking possession of,
14 conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and
15 property of CastlePoint, and he is authorized to pay such costs out of the assets of CastlePoint in
16 such manner as the Liquidator may deem proper and in accordance with the Liquidator's
17 authority under the Insurance Code. If there are insufficient funds to pay such costs, then the
18 Liquidator may pay such costs out of the Insurance Fund pursuant to Insurance Code section
19 1035(a);

20 18. The Liquidator is authorized to terminate compensation arrangements with
21 employees, to enter into new compensation arrangements with employees (including
22 arrangements containing retention incentives), and to hire employees on such terms and
23 conditions as he deems reasonable, provided, however, that the Liquidator shall continue to honor
24 any such compensation arrangements with employees he approved or authorized in his prior
25 capacity as Conservator;

26 19. The Liquidator is vested with all the powers of the directors, officers and managers
27 of CastlePoint, whose authorities are suspended except as such powers may be re-delegated by
28 the Liquidator;

Injunctions and Other Orders

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2 20. Except upon the express authorization of the Liquidator, all persons (including
3 without limitation CastlePoint and its officers, directors, agents, servants, and employees) are
4 enjoined from the transaction of CastlePoint’s business or disposition of its property (including
5 without limitation disposing of, using, transferring, selling, assigning, canceling, alienating,
6 hypothecating or concealing in any manner or any way), or assisting any person in any of the
7 foregoing, until further order of this Court. All persons are enjoined from obstructing or
8 interfering with the Liquidator's conduct of his duties as Liquidator;

9 21. All persons are enjoined from instituting, prosecuting or maintaining any action at
10 law or suit in equity (including without limitation actions or proceedings to compel discovery or
11 production of documents or testimony, and matters in arbitration), except in matters before either
12 the California Workers Compensation Appeals Board or equivalent administrative boards or
13 organizations performing such functions in other states in which CastlePoint issued workers
14 compensation policies, against CastlePoint or against the Liquidator, and from attaching,
15 executing upon, foreclosing upon, redeeming of, making levy upon, or taking any other legal
16 proceedings against any of the property and/or assets of CastlePoint, and from doing any act
17 interfering with the conduct of said business by the Liquidator, except after an order from this
18 Court entered after notice to the Liquidator of not less than 30 court days. For the avoidance of
19 doubt, the injunctions set forth in paragraph 21 of this Order are not intended to stay any action
20 against third parties not insured or indemnified by CastlePoint, provided that the parties in such
21 action shall not pursue, directly or indirectly, recovery on any resulting judgment from
22 CastlePoint, its assets, or the Liquidator, nor shall such resulting judgment be afforded any
23 evidentiary or preclusive effect on any proof of claim submitted pursuant to this Order;

24 22. Except upon further order of the Court issued after a hearing in which the
25 Liquidator has received reasonable notice, all persons are enjoined from obtaining or attempting
26 to attain preferences, judgments, foreclosures, attachments or other liens of any kind or nature, or
27 making any levy, against CastlePoint, its assets or property, or the Liquidator, and from executing
28 or issuing or causing the execution or issuance of any court attachment, subpoena, replevin,

1 execution or other process for the purpose of impounding or taking possession of or interfering
2 with or creating or enforcing a lien upon any property or assets owned or in the possession of
3 CastlePoint or the Liquidator, wheresoever situated, and from doing any act interfering with the
4 conduct of said business by the Liquidator;

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

14 24. All persons are enjoined from the sale or deed for nonpayment of taxes or
15 assessments levied by any taxing agency of property and/or assets of CastlePoint;

16 25. All persons are enjoined from the waste of the assets of CastlePoint;

17 26. CastlePoint and its officers, directors, agents and employees are ordered to
18 immediately make available to the Liquidator all assets, books, accounts, records, information,
19 computers, tapes, discs, writings, other recordings of information, equipment and other property
20 of CastlePoint, wherever situated, in their custody or control. They are directed to disclose to the
21 Liquidator, on his request, the exact whereabouts of the foregoing items if such items are not in
22 their possession, custody or control;

23 27. CastlePoint and its officers, directors, trustees, employees or agents, and any other
24 person, firm, association, partnership, corporate parent, holding company, affiliate or other entity
25 in charge of any aspect of CastlePoint's affairs, either in whole or in part (including but not
26 limited to banks, savings and loan associations, financial or lending institutions, brokers, stock or
27 mutual associations, or any parent, holding company, subsidiary or affiliated corporation or any
28

1 other representative acting in concert with CastlePoint) are ordered to cooperate with the
2 Liquidator in the performance of his duties;

3 28. All persons who maintain records, books; assets, accounts, tax returns,
4 information, computers, tapes, discs, writings, other recordings of information, equipment and
5 other property of CastlePoint, wheresoever located, pursuant to written contract or any other
6 agreement, are ordered to maintain such records and to deliver to the Liquidator such records
7 upon his request;

8 29. The Court hereby stays any and all provisions of any agreement entered into by
9 and between any third party and CastlePoint, that provide, in any manner, that selection,
10 appointment or retention of a conservator, receiver or trustee, or entry of an order such as hereby
11 made, shall be deemed to be, or otherwise operate as, a breach, violation, event of default,
12 termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation.
13 The assertion of any and all rights and remedies relating thereto are also stayed and barred, except
14 as otherwise ordered by this Court. This Court shall have and retain exclusive jurisdiction over
15 any cause of action that has arisen or may otherwise arise under any such a provision;

16 30. Unless expressly superseded or amended under this Order, all restraining orders
17 and injunctions set forth in the Court's July 28, 2016, *Order Appointing Insurance Commissioner*
18 *as Conservator and Restraining Orders* shall remain in full force and effect.

19 **Creditors and Setting of Claims Bar Date**

20 31. The rights and liabilities of claimants, policyholders, shareholders, members and
21 all other persons interested in the assets of CastlePoint are fixed as of the effective date of entry
22 of this Liquidation Order;

23 32. Any and all claims against CastlePoint (except those policyholder claims already
24 pending against CastlePoint, which are hereby deemed filed with the Liquidator, who shall
25 maintain a list of such claims), including without limitation those claims which in any way affect
26 or seek to affect any of the assets of CastlePoint, wherever or however such assets may be owned
27 or held, must be filed with the Liquidator no later than December 31, 2017 (the "**Claims Bar**
28 **Date**") in accordance with the provisions of Insurance Code sections 1010 *et seq.*, (including

1 without limitation Insurance Code section 1023). The claim must be timely filed on the form
2 provided by the Liquidator, together with proper proofs thereof, and must be supplemented with
3 such further information as the Liquidator requests, in accordance with Insurance Code section
4 1023(f). **As provided in Insurance Code section 1024, any claims not filed by the Claims Bar**
5 **Date shall be conclusively deemed forever waived and no action may be maintained**
6 **thereon;**

7 33. The Conservation Order shall remain in full force and effect through and including
8 March 31, 2017, and the provisions of this Liquidation Order shall become effective on and as of
9 April 1, 2017. This Liquidation Order is deemed final as of April 1, 2017.

10 MAR 30 2017

11 Dated: _____

HAROLD KAHN

HONORABLE HAROLD E. KAHN
JUDGE OF THE SUPERIOR COURT

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