

1 Jesse L. Miller (State Bar No. 183229)  
Email: jesse@reedsmith.com  
2 Maytak Chin (State Bar No. 288155)  
Email: mchin@reedsmith.com  
3 REED SMITH LLP  
101 Second Street, Suite 1800  
4 San Francisco, CA 94105-3659  
Telephone: (415) 543-8700  
5 Facsimile: (415) 391-8269

6 Shannon Rose Selden (*pro hac vice*)  
Email: srselden@debevoise.com  
7 Carl Micarelli (*pro hac vice*)  
Email: cmicarelli@debevoise.com  
8 DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
9 New York, NY 10022-3916  
Telephone: (212) 909-6000  
10 Facsimile: (212) 909-6836

11 Attorneys for Interested Parties ACP Re, Ltd., ACP Re  
Holdings, LLC, AmTrust Financial Services, Inc.,  
12 CastlePoint Bermuda Holdings, Ltd., CastlePoint  
Management Corp., Integon National Insurance Company,  
13 National General Holdings Corp., Preserver Group, Inc.,  
Technology Insurance Company, Inc., Tower Group, Inc.,  
14 Tower Group International, Ltd., William F. Dove, William  
F. Fox, Jr., William E. Hitzelberger, Michael H. Lee,  
15 Herbert Lemmer, Elliot S. Orol, William A. Robbie, James  
E. Roberts, Steven W. Schuster, Robert S. Smith, Jan R.  
16 Van Gorder, Austin P. Young, III, Meghan Zeigler, George  
Karfunkel, Leah Karfunkel, Estate of Michael Karfunkel,  
17 Barry Zyskind, Michael Karfunkel Family 2005 Trust, and  
Michael Karfunkel 2005 Grantor Retained Annuity Trust  
18

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 FOR THE CITY AND COUNTY OF SAN FRANCISCO

21 INSURANCE COMMISSIONER OF THE STATE  
22 OF CALIFORNIA,

23 Applicant,

24 - vs -

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

26 Respondents.  
27  
28

**F I L E D**  
Superior Court of California  
County of San Francisco

AUG 13 2019

CLERK OF THE COURT

BY: [Signature]  
Deputy Clerk

Case No. CPF-16-515183

**[PROPOSED] ORDER DENYING  
MOTION FOR RECONSIDERATION  
OF THIS COURT'S MAY 16, 2019  
ORDER**

Date: August 13, 2019  
Time: 9:30 a.m.

Dept. 302  
Hon. Ethan P. Schulman

**Reservation ID: 05300701-04**

1 The Motion for Reconsideration of This Court’s May 16, 2019 Order (the “Motion”) filed by  
2 Nonparties Alesco Preferred Funding VIII, Ltd., Alesco Preferred Funding XI, Ltd., Alesco  
3 Preferred Funding XII, Ltd., Alesco Preferred Funding XIII, Ltd, Alesco Preferred Funding XIV,  
4 Ltd., Hildene Opportunities Master Fund II, Ltd., NFC Partners, LLC, NFC Insurance Partners,  
5 LLC, Preferred Term Securities XVI, Ltd., Preferred Term Securities XXIII, Ltd., Preferred Term  
6 Securities XXIV, Ltd., Preferred Term Securities XXVIII, Ltd., Wolf River Opportunity Fund LLC,  
7 Wolf River Partner Fund, WT Holding, Inc. (together the “Movants”) came on for hearing before  
8 this Court on August 13, 2019 at 9:30 a.m. in Department 302.

9 Interested Parties ACP Re, Ltd., ACP Re Holdings, LLC, AmTrust Financial Services, Inc.,  
10 CastlePoint Bermuda Holdings, Ltd., CastlePoint Management Corp., Integon National Insurance  
11 Company, National General Holdings Corp., Preserver Group, Inc., Technology Insurance  
12 Company, Inc., Tower Group, Inc., Tower Group International, Ltd., William F. Dove, William F.  
13 Fox, Jr., William E. Hitselberger, Michael H. Lee, Herbert Lemmer, Elliot S. Orol, William A.  
14 Robbie, James E. Roberts, Steven W. Schuster, Robert S. Smith, Jan R. Van Gorder, Austin P.  
15 Young, III, Meghan Zeigler, George Karfunkel, Leah Karfunkel, Estate of Michael Karfunkel, Barry  
16 Zyskind, Michael Karfunkel Family 2005 Trust, and Michael Karfunkel 2005 Grantor Retained  
17 Annuity Trust (together the “Interested Parties”) opposed the Motion.

18 The Insurance Commissioner of the State of California as Liquidator of CastlePoint National  
19 Insurance Company (the “Commissioner”) filed a statement of position.

20 The Movants, the Interested Parties and the Commissioner appeared by their respective  
21 counsel of record. Having fully considered the papers filed in support of and opposition to the  
22 Motion, including any reply papers filed by the Movants, and the arguments of counsel at the  
23 hearing, this Court finds:

24 Movants’ motion for reconsideration of the Court’s May 16, 2019 order is denied. Movants  
25 have not shown any “new or different facts, circumstances, or law” warranting reconsideration of the  
26 Court’s order. (Code Civ. Proc. Sec. 1008(a).) Nor is the Court inclined to grant reconsideration of  
27 the order on its own motion. (See *Le Francois v. Goel* (2005) 35 Cal.4th 249.) The Court made it  
28 clear at the very outset of the hearing that it was inclined to give “substantial weight” (but not

1 dispositive weight) to the Insurance Commissioner's views. (RT (Mar. 11, 2019) at 3:25-4:8.)  
2 Movants appeared to agree, since in their moving papers they asserted (overly optimistically, as it  
3 turned out) that the Commissioner supported their position. (See Mot. at 1:19-21 ["Movants  
4 understand that the Insurance Commissioner agrees with their view."].) In any event, Movants had  
5 ample opportunity, both at the hearing and in their post-hearing submission, to take issue with the  
6 Court's views on that subject. Further, while it is true that the Commissioner changed his position to  
7 some degree following the hearing, Movants consented to the procedure proposed by the Court for  
8 the parties to submit simultaneous post-hearing briefs and proposed orders. If Movants were taken  
9 by surprise by the Commissioner's position, they could have sought leave to file a further brief  
10 before the Court issued its order more than 60 days later. Finally, Movants devote the bulk of their  
11 motion not to the question whether the Commissioner's position is entitled to deference, but rather to  
12 rearguing issues and authority that were raised in the prior briefing, hearing, and post-hearing  
13 submissions, or could have been. As such, reconsideration is not appropriate. (See New York Times  
14 Co. v. Superior Court (2005) 135 Cal.App.4th 206, 212 [moving party must provide satisfactory  
15 explanation for the failure to make the showing of new or different facts, circumstances, or law at or  
16 before the time the challenged order was issued]; Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494,  
17 1500 [reconsideration not warranted based on claim that trial court misinterpreted applicable law in  
18 its initial decision].)

19 **IT IS THEREFORE ORDERED** that the Motion, along with the relief sought therein,  
20 is DENIED.

21 Dated: August 13, 2019



Hon. Ethan P. Schulman  
Judge of the Superior Court

22  
23  
24  
25  
26  
27  
28