Filing # 124439446 E-Filed 04/06/2021 06:00:14 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

State of Florida, ex rel.,
the Department of Financial Services
of the State of Florida,

Relator CASE NO.:

v.

American Capital Assurance Corp.
Respondent.
_____/

Petition for Consent Order Appointing the Florida Department of Financial Services as Receiver of American Capital Assurance Corp. for Purposes of Liquidation, Injunction, and Notice of Automatic Stay

The Florida Department of Financial Services, Division of Rehabilitation and Liquidation ("Department"), hereby petitions this Court pursuant to sections 631.031 and 631.051, Florida Statutes (2020), for the entry of a Consent Order Appointing the Department as Receiver of American Capital Assurance Corp. ("Respondent" or "Company") for Purposes of Liquidation, Injunction, and Notice of Automatic Stay. In support of its petition, the Department states:

1. Respondent was licensed by the Office of Insurance Regulation ("OIR") as a state of Florida domestic property and casualty insurer authorized to write homeowners multiple peril, commercial multiple peril, inland marine, allied lines, fire, and other liability coverage pursuant to Chapter 624, Florida Statutes. Respondent's principal place of business is located at: 55 First Street South, Saint Petersburg, FL 33701.

2. Section 631.021, Florida Statutes, provides that a delinquency proceeding pursuant to chapter 631, Florida Statutes, constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving a Florida domiciled insurer.

3. This Court has original jurisdiction over these proceedings pursuant to section 631.021(1), Florida Statutes, and can exercise jurisdiction over any person required by section

631.391, Florida Statutes, to cooperate with the Department and OIR and over all persons made subject to this Court's jurisdiction by other provisions of law, section 631.025, Florida Statutes. Additionally, this Court is authorized to enter all necessary or proper orders to carry out the purpose of the Florida Insurers Rehabilitation and Liquidation Act, sections 631.001 *et seq*., Florida Statutes. § 631.021(1), Fla. Stat.

4. Venue is proper in the Circuit Court of Leon County. § 631.021(2), Fla. Stat.

5. Upon a determination by OIR that one or more grounds exist to initiate a delinquency proceeding against an insurer, and upon OIR's determination that a delinquency proceeding should be initiated, OIR is required to refer the insurer to the Department for the initiation of such delinquency proceeding. § 631.031(1), Fla. Stat.

6. By letter dated April 2, 2021, and pursuant to section 631.031(1), Florida Statutes, David Altmaier, Commissioner of OIR, advised Florida's Chief Financial Officer, Jimmy Patronis, that grounds exist for the initiation of delinquency proceedings against Respondent. A copy of the letter is attached hereto and incorporated herein as **Department Exhibit A.**[1]

7. Section 631.031(2), Florida Statutes, empowers the Department to petition this Court for a consent order directing it to liquidate a domestic insurer, and section 631.051, Florida Statutes, provides that the Department may apply for such order upon the existence of any of the grounds specified in that section. Based on the documentation received from OIR, including a Consent to Order of Receivership executed by Respondent, the Department has confirmed that grounds exist that warrant the liquidation of Respondent.

[1] OIR submitted its letter of referral for American Capital Assurance Corp. to the Department on April 2, 2021, but the name of the company was referenced as "American Capital Assurance Company" on the letter and on the documents executed by Respondent. On April 6, 2021, OIR submitted a letter to the Department apprising it of the scrivener's error and providing corrected documents from Respondent. OIR considers the date of the referral to be April 2, 2021.

A. **Basis One for Liquidation:** Section 631.061(1), in that Respondent is insolvent within the meaning of section 631.011(14) as stated by Respondent in its Consent to Order of Receivership.

B. **Basis Two for Liquidation:** Section 631.051(11), in that Respondent has consented, through a Resolution of its board of directors, to the appointment of the Department as Receiver of Respondent for the purposes of liquidation.

8. Accordingly, the Department requests, pursuant to sections 631.031 and 631.061, Florida Statutes, the entry of a Consent Order Appointing the Department as Receiver of Respondent for purposes of liquidation, injunction, and notice of automatic stay to allow the Department the ability to marshal Respondent's assets in the best interest of Respondent's policyholders, creditors, other claimants, and the public.

WHEREFORE, the Florida Department of Financial Services, Division of Rehabilitation and Liquidation, respectfully requests that this Court enter a Consent Order appointing the Department of Financial Services as Receiver of American Capital Assurance Corp. for the Purposes of Liquidation, Injunction, and Notice of Automatic Stay.

RESPECTFULLY SUBMITTED this the 6th day of April, 2021.

/*Jamila G. Gooden*
JAMILA G. GOODEN
Senior Attorney
Florida Bar No. 46740
Jamila.Gooden@myfloridacfo.com
MIRIAM O. VICTORIAN
Chief Attorney
Florida Bar No. 355471
Miriam.Victorian@myfloridacfo.com
Florida Department of Financial Services
Division of Rehabilitation and Liquidation
325 John Knox Road
The Atrium, Suite 101
Tallahassee, FL 32303
Telephone: (850) 413-4414

FINANCIAL SERVICES COMMISSION

RON DESANTIS
GOVERNOR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

NICOLE "NIKKI" FRIED
COMMISSIONER OF AGRICULTURE

OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER
COMMISSIONER

April 2, 2021

The Honorable Jimmy Patronis
The Chief Financial Officer
Department of Financial Services
The Capitol, PL-11
Tallahassee, FL 32399

Re: American Capital Assurance Company

Dear Chief Financial Officer Patronis:

Please be advised that the Office of Insurance Regulation (hereinafter the "Office") has determined that one or more grounds exist for the initiation of delinquency proceedings, pursuant to Chapter 631, Florida Statutes, against the above-referenced company. As such, I am advising you of that determination and including herewith a consent to order of receivership signed by the company in which it admits that it is insolvent, so that delinquency proceedings can be initiated by the Division of Rehabilitation and Liquidation.

As always, the Office stands ready to provide any additional information or assistance the Department needs in order for this matter to proceed as expeditiously as possible. Thank you for your attention to this matter.

Sincerely,

David Altmaier

David Altmaier, Commissioner
Office of Insurance Regulation

cc:
John MacIver, General Counsel,
Department of Financial Services

DAVID ALTMAIER • COMMISSIONER
200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-0305 • (850) 413-5914 • FAX (850) 488-3334
WEBSITE: WWW.FLOIR.COM • EMAIL: DAVID.ALTMAIER@FLOIR.COM

Affirmative Action / Equal Opportunity Employer

Exhibit A

OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER
COMMISSIONER

FINANCIAL SERVICES COMMISSION

RON DESANTIS
GOVERNOR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

NICOLE "NIKKI" FRIED
COMMISSIONER OF AGRICULTURE

April 6, 2021

Ms. Toma Wilkerson
Division Director
Florida Department of Financial Services
Division of Rehabilitation and Liquidation
325 John Knox Road, Suite 101
The Atrium
Tallahassee, Florida 32303

Dear Ms. Wilkerson,

By letter dated April 2, 2021, the Office of Insurance Regulation referred American Capital Assurance Corp. to the Department of Financial Services for purposes of receivership. The letter transmitted a consent to receivership executed by the Board of Directors of the company which incorrectly identified the company as American Capital Assurance Company. The Board of the company has since corrected the scrivener's error by executing a new consent with the proper company name which I have included. The date of the referral remains April 2, 2021.

Sincerely,

Anoush Arakalian Brangaccio

Anoush Brangaccio
General Counsel

Enclosure

• • •
ANOUSH ARAKALIAN BRANGACCIO • LEGAL SERVICES OFFICE
200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-4206 • (850) 413-4116 • FAX (850) 922-2543
WEBSITE: WWW.FLOIR.COM • EMAIL: ANOUSH.BRANGACCIO@FLOIR.COM

Affirmative Action / Equal Opportunity Employer

CONSENT TO ORDER OF RECEIVERSHIP
AMERICAN CAPITAL ASSURANCE CORP.

IT IS HEREBY AGREED TO AS FOLLOWS:

1. American Capital Assurance Corp. ("Respondent") is a Florida corporation and is a domestic property and casualty insurer authorized to transact insurance business in Florida and regulated by the Florida Office of Insurance Regulation.

2. Respondent admits that grounds exist for the appointment of a Receiver of the company for Rehabilitation or Liquidation pursuant to Sections 631.051 and 631.061, Florida Statutes.

3. Respondent specifically admits that it is presently unable to pay its debts as they become due in the usual course of business and therefore as of the date of this consent is insolvent as that term is defined in Section 631.011(14), Florida Statutes.

4. Pursuant to Sections 631.051 and 631.061, Florida Statutes, Respondent consents through a majority of its directors, stockholders, members, or subscribers to the entry of an Order of Liquidation appointing the Florida Department of Financial Services as the Receiver, for purposes of liquidation, with the determination of the type of order to be sought and entered to be made at the sole discretion of the Florida Department of Financial Services, and consents to any injunctions the receivership court, as defined by Section 631.021, Florida Statutes, deems necessary and appropriate. The Resolution of the Board of Directors is attached as Attachment A to this Consent.

By execution hereof, AMERICAN CAPITAL ASSURANCE CORP. consents to the appointment of the Department of Financial Services as receiver for purposes of Rehabilitation or Liquidation, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that they have the authority to bind AMERICAN CAPITAL ASSURANCE CORP. to the terms and conditions of this Consent Order.

AMERICAN CAPITAL ASSURANCE CORP.

By: _____

[Corporate Seal]

Print Name: DENNIS G. Ruppel

Title: CHAIRMAN

Date: 04-05-2021

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 5TH day of APRIL 2021, by DENNIS G Ruppel (name of person) as CHAIRMAN (type of authority; e.g., officer, trustee, attorney in fact) for AMERICAN CAPITAL ASSURANCE CORP. (company name).

_____
(Signature of the Notary)

BRAY N. WALKER
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known _____ OR Produced Identification X

Type of Identification Produced Florida Driver License

My Commission Expires 10/11/2024

BRAY N. WALKER NOTARY PUBLIC STATE OF FLORIDA My Comm. Expires 10/11/2024 No. HH 052403

RESOLUTION OF THE BOARD OF DIRECTORS OF AMERICAN CAPITAL ASSURANCE CORP.
ATTACHMENT A

The undersigned, being the majority of the Directors of American Capital Assurance Corp., ("Company") hereby makes the following resolutions as follows:

RESOLVED that the majority of the current Directors on the Board of Directors consent to the entry of an Order of Liquidation of the Company.

FURTHER RESOLVED, that pursuant to Sections 631.051 and 631.061, Florida Statutes, the majority of the Directors consent to the immediate appointment of the Florida Department of Financial Services ("Department") as Receiver of the company, for the purposes of Liquidation, without further notice or hearing, and waive any and all rights to notice and hearing with regard to such appointment.

FURTHER RESOLVED, that the Chairman of the Board of Directors and the Officers of the Company are hereby authorized to execute any and all consent agreements or documents on behalf of the Company, and are authorized to take any and all additional actions, including the Consent to Receivership under Chapter 631, Part I, Florida Statutes, as deemed necessary or appropriate by the Florida Office of Insurance Regulation or the Department, without further approval of the shareholders or directors.

Directors of American Capital Assurance Corp.

By: _____

[Corporate Seal]

Print Name: DENNIS G. RUPPERT

Title: CHAIRMAN + DIRECTOR

Date: 04-05-2021

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 5TH day of APRIL 2021, by DENNIS G. RUPPERT (name of person) as CHAIRMAN AND DIRECTOR (type of authority; e.g., officer, trustee, attorney in fact) for AMERICAN CAPITAL ASSURANCE CORP. (company name).

_____
(Signature of the Notary)

BRAY N. WALKER
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known _____ OR Produced Identification X

Type of Identification Produced FLORIDA DRIVER LICENSE

My Commission Expires 10/11/2024

BRAY N. WALKER NOTARY PUBLIC STATE OF FLORIDA My Comm. Expires 10/11/2024 No. HH 052403

Directors of American Capital Assurance Corp.

By: _____

[Corporate Seal]

Print Name: Robert H. Willis Jr

Title: Director

Date: 4/5/2021

STATE OF Florida

COUNTY OF Pinellas

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 5 day of April 2021, by Robert H. Willis, Jr (name of person) as Director (type of authority; e.g., officer, trustee, attorney in fact) for American Capital Assurance Corp (company name)

_____
(Signature of the Notary)

Lori J. Emerson
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires 5/27/21

LORI J. EMERSON
State of Florida-Notary Public
Commission # GG 106806
My Commission Expires
May 27, 2021

Directors of American Capital Assurance Corp.

By: _____

[Corporate Seal]

Print Name: CRAIG SHER

Title: BOARD MEMBER

Date: 4/5/21

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ 2021, by _____ (name of person) as _____ (type of authority; e.g., officer, trustee, attorney in fact) for _____ (company name).

_____
(Signature of the Notary)

_____
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires _____

Directors of American Capital Assurance Corp.

By: _____

[Corporate Seal]

Print Name: Christian D. Ruppel

Title: Director

Date: 4/5/2021

STATE OF Florida

COUNTY OF Pinellas

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 5th day of April 2021, by Christian D. Ruppel (name of person) as Director (type of authority; e.g., officer, trustee, attorney in fact) for American Capital Assurance Corp (company name).

KATHLEEN S. PODURGIEL
MY COMMISSION # GG 329260
EXPIRES: June 26, 2023
Bonded Thru Notary Public Underwriters

_____
(Signature of the Notary)

Kathleen S. Podurgiel
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires June 26, 2023

Directors of American Capital Assurance Corp.

By: Gilbert C Rohde Jr

[Corporate Seal]

Print Name: Gilbert C. Rohde JR.

Title: Director

Date: 4-6-2021

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this ____ day of _____ 2021, by _____ (name of person) as _____ (type of authority; e.g., officer, trustee, attorney in fact) for _____ (company name).

_____
(Signature of the Notary)

_____
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires _____