



**FILED**

JUN 29 2023

INSURANCE REGULATION  
Docketed by: OA

**OFFICE OF INSURANCE REGULATION**

**MICHAEL YAWORSKY**  
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 312190-23-CO

CAPACITY INSURANCE COMPANY  
\_\_\_\_\_ /

**FIRST CONSENT ORDER**  
**EXTENDING PERIOD OF PUBLIC ADMINISTRATIVE SUPERVISION**

THIS CAUSE came on for consideration as a result of discussions between the FLORIDA OFFICE OF INSURANCE REGULATION (“OFFICE”) and CAPACITY INSURANCE COMPANY (“CAPACITY”) subsequent to entering into a consent order placing it in public administrative supervision for a period of 120 days in Consent Order 307008-23-CO (“Supervision Order”), which was filed on March 3, 2023. Following a complete review of the entire record, and upon consideration thereof, and otherwise being fully advised in the premises, the OFFICE hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter and the parties herein.
2. CAPACITY is a domestic property and casualty insurer authorized to transact insurance business in the state of Florida pursuant to a Certificate of Authority issued by the OFFICE, pursuant to Chapter 624, Part III, Florida Statutes.
3. Paragraph 6 of the Supervision Order states as follows:
  6. CAPACITY has been cooperative with the OFFICE and agrees to be placed under administrative supervision for a period of 120 days from the date of execution of this Consent Order and to be subject to the provisions of Sections 624.80-.87, Florida Statutes, as if an order were issued by the OFFICE. Such administrative supervision may be extended in 60-day increments at the OFFICE’s sole discretion for as long as is necessary for the company to effectuate a smooth transition and orderly wind-down of its

remaining policies and liabilities. All terms of the transition and wind-down of business are to be included in a Runoff plan (“Plan”), which is subject to the OFFICE’s approval.

4. Administrative supervision of CAPACITY is currently set to expire on July 1, 2023.

5. Section 624.81(8), Florida Statutes, provides that the OFFICE “may extend the supervision in increments of 60 days or longer...if conditions justifying supervision exist.” The OFFICE has determined that grounds exist to extend the period of administrative supervision of CAPACITY.

6. As of the date of the execution of this Consent Order CAPACITY agrees that conditions exist that necessitate an additional period of administrative supervision.

7. CAPACITY hereby consents to an additional period of administrative supervision of 120 days from the date of execution of this Consent Order.

8. CAPACITY hereby knowingly and voluntarily waives the requirement of written notice under Section 624.81(1), Florida Statutes, and agrees that any timelines outlined in this Consent Order will be binding, notwithstanding any timelines provided for in Section 624.81, Florida Statutes.

9. CAPACITY agrees that all terms of the Supervision Order shall apply and remain in full force and effect, except as superseded by this Consent Order.

10. Any prior orders, consent orders, or corrective action plans that CAPACITY has entered into with the OFFICE prior to the execution of this Consent Order shall apply and remain in full force and effect for CAPACITY, except where provisions of such orders, consent orders, or corrective action plans have expired, other than the Supervision Order as indicated above in

paragraph 3; have been superseded by subsequent orders, consent orders, or corrective action plans; or are inconsistent with this Consent Order.

11. CAPACITY agrees that, upon execution of this Consent Order, failure to adhere to one or more of the terms and conditions contained herein may result, without further proceedings, in the OFFICE suspending, revoking, or taking other administrative action as it deems appropriate upon CAPACITY's Certificate of Authority in this state in accordance with Sections 120.569(2)(n) and 120.60(6), Florida Statutes.

12. CAPACITY affirms that all representations made herein are true and all requirements set forth herein are material to the issuance of this Consent Order.

13. In accordance with Section 624.87, Florida Statutes, CAPACITY agrees to pay to the OFFICE all expenses of supervision incurred subsequent to the date of execution of this Consent Order.

14. Except as provided in paragraph 13 above, each party to this action shall bear its own costs and fees.

15. CAPACITY expressly waives a hearing in this matter, the making of findings of fact and conclusions of law by the OFFICE, and all further and other proceedings herein to which it may be entitled by law or rules of the OFFICE. CAPACITY hereby knowingly and voluntarily waives all rights to challenge or to contest this Consent Order in any forum available to it, now or in the future, including the right to any administrative proceeding, state or federal court action, or any appeal.

16. The parties agree that this Consent Order shall be deemed to be executed when the OFFICE has signed and docketed a copy of this Consent Order bearing the signature of the authorized representative of CAPACITY, notwithstanding the fact that the copy may have been

transmitted to the OFFICE electronically. Further, CAPACITY agrees that the signature of its authorized representative as affixed to this Consent Order shall be under the seal of a Notary Public.

WHEREFORE, because the FLORIDA OFFICE OF INSURANCE REGULATION has determined that conditions justifying administrative supervision continue to exist, the administrative supervision of CAPACITY INSURANCE COMPANY is hereby agreed to be extended for 120 days from the date of execution of this Consent Order. All terms and conditions contained herein are hereby ORDERED, and all other provisions of Consent Orders 307008-23-CO remain unchanged by this Consent Order. FURTHER, all terms and conditions contained herein are hereby ORDERED.

DONE and ORDERED this 29<sup>th</sup> day of June, 2023.



A handwritten signature in blue ink, appearing to read "Michael Yaworsky". The signature is written in a cursive style and is positioned above a horizontal line.

Michael Yaworsky, Commissioner  
Office of Insurance Regulation

By execution hereof, CAPACITY INSURANCE COMPANY consents to entry of this Consent Order, 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 CAPACITY INSURANCE COMPANY to the terms and conditions of this Consent Order. The undersigned also certifies that they have provided the signature below voluntarily and without coercion, based upon the assistance of legal counsel for CAPACITY INSURANCE COMPANY.

CAPACITY INSURANCE COMPANY

By: *Andrew McGuire*

[Corporate Seal]

Print Name: Andrew McGuire

Title: President and CEO

Date: June 28, 2023

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of  physical presence

or  online notarization, this 28th day of June 2023, by Andrew McGuire

(name of person)

as President and CEO for Capacity Insurance Company

(type of authority; e.g., officer, trustee, attorney in fact)

(company name)

*Rita Marro*  
(Signature of the Notary)



RITA MARRO  
(Print, Type or Stamp Commissioned Name of Notary)

Personally Known X OR Produced Identification \_\_\_\_\_

Type of identification produced \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**COPIES FURNISHED TO:**

**ANDREW MCGUIRE**  
**CHIEF EXECUTIVE OFFICER**  
**CAPACITY INSURANCE COMPANY**  
1300 Sawgrass Corporate Parkway  
Suite 300  
Sunrise, Florida 33323  
Email: [amcquire@peak6.com](mailto:amcquire@peak6.com)

**FRED KARLINSKY, ESQ.**  
**SHAREHOLDER**  
Greenberg Traurig, P.A.  
401 East Las Olas Boulevard  
Suite 2000  
Fort Lauderdale, FL 33301  
Telephone: (954) 768-8278  
Email: [karlinskyf@gtlaw.com](mailto:karlinskyf@gtlaw.com)

**CHRISTIAN BRITO, ESQ.**  
**OF COUNSEL**  
Greenberg Traurig, P.A.  
401 East Las Olas Boulevard  
Suite 2000  
Fort Lauderdale, FL 33301  
Telephone: (954) 768-8279  
Email: [Christian.Brito@gtlaw.com](mailto:Christian.Brito@gtlaw.com)

**VIRGINIA CHRISTY, DEPUTY COMMISSIONER**  
**Property & Casualty**  
200 East Gaines Street  
Tallahassee, Florida 32399  
Email: [virginia.christy@flor.com](mailto:virginia.christy@flor.com)

**COURTNEY ALLYSON COLSTON-HAYES**  
**ASSISTANT GENERAL COUNSEL**  
Florida Office of Insurance Regulation  
200 East Gaines Street  
Tallahassee, Florida 32399  
Telephone: (850) 413-4174  
Email: [courtney.colston-hayes@flor.com](mailto:courtney.colston-hayes@flor.com)



**FILED**

**MAR 13 2023**

**INSURANCE REGULATION**  
Docketed by: AB

**OFFICE OF INSURANCE REGULATION**

**MICHAEL YAWORSKY**  
INTERIM COMMISSIONER

IN THE MATTER OF:

CASE NO.: 307008-23-CO

CAPACITY INSURANCE COMPANY  
\_\_\_\_\_ /

CONSENT ORDER FOR PUBLIC ADMINISTRATIVE SUPERVISION

THIS CAUSE came on for consideration upon review of the financial condition of CAPACITY INSURANCE COMPANY ("CAPACITY") by the FLORIDA OFFICE OF INSURANCE REGULATION ("OFFICE"). After a complete review of the entire record, and upon consideration thereof, and otherwise being fully advised in the premises, the OFFICE hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter and the parties herein.
2. CAPACITY is a domestic property and casualty insurer authorized to transact insurance business in the state of Florida pursuant to a Certificate of Authority issued by the OFFICE, pursuant to Chapter 624, Part III, Florida Statutes.
3. On or about October 7, 2022, CAPACITY began sending notices of nonrenewal to its existing book of business due uncertainty in the Florida property insurance marketplace, unacceptable financial results, and the substantial increase in the cost of reinsurance.
4. On or about January 15, 2023, CAPACITY notified the OFFICE that it would not be able to maintain the statutorily required surplus and would likely be filing an impaired financial

statement for year end 2022, due to be filed on March 1, 2023, but represented it would be able to effectuate a solvent run-off of its remaining liabilities.

5. The OFFICE has determined that grounds exist for CAPACITY to be placed in administrative supervision for the purpose of effectuating an orderly wind-down of its remaining liabilities, safeguarding its assets and protecting the interests of policyholders, claimants, and the public.

6. CAPACITY has been cooperative with the OFFICE and agrees to be placed under administrative supervision for a period of 120 days from the date of execution of this Consent Order and to be subject to the provisions of Sections 624.80-.87, Florida Statutes, as if an order were issued by the OFFICE. Such administrative supervision may be extended in 60-day increments at the OFFICE's sole discretion for as long as is necessary for the company to effectuate a smooth transition and orderly wind-down of its remaining policies and liabilities. All terms of the transition and wind-down of business are to be included in a Runoff Plan ("Plan"), which is subject to the OFFICE's approval.

7. The date by which CAPACITY must file its Plan with the OFFICE is hereby extended to the close of business on March 13, 2023. The Plan must include, but is not limited to, the following:

a. A demonstration in sufficient detail of CAPACITY's ability to fund its operations in amounts sufficient to pay all policyholder claims and provide for the payment of other liabilities as they become due;

b. A demonstration that all policies currently in force are covered by reinsurance or a plan to otherwise place the policies with another insurer;

c. A schedule of all outstanding claims to include date of loss, initial reserve amount, and current reserve amount as of February 28, 2023, and such further claim information as may be requested by the OFFICE;



d. A demonstration that all risks in place on May 31, 2023, would be covered by reinsurance or otherwise divested by May 31, 2023; and

e. Such other information as the OFFICE requested in its letters to CAPACITY dated January 20, 2023, and February 17, 2023.

8. CAPACITY will remain in administrative supervision for the purpose of implementing its Plan.

9. CAPACITY may not conduct the following activities during the period of supervision, without prior approval by the Office, as set forth in Section 624.83, Florida Statutes:

- a. Dispose of, convey, or encumber any of its assets or its business in force;
- b. Withdraw any of its bank accounts;
- c. Lend any of its funds;
- d. Invest any of its funds;
- e. Transfer any of its property;
- f. Incur any debt, obligation, or liability;
- g. Merge or consolidate with another company;
- h. Enter into any new reinsurance contract or treaty;
- i. Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract of insurance, except for nonpayment of premiums due;
- j. Release, pay, or refund premium deposits, accrued cash or loan values, or other reserves on any insurance policy or certificate, with the exception of refunds of unearned premiums resulting from cancellations requested by a policyholder; or
- k. Make any material change in management.

10. CAPACITY hereby knowingly and voluntarily waives the requirement of written notice under Section 624.81(1), Florida Statutes, and therefore agrees that any timelines outlined in

this Consent Order will be binding, notwithstanding any timelines provided for in Section 624.81, Florida Statutes.

11. CAPACITY is not currently writing new business and may only renew policies where required by statute.

12. CAPACITY shall not enter into any new or amend any existing agreements with any affiliate(s), as defined in Section 631.011(1), Florida Statutes, without prior written consent of the OFFICE.

13. CAPACITY shall not waste assets or expend funds in excess of \$10,000, other than in the ordinary course of business, without the prior written consent of the OFFICE. If, after approval of a transaction over \$10,000 has been granted by the OFFICE, the OFFICE becomes aware of additional facts or circumstances that materially affect such approval, the OFFICE reserves the right to require such corrective action as it may deem necessary or advisable. Transactions in the ordinary course of business shall include, but not be limited to, payment of claims, or settlement of disputed or litigated claims. CAPACITY need not obtain prior written approval for payment of claims, or settlement of disputed or litigated claims over the amount of \$10,000; however, the OFFICE may retrospectively review such payments.

14. Within five business days of execution of this Consent Order, CAPACITY shall provide a list of any known pending litigation in which CAPACITY is named as a party. CAPACITY agrees to provide the OFFICE an updated list on a monthly basis.

15. The OFFICE may appoint a Deputy Supervisor pursuant to Section 624.87, Florida Statutes. Such Deputy Supervisor shall represent the OFFICE and shall be under the control of the OFFICE.

16. CAPACITY shall be responsible for administrative supervision expenses pursuant to Section 624.87, Florida Statutes, unless CAPACITY shows that payment of administrative

supervision expenses will have an adverse impact on its financial condition and jeopardize its rehabilitation. Otherwise, CAPACITY shall reimburse the OFFICE for any reasonable expenses of supervision and will pay directly all contractors, including any Deputy Supervisor retained by the OFFICE, for assistance with the administrative supervision.

17. CAPACITY agrees that the OFFICE and the Department of Financial Services (hereinafter referred to as the "Department") may have examiners or other designees present at the offices of CAPACITY to obtain independent information. Further, the OFFICE may have examiners or other designees to supervise activities, verify transactions, verify the conditions and status of CAPACITY and its progress in developing and complying with its Plan, and perform any other duty as designated by the OFFICE. CAPACITY shall cooperate with and facilitate the presence and work of such examiners or designees.

18. Administrative supervision is confidential as provided in Section 624.82, Florida Statutes, unless otherwise specified within that statute. The OFFICE finds, and CAPACITY agrees, that it is in the best interest of its policyholders and the public to make this Consent Order public pursuant to Section 624.82(4), Florida Statutes. This finding does not affect the confidentiality of any other orders, notices, correspondence, reports, records, or other information in the possession of the OFFICE relating to the administrative supervision of CAPACITY, including the Plan, which will remain confidential pursuant to Section 624.82(1), Florida Statutes.

19. CAPACITY affirms that all explanations, representations, statements, and documents provided to the OFFICE in connection with this Consent Order including all attachments and supplements thereto, are true and correct and are material to the issuance of this Consent Order.

20. CAPACITY expressly waives its rights to a hearing in this matter, the making of findings of fact and conclusions of law by the OFFICE, and all further and other proceedings herein to which it may be entitled by law or rules of the OFFICE. CAPACITY hereby knowingly and

voluntarily waives all rights to challenge or contest this Consent Order in any forum available to it, now or in the future, including the rights to any administrative proceeding, state or federal court action, or any appeal.

21. CAPACITY acknowledges that the execution of this Consent Order does not prohibit other administrative action upon the Certificate of Authority of CAPACITY deemed appropriate by the OFFICE in accordance the Florida Insurance Code or with Sections 120.569(2)(n), 120.60(6), and 631.031, Florida Statutes.

22. Any prior Orders of the OFFICE, Consent Orders, or corrective action plans that CAPACITY has entered into with the OFFICE prior to the issuance of this Consent Order, shall remain in full force and effect for CAPACITY, except where provisions of such Orders, Consent Orders, or corrective action plans have expired; have been superseded by subsequent Orders, Consent Orders, or corrective action plans; or are inconsistent with this Consent Order.

23. Any deadlines, reporting requirements, other provisions, or requirements set forth in this Consent Order may be altered or terminated by written approval of the OFFICE. Such written approval by the OFFICE is subject to statutory or administrative regulation limitations.


24. CAPACITY agrees that it has entered into this Consent Order voluntarily, without coercion from the OFFICE, or any agent, employee, or designee of the OFFICE, and that CAPACITY has obtained legal counsel prior to entering into this Consent Order.

25. The parties agree that this Consent Order shall be deemed to be executed when the OFFICE has signed and docketed a copy of this Consent Order bearing the signature of CAPACITY or its authorized representative, notwithstanding the fact that the copy may have been transmitted to the OFFICE electronically. Further, CAPACITY agrees that its signature, as affixed to this Consent Order, shall be under the seal of a Notary Public.

WHEREFORE, the agreement between CAPACITY INSURANCE COMPANY and the OFFICE, the terms and conditions of which are set forth above, is APPROVED. FURTHER, all terms and conditions contained herein to place CAPACITY INSURANCE COMPANY in administrative supervision are hereby ORDERED. FURTHER, all terms and conditions contained herein are hereby ORDERED.

DONE and ORDERED this 3<sup>rd</sup> day of March 2023.



  
Michael Kaworsky, Interim Commissioner  
Office of Insurance Regulation

By execution hereof, CAPACITY INSURANCE COMPANY consents to entry of this Consent Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that he or she has the authority to bind CAPACITY INSURANCE COMPANY to the terms and conditions of this Consent Order. The undersigned also certifies that he or she has provided the signature below voluntarily and without coercion, based upon the assistance of legal counsel for CAPACITY INSURANCE COMPANY.

CAPACITY INSURANCE COMPANY

By: Andrew McGuire

Print Name: Andrew McGuire

Title: CEO

Date: 03/03/2023

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing affidavit was sworn to and subscribed before me this 3 day of March, 2023,

by Andrew McGuire as CEO  
(Name of person) (Type of authority... e.g. officer, trustee attorney in fact)

for Capacity Insurance Company  
(Company name)

Elizabeth Collazo

(Signature of notary)

Elizabeth Collazo

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



Personally Known \_\_\_\_\_ OR Produced Identification Driver's License

Type of identification produced \_\_\_\_\_

My Commission Expires June 27, 2023

COPIES FURNISHED TO:

ANDREW MCGUIRE  
CHIEF EXECUTIVE OFFICER  
CAPACITY INSURANCE COMPANY  
1300 Sawgrass Corporate Parkway  
Suite 300  
Sunrise, Florida 33323  
Email: amcquire@peak6.com

FRED KARLINSKY, ESQ.  
SHAREHOLDER  
Greenberg Traurig, P.A.  
401 East Las Olas Boulevard  
Suite 2000  
Fort Lauderdale, FL 33301  
Telephone: (954) 768-8278  
Email: karlinskyf@gtlaw.com

CHRISTIAN BRITO, ESQ.  
OF COUNSEL  
Greenberg Traurig, P.A.  
401 East Las Olas Boulevard  
Suite 2000  
Fort Lauderdale, FL 33301  
Telephone: (954) 768-8279  
Email: Christian.Brito@gtlaw.com

VIRGINIA CHRISTY, DIRECTOR  
Property & Casualty Financial Oversight  
200 East Gaines Street  
Tallahassee, Florida 32399  
Email: virginia.christy@fleur.com

COURTNEY ALLYSON COLSTON-HAYES  
ASSISTANT GENERAL COUNSEL  
Florida Office of Insurance Regulation  
200 East Gaines Street  
Tallahassee, Florida 32399  
Telephone: (850) 413-4174  
Email: courtney.colston-hayes@fleur.com