

STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT

)ss:

COUNTY OF HUGHES ) SIXTH JUDICIAL CIRCUIT

\*\*\*\*\*

STATE OF SOUTH DAKOTA, EX REL. )  
LARRY DEITER, DIRECTOR OF )  
INSURANCE OF THE STATE OF SOUTH )  
DAKOTA, )

32CIV18-125

APPLICATION NO. 8

Petitioner, )

FOR APPOINTMENT OF SPECIAL  
REFEREE FOR CLAIMS AND  
APPROVAL OF PROCEDURES  
GOVERNING REFEREE'S PROOF  
OF CLAIM ADJUDICATION

v. )

RELIAMAX SURETY COMPANY, )

Respondent. )

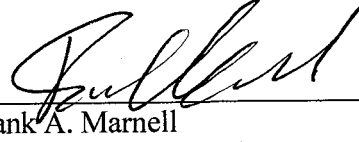
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COMES NOW Larry Deiter, Liquidator ("the Liquidator") of ReliaMax Surety Company ("ReliaMax Surety"), and hereby applies to the Court for an Order appointing a Special Referee and approval of the proposed Procedures Governing Referee's Proof of Claim Adjudication, and for that purpose states to the Court as follows:

- 1) Appointment of a Special Referee and approval of procedures for administration of disputed claims is necessary for the Liquidator to complete his duties as court-appointed Liquidator of ReliaMax Surety Company, pursuant to SDCL § 58-29B *et seq.* An affidavit in support of this proposition is attached as Exhibit A to this Application.
- 2) Further, the Liquidator respectfully requests that this Court approve the Procedures Governing Referee's Proof of Claim Adjudication, attached and incorporated herein by reference as Exhibit B.
- 3) The Liquidator respectfully requests that this Court to appoint Jack H. Hieb, Special Referee in this matter pursuant to SDCL § 58-29B-120. Mr. Hieb's credentials are Attached as Exhibit C.

WHEREFORE, the Liquidator respectfully requests that this Application be in all respects granted and that the Court enter its Order confirming the Liquidator's request for the appointment of a Special Referee and adoption of procedures for Proof of Claim adjudication.

Respectfully submitted this 21<sup>st</sup> day of February, 2019.

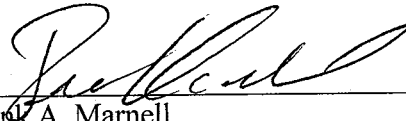


Frank A. Marnell  
Attorney for Liquidator of ReliaMax Surety  
124 S. Euclid Avenue, 2<sup>nd</sup> Floor  
Pierre, SD 57501  
(605) 773-3563

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that copy of the Liquidator's Application No. 8 was served upon ReliaMax Surety Company in Liquidation via regular U.S. Mail, postage prepaid, to the company's mailing address at 3801 W. Technology Circle, Sioux Falls, SD 57106.

Dated this 21<sup>st</sup> day of February, 2019 in Pierre, South Dakota.



Frank A. Marnell  
Attorney for Liquidator of ReliaMax Surety  
124 S. Euclid Avenue, 2<sup>nd</sup> Floor  
Pierre, SD 57501  
(605) 773-3563

STATE OF SOUTH DAKOTA )  
) ss:  
COUNTY OF HUGHES )  
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IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, EX REL. ) 32CIV18-125  
LARRY DEITER, DIRECTOR OF )  
INSURANCE OF THE STATE OF )  
SOUTH DAKOTA )

Petitioner, ) **AFFIDAVIT OF MICHAEL FITZGIBBONS**  
) **IN SUPPORT OF LIQUIDATOR'S**  
v. ) **APPLICATION NO. 8**  
)

RELIAMAX SURETY COMPANY )  
Respondent. )

STATE OF SOUTH DAKOTA )  
) ss:  
COUNTY OF MINNEHAHA )

Michael FitzGibbons, of lawful age and being first duly sworn states as follows:

1. I am the duly appointed Special Deputy Liquidator of ReliaMax Surety Company ("ReliaMax"). Under the general supervision of the Court and the Liquidator, my staff and I oversee the day-to-day operations of ReliaMax to timely and efficiently wind down the ReliaMax liquidation estate. I am very knowledgeable about the current affairs, needs, and financial condition of ReliaMax.
2. I have reviewed and support the Liquidator's Application No. 8 and its exhibits consisting of this Affidavit and agreements with recommended appointment of a Special Referee and the Procedures Governing Referee's Proof of Claim Adjudication ("Procedures").
3. The appointment of a Special Referee and approval of the Procedures provided in the Liquidator's Application No. 8 are required for the liquidation of the estate which the court should approve for the reasons listed below.

**Appointment of Special Referee**

4. On June 27, 2018 this Court issued an Order commencing the liquidation of ReliaMax Surety and appointing Larry Deiter, as Liquidator. Pursuant to the requirements of SDCL § 58-29B-1, et seq, the Insurers Supervision, Rehabilitation, and Liquidation Act ("the Act"), the Liquidator notified all known creditors and potential claimants that they were entitled to submit a claim against ReliaMax Surety and established a claim submission cutoff date of December 31, 2018.

**Exhibit A**

5. The claim submission cutoff date has passed, and as the Special Deputy Liquidator, I have begun reviewing Proof of Claim forms submitted by claimants in accordance with the Act. In my opinion, one or more claimants will dispute the claim determination.
6. I believe it is appropriate and necessary to appoint Mr. Jack H. Hieb as Special Referee in this matter pursuant to SDCL § 58-29B-120 based on Mr. Hieb's qualifications and expertise with regard to the subject matter of the submitted claims.
7. Furthermore, I believe it is appropriate to approve the compensation of Mr. Hieb at the rate of \$275 per hour, with responsibility for payment to be allocated between the Liquidator and claimant as specified in the Procedures. The appointment of the Special Referee is subject only to this Court's approval, which is requested.

#### Approval of Procedures

8. The Procedures, as attached to the Liquidator's Application No. 8 as Exhibit B, set forth the process by which the Special Referee should hold hearings and adjudicate disputed claims pursuant to SDCL § 58-29B-120.
9. I believe the Procedures will facilitate a neutral, fair, and efficient forum to resolve disputed claims as authorized in the statutes. Creditors of ReliaMax should benefit from their use.
10. I believe it is appropriate and necessary to approve the Procedures to govern the Special Referee in adjudicating disputed Proofs of Claim. The approval of the Procedures is subject only to this Court's approval, which is requested.

Further Affiant sayeth not.

Dated this 21<sup>st</sup> day of February, 2019.



\_\_\_\_\_  
Michael J. FitzGibbons, Special Deputy Liquidator  
ReliaMax Surety Company, in Liquidation

Subscribed and sworn to before me this 21 day of February, 2019.



\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires: 7/17/2020



**PROCEDURES GOVERNING SPECIAL REFEREE'S  
PROOF OF CLAIM ADJUDICATION  
RELIAMAX SURETY COMPANY, IN LIQUIDATION**

These procedures contained herein ("Procedures") shall govern the Special Referee's participation in the administration of claims against ReliaMax Surety Company (the "Company"), in accordance with SDCL § 58-29B-120 of the Insurers Supervision, Rehabilitation, and Liquidation Act, SDCL § 58-29B-1 *et seq.* (the "Act"). Creditors who have filed Proof of Claim forms in compliance with the Act shall follow these Procedures to engage a Special Referee to perform review of Final Claim Determinations made by the Liquidator of the Company. These Procedures are designed to facilitate the timely, fair, and efficient adjudication of claims against the Company.

**1. Liquidator's Claim Determination; Reconsideration Upon Claim Denial.**

The Liquidator shall review each claim and determine the following:

- A. The claims class of each claim pursuant to SDCL § 58-29B-124, and
- B. The amount of each claim, if the claim is not a subordinate claim.

If the Liquidator determines that the estate's assets are insufficient to provide for a distribution, in whole or in part, for claims below a certain priority class, the Liquidator is not required to make a determination as to the value of any claim if it is determined that the claim in question has a priority equal to or lower to the first priority class for which no funds will be available for distribution. These are "subordinate claims" in B above where funds will not be available for class payment in any instance.

Pursuant to SDCL § 58-29B-119, the Liquidator shall provide written notice of the determination to the Claimant directly affected by the Liquidator's claim determination, called a "Claim Determination". A Claimant may submit detailed written objections to the Liquidator regarding a Claim Determination within 60 days of the date of mailing by the Liquidator. If the Claimant does not timely submit detailed written objections with the Liquidator, the Claimant may not further object to the Claim Determination.

Upon receipt of the written objections, the Liquidator will consider the objections and may or may not revise the Claim Determination. Following the Liquidator's reconsideration, the Liquidator shall provide written notice to the Claimant whether or not the Liquidator revised the Claim Determination, called a "Final Claim Determination".

**2. Referral of Liquidator's Final Claim Determination to Special Referee.**

If a Final Claim Determination is not to a Claimant's satisfaction, a Claimant may submit a "Request for Referee Review" within 15 days from the date of mailing of the Liquidator's Final Claim Determination. If the Claimant does not timely submit a Request for Referee Review, the Claimant may not further object to the Liquidator's Final Claim Determination. The Special Referee shall be the same appointed by the Court pursuant to SDCL § 58-29B-120.

**Exhibit B**

A Request for Referee Review shall include a non-refundable deposit from the Claimant of \$750 for each Proof of Claim in SDCL § 58-29B-124 subsections (1)-(3), and a non-refundable deposit of \$1,500 for each Proof of Claim in SDCL § 58-29B-124 subsections (4)-(8). This deposit must be remitted with the Request for Referee Review. Failure of the Claimant to remit this non-refundable deposit will result in the Special Referee dismissing a referral and allowing the claim in the amount of the Liquidator's Final Claim Determination. Aside from the non-refundable deposit by Claimants, the cost of the Special Referee under these Procedures shall be borne by the Company.

Upon receipt of a Request for Referee Review with the appropriate deposit, the matter shall be referred to the Special Referee by a Notice of Referral. The Notice of Referral shall include:

- A. The name of the Claimant and insured, if different,
- B. The POC number,
- C. The Liquidator's determination of claim priority pursuant to § 58-29B-124,
- D. The Liquidator's approved amount,
- E. The amount claimed, and
- F. A brief narrative from the Liquidator as regards the nature of the claim.

The Liquidator shall provide copies of the Notice of Referral to the Claimant, the Special Referee, and any other parties the Liquidator deems necessary.

### **3. Setting the Matter for Hearing; Exchange of Documentation.**

Within 30 days of receipt by the Special Referee of a Notice of Referral, the Special Referee shall set the matter for hearing and so notify the Liquidator in writing. The Liquidator shall then provide written notice of the hearing to the Claimant and any other parties directly affected not less than 10 nor more than 30 days before the date of the hearing pursuant to SDCL § 58-29B-120, unless the Claimant otherwise consents in writing to a different time for notice.

The Liquidator shall also make available to the Claimant a copy of the Liquidator's claim file or such portions thereof as are requested by the Claimant. If a hard copy of the claim file is requested by the Claimant, the Claimant shall pay the Liquidator's reasonable costs for copying and mailing the claim file within 10 days from the date of mailing of the claim file. The claim file shall include the following:

- A. The Company's original claim file(s),<sup>1</sup>
- B. The Claimant's Proof of Claim form with any accompanying or clarifying material,
- C. A statement of the amount of the claim and coverage,
- D. The Liquidator's Claim Determination,
- E. Claimant's objections to the Claim Determination,
- F. The Liquidator's Final Claim Determination,
- G. The Claimant's Request for Referee Review,

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<sup>1</sup> The Liquidator's claim file will be redacted to preserve any attorney client communications and attorney work product.

H. The Liquidator's referral of the claim to the Special Referee.

The Liquidator shall provide the claim file to the Special Referee and the Claimant. The Liquidator shall provide a copy of these Procedures to the Claimant and to all other parties directly affected, if any.

**4. The Hearing.**

The “hearing” referred to in the Act shall consist of the submission all written material that either party wishes to furnish to the Special Referee and shall commence on the date set by the Special Referee, called the “Commencement Date”. Unless determined appropriate by the Special Referee, in the Special Referee’s sole discretion, no meeting or other session at which the parties or their legal counsel are present in person or by telecommunications equipment shall be held. If meetings or sessions are held, the Special Referee shall determine in his sole discretion the procedures to be followed. Unless otherwise determined by the Special Referee in his sole discretion, any meetings or other proceedings before the Special Referee will be conducted at the office of the Special Referee. The Special Referee may, in his discretion, receive as evidence any written material concerning the claim in controversy which is deemed to be relevant and which provides competent material evidence relating to the claim in dispute. In his sole discretion, Special Referee may request materials or responses from any party and establish such procedures and processes as are necessary.

The Claimant shall have 30 days following the Commencement Date to provide any additional written material in support of the Claimant's position to the Special Referee with a copy to the Liquidator's attorney. The Liquidator shall have 20 days thereafter to further supplement the claim file with written material by submitting the same to the Special Referee with a copy to the Claimant or Claimant's designate. Such written material shall include any arguments and legal authority supporting the parties' positions.

**5. Special Referee's Recommendation.**

Following submission of all written information to the Special Referee, the Special Referee shall close the record and make a determination of the claim, *de novo*, on the submitted record. The Special Referee will make written findings of fact and a determination of the claim in a document called the “Special Referee’s Recommendation” regarding that claim. The Special Referee’s Recommendation shall be filed by the Special Referee with the Clerk of Courts, Sixth Judicial Circuit Court, Pierre, South Dakota. If the Clerk of Court’s office will allow it, the filing of the Special Referee’s Recommendation may be accomplished by e-filing into the case docket number associated with the liquidation of ReliaMax Surety Company while providing a copy to the Sixth Circuit Court Judge. The Special Referee shall also provide copies to the Claimant, the Liquidator and any other affected party at the time of filing.

**6. Court Approval of Special Referee's Recommendation; Objections.**

The Liquidator and the Claimant shall have 20 days following the filing of the Special Referee's Recommendation to object. Any objections shall become part of the record to be submitted to the

Liquidation Court along with the Special Referee's Recommendation. The Liquidation Court shall accept and approve the Special Referee's Recommendation if it is supported by competent, material, and substantive evidence appearing in the record and if it was made in accordance with these Procedures and South Dakota Law. The Liquidation Court may modify the Special Referee's Recommendation so that it complies with these standards and South Dakota Law. The Liquidation Court's order accepting or modifying the Special Referee's Recommendation shall be entered and a copy provided to the Special Referee, the Liquidator, the Claimant, and any other affected parties. For purposes of appeal, the Liquidation Court's order shall be a final order.

**7. Legal Counsel.**

In matters before the Special Referee, legal counsel licensed to practice law and in good standing with the bar of any United States jurisdiction may represent a Claimant or any other parties directly affected to the extent allowed by South Dakota Law (including applicable sale tax requirements regarding legal representation in South Dakota).

**8. Compromises.**

At any time a claim is pending before the Special Referee, the Liquidator and Claimant, together with any other parties directly affected, may compromise the claim and withdraw the claim from consideration by the Special Referee, whereupon the agreed disposition of the claim will become final and binding as an approved claim in the liquidation proceedings.

**9. General.**

As used in these Procedures:

- A. "Liquidation Court" shall mean the Honorable Patricia DeVaney, Sixth Judicial Court, Hughes County, South Dakota, and/or her successors in that position presiding over that proceeding Case No. 32CIV18-125;
- B. "Liquidator" shall mean Larry Deiter or his successors, or Michael J. FitzGibbons, as Special Deputy Liquidator of ReliaMax Surety Company or his successors;
- C. "Company" shall mean ReliaMax Surety Company;
- D. "Claimant" shall mean the person or entity asserting a POC against the Company;
- E. "Special Referee" shall mean the Special Referee appointed by the Liquidation Court pursuant to SDCL § 58-29B-120;

All notices and other communications provided for herein shall be in writing and shall be sent by first class mail postage prepaid. If any party is represented by legal counsel, such legal counsel shall be entitled to receive copies of any notices provided for herein, and the parties shall have the right to appear by counsel. In lieu of notices and communications sent by U.S. Mail, electronic communication may be used upon agreement between the Special Referee and the other affected parties to the liquidation on a case-by-case basis, including Claimants and their counsel and the Special Deputy Liquidator and his counsel. Unless otherwise specifically indicated, all time periods provided for herein shall be calculated in accordance with the South Dakota Rules of Civil Procedure and shall be subject to extension by the Special Referee for good cause shown.



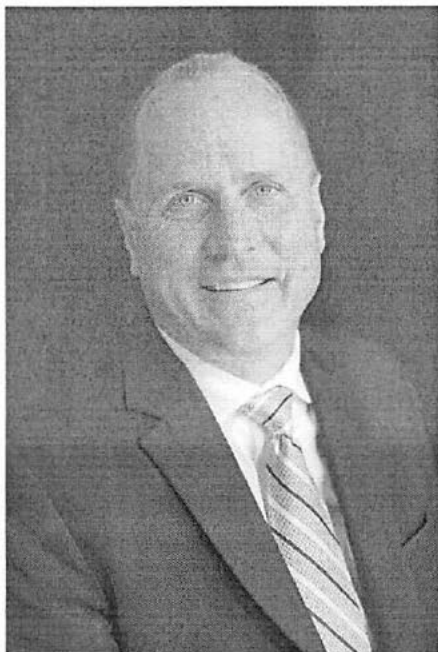
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## Jack H. Hieb

Partner



Jack H. Hieb was born and raised in South Dakota, growing up in Delmont. After graduating from Delmont High School, Jack attended Augustana College in Sioux Falls, South Dakota, where he obtained his Bachelor of Arts degree in government and international affairs. Jack also competed in intercollegiate track and cross country at Augustana College. Following the completion of his undergraduate studies, Jack enrolled at the University of South Dakota School of Law, in Vermillion, South Dakota. His law school achievements included: Dean's

**Exhibit C**

List, Sterling Honor Graduate, and Law School Foundation's Distinguished Scholar.

Prior to joining the Richardson Law Firm, Jack practiced law with Lee Schoenbeck in Webster, South Dakota and served a four year term as the Day County State's Attorney. Jack has been a partner at Richardson Law Firm since 2000.

Jack and his wife Jennifer have three sons, Austin, Griffin and Trevor.

### **Areas of Practice**

- Commercial Litigation
- Construction Law
- Indian Law
- Insurance Litigation
- Water Law

### **Bar Admissions**

- South Dakota State Bar
- United States District Court, District of South Dakota
- United States Court of Appeals, Eighth Circuit
- Sisseton Wahpeton Oyate Tribal Court
- Standing Rock Tribal Court

### **Professional Associations & Memberships**

- Brown County Bar Association
- South Dakota Bar Association
- Order of Barristers
- Association of Defense Trial Attorneys
- South Dakota Defense Lawyers Association

- Defense Research Institute

## Professional Committees & Boards

- Editorial Advisory Committee 2019 – National Conference of Bar Examiners (NCBE)
- South Dakota Board of Bar Examiners (2008-present)
- Board of Directors – South Dakota Golf Association (SDGA) (2019-present)
- Board of Directors – SDGA Junior Golf Foundation (2019-present)
- South Dakota Trial Academy Faculty
- South Dakota Board of Pardons & Paroles (2009-2013)
- South Dakota Board of Bar Commissioners (2005-2008)
- South Dakota Civil Pattern Jury Instruction Committee (1998)
- South Dakota Bar Association Negligence and Tort Law Committee (1996-1997)

## Awards & Recognition

- Great Plains Super Lawyer
- Rated “AV Preeminent” by Martindale-Hubbell
- Chambers USA
- 2016 WWCA Dan Gable “America Needs Wrestling Award”