

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF HUGHES

)  
)ss:  
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SIXTH JUDICIAL CIRCUIT

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

32CIV18-125

APPLICATION NO.1

Petitioner,

FOR ORDER APPROVING  
COMPENSATION OF EMPLOYEES  
AND OTHER PERSONS EMPLOYED  
BY THE LIQUIDATOR

v.

RELIAMAX SURETY COMPANY,

Respondent.

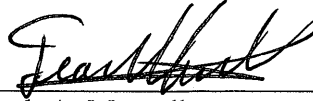
\*\*\*\*\*

COMES NOW Larry Deiter, Liquidator ("the Liquidator") of ReliaMax Surety Company ("ReliaMax"), and hereby applies to the Court for an Order approving compensation as follows:

1. This application is made pursuant to SDCL § 58-29B-49(3) requesting Court approval of the compensation levels of employees, consultants, and other professionals employed by the Liquidator in the pursuit of his duties under SDCL Ch. 58-29B;
2. Pursuant to SDCL § 58-29B-49(2) and (3), the Liquidator has the power to employ individuals as the Liquidator considers necessary to assist in the liquidation and fix compensation with Court approval;
3. The Liquidator has determined that the engagement of the individuals and organizations in this application are necessary for the liquidation to proceed;
4. Attached hereto as Exhibits A, B, C, and D, incorporated herein by reference, are the applicable engagement agreements and compensation levels for the Court's review;
5. The Liquidator, pursuant to SDCL § 58-29B-49(1), has appointed Michael FitzGibbons of FitzGibbons & Company as Special Deputy Liquidator on June 27, 2018 and has executed an engagement agreement included as Exhibit A to this application;
6. ReliaMax's compensation of employees is included as Exhibit B to this application;
7. The Liquidator and Special Deputy Liquidator engaged outside counsel to assist in the liquidation process which is included as Exhibits C and D to this application;
8. The Liquidator will be providing an Order of Approval regarding this Application No. 1 for the Court's consideration without necessity of a hearing unless the Court should require;

WHEREFORE the Liquidator respectfully requests that the court enter an Order of Approval for the compensation levels as contained this application.

Respectfully submitted this 30<sup>th</sup> day of July, 2018.



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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. 1 was served upon ReliaMax Surety Company in Liquidation via regular U.S. Mail, postage prepaid, to the company's mailing address at 2300 E. 54<sup>th</sup> Street North, Sioux Falls, SD 57104.

Dated this 30<sup>th</sup> day of July, 2018 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

**AGREEMENT FOR LIQUIDATION SERVICES BETWEEN  
LARRY DEITER, AS LIQUIDATOR OF RELIAMAX SURETY COMPANY., AND  
FITZGIBBONS & COMPANY, INC.**

Larry Deiter, in his capacity as Liquidator of ReliaMax Surety Company (hereinafter "Liquidator"), and Michael FitzGibbons, on behalf of FitzGibbons & Company, Inc. (hereinafter "F&C") hereby agree to the appointment by the Liquidator of Michael FitzGibbons as Special Deputy Liquidator (hereinafter "Special Deputy") pursuant to SDCL § 58-29B-49(1) and that the Special Deputy utilize professionals of F&C to assist in the liquidation of the ReliaMax Surety Company (Company). The following is agreed between the parties concerning services to be performed in the liquidation of the Company

**Section I. Scope of Work:**

Michael J. FitzGibbons, with the assistance of F&C, will perform services under SDCL Ch. 58-29B as a Special Deputy Liquidator at the pleasure of the Liquidator.

The services to be performed by F&C shall not be assigned, sublet or transferred without the prior written approval of the Liquidator nor shall F&C assign any monies due or monies to become due under any contract with the Liquidator pertinent to these specifications, without prior approval of the Liquidator. This is a mandatory requirement; it will not be waived for any reason.

**Section II. Payment Provisions:**

F&C will submit monthly invoices for services rendered and costs incurred in connection with this engagement. Each invoice will contain a brief narrative concerning the services rendered and will be submitted to the Liquidator, or the Liquidator's designee, for approval. Payment will be made promptly following the Liquidator's approval from the assets of the Company.

The following rates for services rendered by F&C are agreed:

FEES:

Michael J. FitzGibbons	\$275.00/hour
Other Staff	\$125.00 to \$265.00/hour

EXPENSES:

Airfare	Lowest Available Coach Fare
Taxi/Livery	Actual Cost
Car Rental	Actual cost
Rail	Actual Cost
Lodging	Actual cost
Meals & Incidentals	Actual or Per Diem based on Federal Register, as agreed by Liquidator
Long Distance	Actual cost

Postage	Actual cost
Express delivery	Actual cost
Photocopies	10¢ per page

Rates not listed above for services are agreed once approved by the Liquidator.

**Section III. Independent Contractor and Tax Duties:**

While performing the services hereunder, F&C is acting as an independent contractor and not an officer, agent or employee of the Division of Insurance or the State of South Dakota. F&C has no authority to enter into contracts or agreements on behalf of the Division of Insurance. This Agreement does not create a partnership between the parties.

F&C understands that F&C is responsible to pay, according to law, F&C's income tax. If F&C is not a corporation, F&C further understands that F&C may be liable for self-employment (social security) tax, to be paid by F&C according to law.

**Section IV. Hold Harmless and Indemnification:**

F&C agrees to indemnify and hold harmless the Liquidator and the State of South Dakota, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require F&C to be responsible for or defend against claims or damages arising from the errors or omissions of the Liquidator and the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of F&C, unless such errors or omissions resulted from the acts or omissions of F&C. Nothing in this Agreement is intended to impair the insurance coverage or any subrogation rights of F&C's insurers.

**Section V. Insurance:**

F&C hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide the Liquidator with evidence thereof upon request. F&C hereby agrees to maintain errors and omissions insurance in the amount of \$1 million for each occurrence and \$2 million in the aggregate.

**Section VI. Term of the Agreement:**

The term of this Agreement shall become effective upon the commencement of services under this agreement but no earlier than June 27, 2018 and shall terminate upon completion of the foregoing services, unless sooner terminated pursuant to the terms hereof, but in no event later than June 30, 2023.

**Section VII. Termination:**

This Agreement may be terminated by the Liquidator at any time. F&C may terminate this Agreement with 30 days written notice.

**Section VIII. Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto and subject to the approval of both the Liquidator and F&C.

**Section IX. Payments Include All Taxes:**

Payments made to F&C as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against F&C by reason of this Agreement.

**Section X. South Dakota Law Controlling, Venue:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance. In the event that litigation should arise concerning the validity or interpretation of any provision of this Agreement, venue over such litigation shall reside in the Circuit Court of the County of Hughes, South Dakota.

**Section XI. Non-waiver**


The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.


**Section XII. F&C Declaration**

F&C declares that F&C has complied with all federal, state, and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

**LIQUIDATOR:**

**F&C:**

  
\_\_\_\_\_  
Larry Deiter  
Liquidator, ReliaMax Surety Company.

  
\_\_\_\_\_  
Michael FitzGibbons  
FitzGibbons & Company, Inc.

Dated: 7/9/18

Dated: 7-3-18

**Compensation of Employees of  
ReliaMax Surety Company (in Liquidation)**

At the date of liquidation, the annualized salary of ReliaMax employees was zero (\$0) as all employees were on the holding company payroll. On July 7, 2018 the payroll was switched to ReliaMax which replicated the salaries and benefits for all employees. The annualized salary for ReliaMax as of July 8, 2018 was \$2,546,566.

As part of the ReliaMax compensation package to its employees the Liquidator will pay a 20% retention bonus quarterly and at termination a 30 day severance for employees. The Liquidator will continue to employ these individuals as needed and will, in its financial reports to the Court, disclose these payments from the liquidation estate.. An employee who voluntarily terminates his or her employment or is terminated for cause is not eligible for severance or retention pay. It is the finding of the Liquidator and Special Deputy Liquidator that retention bonus and severance pay is a reasonable and necessary expense to maintain employment by the company in liquidation until services are no longer needed.

Alan D. Slattery  
Robert L. Nefsky  
Peter C. Wegman  
Daniel E. Klaus \*  
Timothy F. Clare  
Timothy R. Engler  
Timothy L. Moll  
Jane F. Langan Mach  
Mark A. Fahleson  
Brian S. Kruse  
Troy S. Kirk \*  
David J. A. Bargen  
Ramzi J. Hynek  
Andrew S. Pollock  
Benjamin E. Moore  
Tara Tesmer Paulson  
Mark R. Richardson  
Sheila A. Bentzen ‡  
Alyssa P. Martin ♦  
Jaydon McDonald Pence  
Anthony M. Aerts  
Max L. Rodenburg  
Alex M. Lierz

OF COUNSEL  
Donald L. Dunn  
Rick D. Lange

RETIRED  
James E. Rembolt  
David A. Ludtke

\* also admitted in Colorado  
‡ also admitted in Iowa  
♦ also admitted in California

July 9, 2018

VIA EMAIL

Larry Dieter  
South Dakota Insurance Director  
Liquidator  
ReliaMax Surety Company  
2300 East 54<sup>th</sup> Street North  
Sioux Falls, SD 57104  
Attention: Michael J. FitzGibbons, Special Deputy Liquidator

RE: Legal Representation and Billing Arrangements

Dear Mr. Dieter:

We have been contacted by Joshua Andersen, Director of Regulatory Affairs and In-House Counsel, ReliaMax Surety Company, in liquidation ("ReliaMax"). Mr. Andersen has requested our services on a consulting basis regarding the liquidation of ReliaMax. We are pleased to assist the Liquidator.

The initial scope of our engagement with the Liquidator will be to consult with ReliaMax and its legal staff as to the interpretation of the notice requirements contained in Section 58-29B-51 of the South Dakota Insurers Supervision, Rehabilitation and Liquidation Act (the "Act") and to recommend possible courses of action in regard to the same. Our engagement may also include other matters as to which the Liquidator requests our assistance from time to time.

We will render services based on the time we spend on the Liquidator's behalf at our hourly rates in effect when the services are rendered. My hourly rate for insurance department insolvency work is currently \$375 per hour. Our rates are set annually each December 1. I will be principally responsible for this project. In addition, I will use others in my firm whose billing rates are lower than mine. We generally do not bill for ordinary out of pocket expenses such as copying or long-distance telephone. We will charge for large copying projects at a fixed rate to cover equipment usage if we do the work in house, otherwise at our cost, overnight courier charges at our cost, and mileage and travel at IRS rates for mileage, our cost for other travel costs. We bill monthly, and our statements are due on receipt. We will provide itemized statements in care of the Special Deputy Liquidator and

elsewhere as you may request. We will send our bills by email with hard copy at your request.

Our Standard Terms of Representation attached hereto also apply to this representation. If there is any conflict between this communication and our Standard Terms, this letter controls.

We are not licensed to practice in law South Dakota, so our representation would be on a consulting basis until such time as one or more attorneys in this firm are admitted to practice in South Dakota on either a pro hac vice or other basis.

Thank you again for requesting our assistance. If the foregoing is acceptable, please execute a copy of this letter where indicated and return a copy to us by email. If you have any questions, please do not hesitate to contact us.

Yours very truly,




Robert L. Nefsky  
[rnefsky@remboltlawfirm.com](mailto:rnefsky@remboltlawfirm.com)

Enclosure

AGREED AND ACCEPTED:

RELIAMAX SURETY COMPANY, in liquidation

By   
Name: Michael J. Fitzhugh  
Title: Special Deputy Registrar

Date: 7-9-18



## **Rembolt Ludtke LLP Standard Terms of Representation**

This sets forth the standard terms of Rembolt Ludtke LLP's representation and our agreement with you. These standard terms apply unless varied or supplemented by written agreement. **Please review these terms carefully and contact us if you have any questions.**

### **Scope of Work**

Our representation is limited to the services you specifically requested and we specifically agreed to provide and does not include representation of you in any other legal matter, unless our engagement is expanded by mutual consent. If you have any questions about the scope of our engagement, please contact us immediately.

During the course of our representation, we may express an opinion regarding the outcome of your legal matter. Any such expression is based upon the facts as then known by us and upon our best professional judgment, but is not a guarantee of any particular legal result. Any opinions necessarily are limited by our knowledge of the facts and are based on the state of the law at the time expressed.

### **Fees and Charges**

We consider several factors when determining our fees, including, but not limited to, the time, labor and skill required; the novelty and difficulty of the questions involved; the amount or significance of the matter at issue and the results obtained; any time limitations imposed by the client or by the circumstances of the case; the experience, reputation, and ability of the lawyers involved; and any unforeseen circumstances arising during the course of our representation.

For any portion of our fees based on hourly rates, such fees are based on the billing rates charged by each lawyer or paralegal within the firm who performs work on your behalf. Our hourly fee time is generally recorded in increments of one-tenth of an hour. Normally, there is a minimum charge of .2 hour. Our billing rates are subject to adjustment from time to time, usually in November, and effective December 1 annually.

The time for which you will be charged includes, but is not limited to, factual investigation; legal research; conferences and telephone conferences with you, witnesses and other legal personnel; responses to requests; paper and electronic correspondence; review of financial information; drafting letters and other documents; and travel time. We may charge a flat fee for drafting some documents. When more than one of our legal personnel is involved in a conference, meeting, or hearing, each person will record the time expended.

We bill on a monthly basis. Payment is due within thirty (30) days. We reserve the right to postpone or defer providing additional services or to discontinue our representation if our bills are not timely paid.

We charge interest on bills that remain unpaid for more than 30 days. Interest is charged at 1% per month (12% per annum).

In addition to our fees for services, you agree to reimburse us for expenses we incur on your behalf, including, but not limited to, court costs and filing fees, costs and expenses incurred to retain experts and costs for services such as photocopying, messenger and delivery, computerized research, postage, travel (including mileage, parking, air fare, lodging, meals and ground transportation). As the true cost of certain expenses is difficult to establish, in some instances the amounts charged are estimates which may exceed our actual cost.

### **Paperless / E-mail Billing**

Unless you instruct us otherwise, we will send monthly bills via e-mail. If you prefer to receive paper bills via the U.S. Mail service or if you need to provide us an alternative e-mail address, please contact our billing department by calling (402) 475-5100.

### **Retainer and Trust Deposits**

We will deposit all advance fee and other trust deposits that we receive from you in a trust account. We may place your trust deposit in a pooled account, and any interest earned on that account will not be paid to you but will be paid to a charitable fund established by court rule.

### **Electronic Communications**

We will communicate with you using electronic technology, such as mobile phones, e-mail and facsimile. These modes of communication can be insecure. In some situations, persons not intended to receive such communications can discover their content, some of which may be sensitive and confidential. If you prefer that we refrain from using any of the modes of communication outlined above, inform us immediately. Unless we are instructed otherwise, you authorize us to use these modes of communication and you will not hold us responsible for the unintentional disclosure of information through the use of electronic technology.

We may add you to one or more mailing lists to provide you with general information and legal updates from our firm. You will receive a welcome message which also includes the option to be removed from the list.

### **Conflict of Interest**

If the client we are serving is a corporation or other legal entity, we represent the entity. Unless otherwise agreed in writing, our work on behalf of an entity does not create an attorney-client relationship with any persons or entities affiliated with the client entity, including, but not limited to, parents, subsidiaries, employees, officers, directors, shareholders, members or partners of the client entity. Accordingly, for purposes of a conflict of interest, you agree that we may represent another client with interests adverse to any such affiliated entities or persons without obtaining your consent.

### **File Storage**

Our firm employs electronic filing systems whereby all documents are scanned into a digitized format and entrusted to a third party provider. Our provider is subject to a contractual obligation to preserve confidentiality and security and to guard against reasonably foreseeable attempts to infiltrate. Our filing system includes an online file storage and retrieval system. At times clients may be granted access to some of their files on our online storage system.

### **Records Retention**

When any individual matter for which we perform services has ended or is terminated, we will return any of your papers and property at your request. We retain our own files pertaining to this matter, including, for example, administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, attorney work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. Our files may be maintained purely in electronic format. All documents we retain will be subject to our records retention program. We will destroy or otherwise dispose of any such documents or other materials retained by us following a reasonable time after completion or termination of the engagement.

### **Termination**

You have the right at any time to terminate our representation upon written notice. Such termination shall not relieve you of the obligation to pay for all services rendered and costs incurred prior to the date of our receipt of notice of such termination.

We reserve the right to withdraw from our representation if, among other things, you fail to honor the terms of our agreement, fail to cooperate or follow our advice on a material matter, or if we discover any fact or circumstance that would, in our view, render our continuing representation unlawful, unethical or inappropriate.

After completion of the matter for which you have engaged us, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us to provide additional advice on issues arising from the original engagement, we have no continuing obligation to advise you with respect to future legal developments.

# MAY ADAM

— Since 1881 —

WWW.MAYADAM.NET

July 26, 2018

ROBERT B. ANDERSON  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
BRETT KOENECKE  
CHRISTINA L. KLINGER  
JUSTIN L. BELL  
DOUGLAS A. ABRAHAM  
KARA C. SEMMLER  
KATIE J. HRUSKA  
TERRA M. FISHER

OF COUNSEL  
CHARLES M. THOMPSON  
GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966  
BRENT A. WILBUR 1949-2006  
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605 224-8803  
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605 224-6289  
E-MAIL  
[mfs@mnyadam.net](mailto:mfs@mnyadam.net)

Larry Deiter, Director  
South Dakota Division of Insurance  
and  
Court-Appointed Liquidator of ReliaMax Surety Company  
124 South Euclid Avenue, Second Floor  
Pierre, South Dakota 57501

RE: **RELIAMAX SURETY COMPANY**  
Our file: 4918

Dear Director Deiter:

The purpose of this letter is to set forth the terms of my engagement to render certain legal opinions to you in your capacity as the court-appointed Liquidator of ReliaMax Surety Company, a South Dakota domesticated company which has transacted business in the form of insuring student loans.

The basic facts as I understand them are as follows, due to financial instability, ReliaMax Surety Company has been placed under an Order of Liquidation, dated June 27, 2018, by the Circuit Court, Sixth Judicial Circuit, County of Hughes, the Honorable Patricia DeVaney presiding. The Order also appointed you, in your capacity as the Director of the Division of Insurance as Liquidator of ReliaMax Surety Company, all pursuant to SDCL Ch. 58-29B. Mike Fitzgibbons was named as Special Deputy Liquidator by Liquidator Deiter.

Recently the Division has been approached by Gallatin Point Capital, LLC, a New York entity, who wants to acquire the corporation shell and insurance licenses of ReliaMax and recapitalize the company to continue to transact the student loan insurance business. In order to acquire the corporate shell and licenses, both must be taken out of the liquidation proceedings and separated from the other assets and liabilities of the company. Gallatin Point does not want to assume liabilities associated with the past business transactions of ReliaMax or the liquidation. The thought was to create a trust or some other legal entity to hold the tangible and intangible

MAY, ADAM, GERDES & THOMPSON LLP  
503 SOUTH PIERRE STREET • P.O. BOX 160  
PIERRE, SOUTH DAKOTA 57501-0160

Exhibit   D

July 26, 2018

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assets and liabilities of the past business which compromise the liquidation estate and rely on the protections of the liquidation proceedings and SDCL Ch. 58-29B.

I have been requested to render several opinions including:

1. Whether you as Liquidator, by virtue of the Order of Liquidation entered pursuant to SDCL Ch. 58-29B, may place the tangible and intangible assets and liabilities of ReliaMax Surety Company in a separate legal entity to allow Gallatin Point to acquire the corporate shell, insurance licenses and various selected assets of ReliaMax?
2. Whether the protections and immunities of the Liquidator and the liquidation proceedings set forth in SDCL Ch. 58-29B will continue to protect the Liquidator and the proceedings after the transfer of tangible and intangible assets and liabilities are made to a new legal entity which is not a South Dakota domestic insurer.
3. Identification of potential pitfalls or shortcomings of this plan.

I will agree to undertake a review of Gallatin's plan, the liquidation proceedings and SDCL Ch. 58-29B to be in position where I have the factual and legal information necessary to render such opinions. Upon doing so, I will prepare a legal opinion letter to you encompassing the enumerated opinions requested above.

My fee for the research as well as drafting of the legal opinion will be \$15,000. In addition to this I would expect you to pay the applicable 6.5 percent professional sales tax required in South Dakota and to reimburse us for any costs expended in the rendering of the legal opinion. I would propose to send the bill in conjunction with the finalized legal opinion. I trust that this arrangement will be acceptable, and if so, I would ask that you sign below and return the engagement letter to my attention.

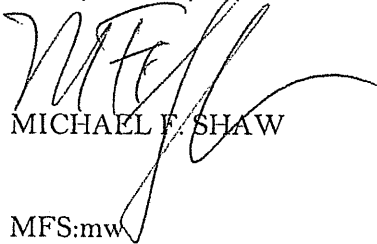
Last, I have contacted Alliance-One, which is a current client of mine and who is currently involved in a regulatory matter with the South Dakota Division of Insurance and have requested that they waive any potential conflict of interest that may arise due to my representation of you as Liquidator of ReliaMax Surety Company. I also will need written confirmation from your office that you would similarly waive any potential conflict. If you have questions regarding that, please feel free to contact me.

July 26, 2018  
Page 3

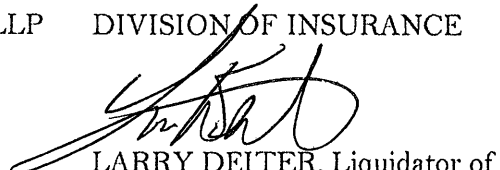
Best regards.

Very truly yours,

MAY, ADAM, GERDES & THOMPSON LLP      DIVISION OF INSURANCE



MICHAEL F. SHAW



LARRY DEITER, Liquidator of  
ReliaMax Surety Co.

MFS:mw

cc: Mike Fitzgibbons