

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

)ss:

COUNTY OF HUGHES)

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, EX REL.)

Civ: 18-_____

LARRY DEITER, DIRECTOR OF)

INSURANCE OF THE STATE OF)

SOUTH DAKOTA)

Petitioner,)

**PETITION FOR ORDER
OF LIQUIDATION, JUDICIAL
DECLARATION OF INSOLVENCY,
AND REQUEST FOR INJUNCTIVE
RELIEF**

v.)

RELIAMAX SURETY COMPANY)

Respondent.)

COMES NOW the State of South Dakota, ex rel. Larry Deiter, Director of the South Dakota Division of Insurance, Petitioner, by and through its attorneys, Frank Marnell and Mallori Barnett, and does hereby allege as follows:

PETITION FOR ORDER OF LIQUIDATION

1. Petitioner is the sovereign State of South Dakota on the relation of Larry Deiter, the duly appointed and qualified Director (“Director”) of the Division of Insurance (“Division”) for the State of South Dakota, who is acting under the authority provided in SDCL Ch. 58-29B in petitioning this court for an Order of Liquidation pursuant to SDCL §§ 58-29B-41 and 58-29B-42.
2. Respondent, ReliaMax Surety Company (“ReliaMax Surety”), whose principal place of business is 2300 E. 54th Street North, Sioux Falls, SD 57104, is a domestic insurer within the meaning of SDCL § 58-29B-3(12) and holds a Certificate of Authority to operate in South Dakota.
3. Jurisdiction and venue for this action lie with the Circuit Court of Hughes County, South Dakota pursuant to SDCL § 58-29B-7.
4. Under the authority of SDCL § 58-29B-41, the Director may petition the Circuit Court of Hughes County for an order to liquidate if the insurer is insolvent, if any grounds for rehabilitation exist, or if the insurer is in such financial condition that further transaction of business would be financially hazardous to its insureds, creditors, or the public.
5. On or about May 18, 2018, ReliaMax Surety filed its financial statements for the period ending March 31, 2018, pertinent parts of which are attached as Exhibit A. These are the most recent financial filings available.

6. Exhibit A shows ReliaMax Surety had a policyholder surplus of \$19.1 million as of March 31, 2018. Exhibit A also shows a receivable of \$21.8 million which represents a series of loans from ReliaMax Surety to its holding company and corporate parent, ReliaMax Holding Company (“Holding Company Loans”) which have grown recently. The amount of the receivable is greater than ReliaMax Surety’s required level of capital and surplus.
7. On or about April 27, 2018, the Division received preliminary first quarter 2018 financial information for ReliaMax Holding Company, ReliaMax Surety’s corporate parent and holding company. Pertinent parts of that filing are attached as Exhibit B to this Petition.
8. Exhibit B shows ReliaMax Holding Company’s financial failure. As shown on page 2 of Exhibit B, ReliaMax Surety’s equity is greater than the entire holding company system. Without ReliaMax Surety’s equity, the remainder of the holding company system’s equity is less than zero. ReliaMax Holding Company is in financial distress.
9. ReliaMax Holding Company has recently attempted to raise capital or find a purchaser and these efforts have not come to fruition.
10. Due to the above, on May 10, 2018, the Division called a targeted financial examination of ReliaMax Surety regarding its actuarially projected losses. The examiners’ actuarial review revealed higher projected losses than those projected by ReliaMax Surety. If the additional liability is added into ReliaMax Surety’s financial statements, the company’s financial shortfall increases.
11. An affidavit from Johanna Nickelson, Assistant Director Financial Solvency and Company Licensing, is filed with and in support of the Petition and is attached as Exhibit C. This affidavit analyzes the current financial situation with more detail, concluding that repayment of the Holding Company Loans is unlikely.
12. Due to the statutory accounting principles and analysis espoused in Exhibit C, the Holding Company Loans on ReliaMax’s Surety’s financial statements must be valued at zero dollars. As a result of the application of this rule, ReliaMax Surety is insolvent.
13. An affidavit from the Director is filed with and in support of this Petition and is attached as Exhibit D.
14. The Exhibits to this Petition demonstrate that ReliaMax Surety is in hazardous financial condition as of March 31, 2018 under any of the grounds provided in ARSD 20:06:23:02(7) (insurer is threatened with insolvency), (8) (contingent liabilities involve a total amount which affect the solvency of an insurer), (16) (the insurer has experienced or will experience cash flow or liquidity problems), (19) (controlling entities do not provide sufficient value or liquidity to assure the insurer’s ability to meet its outstanding obligations as they mature), or (21) (any other finding determined by the Director to be hazardous to policyholders, creditors, or the general public).

15. The Exhibits to this Petition and analysis herein demonstrates that ReliaMax Surety is insolvent within the meaning of SDCL § 58-29B-3 because its admitted assets do not exceed its liabilities plus the greater of any capital and surplus as required by law. Subtracting the Holding Company Loans from ReliaMax Surety's stated policyholder surplus in Exhibit A, ReliaMax Surety has a negative policyholder surplus.
16. Petitioner has made appropriate findings pursuant to SDCL § 58-29B-45, including the attached financial reports and analysis in the Exhibits filed with this Petition, of ReliaMax Surety's hazardous financial condition and insolvency.
17. The Director believes that grounds exist for an Order of Liquidation under SDCL § 58-29B-41(1), (2), and (3) and that the Director should immediately be appointed Liquidator of ReliaMax Surety.
18. ReliaMax Surety, through its CEO acting on the authority of the Board of Directors of ReliaMax Surety, has consented to the Director's requests contained in this Petition. A copy of ReliaMax Surety's consent to liquidation is filed with this Petition as Exhibit E.
19. The Liquidator should be authorized and directed to forthwith take possession of ReliaMax Surety and to take all steps necessary in liquidating the business of ReliaMax Surety as allowed by law and as necessary to protect the interests of policyholders, creditors, and the public.
20. The Liquidator should also be authorized to employ such persons including, but not limited to, a Special Deputy, attorneys, accountants and other consultants as from time-to-time may be necessary or appropriate to assist him in the proper performance of his duties as Liquidator of ReliaMax Surety. All reasonable costs and expenses incurred by the Liquidator or such other persons as designated by him from time-to-time to assist in the performance of such duties should be charged to and paid by ReliaMax Surety.
21. Subject to the supervision of the Liquidator, the present employees and officers of ReliaMax Surety should be allowed to continue performing their duties, unless and until the contrary shall have been directed by the Liquidator with respect to all or any of such personnel; and all such persons shall be ordered to cooperate with the Liquidator as required by SDCL § 58-29B-9.
22. It is in the best interests of the policyholders, the public, and the creditors of ReliaMax Surety for ReliaMax Surety be ordered into liquidation.

WHEREFORE the Petitioner and State of South Dakota respectfully request that the court issue an Order for Liquidation of ReliaMax Surety pursuant to SDCL §§ 58-29B-41 and 58-29B-42.

PETITION FOR JUDICIAL DECLARATION OF INSOLVENCY
AND REQUEST FOR INJUNCTIVE RELIEF

23. Petitioner, for its request for injunctive relief, hereby incorporates all allegations of law and fact as contained in the above-captioned Petition for Order of Liquidation.
24. Petitioner respectfully requests that a declaration of insolvency be made by the Court pursuant to SDCL § 58-29B-45 given the foregoing.
25. The Director requests that an injunction be issued restraining and enjoining ReliaMax Surety and its officers, managers, agents, and employees and all persons and other legal entities, except the Liquidator, from:
- a. The transaction of further business of ReliaMax Surety herein except as directed by the Liquidator;
 - b. The transfer of ReliaMax Surety's assets and property;
 - c. Interference with the Liquidator or his employees or assistants;
 - d. Waste of ReliaMax Surety's assets;
 - e. Dissipation or transfer of bank accounts of ReliaMax Surety;
 - f. Institution or further prosecution of any actions or proceedings;
 - g. The obtaining of preferences, judgments, attachments, garnishments, or liens against ReliaMax Surety, its assets or its policyholders;
 - h. The levying of execution against ReliaMax Surety, its assets or its policyholders;
 - i. The making of any sale or deed for nonpayment of taxes or assessments which would lessen the value of the assets of ReliaMax Surety;
 - j. The withholding from the Liquidator of books, accounts, documents or other records relating to ReliaMax Surety; and
 - k. Any other threatened or contemplated action that might lessen the value of ReliaMax Surety's assets or prejudice the right of policyholders, creditors or shareholders or the administration of any proceeding under the SDCL Ch. 58-29B.

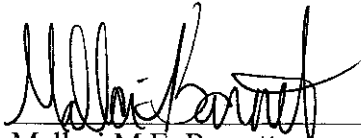
WHEREFORE, Petitioner respectfully requests that the Court enter an order declaring ReliaMax Surety insolvent, placing the company in liquidation, appointing Larry Deiter, Director of the South Dakota Division of Insurance, and his successors in office, as Liquidator, that an Injunction be entered accordingly, and that the court grant such other relief as is appropriate.

Dated this 11th day of June, 2018.



Frank A. Marnell
Special Assistant Attorney General
Attorney for Petitioner State of South Dakota
South Dakota Division of Insurance
124 S. Euclid Avenue, 2nd Floor
Pierre, SD 57501
(605) 773-3563

Dated this 11th day of June, 2018.



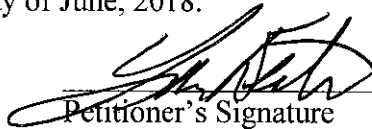
Mallori M.E. Barnett
Special Assistant Attorney General
Attorney for Petitioner State of South Dakota
South Dakota Division of Insurance
124 S. Euclid Avenue, 2nd Floor
Pierre, SD 57501
(605) 773-3563

VERIFICATION

STATE OF SOUTH DAKOTA)
): SS
COUNTY OF HUGHES)

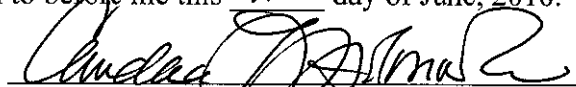
Petitioner, being first duly sworn, deposes and states that they verify the facts expressed within the Petition for Order of Liquidation, Judicial Declaration of Insolvency, and Request for Injunctive Relief are true.

Dated this 11th day of June, 2018.



Petitioner's Signature

Subscribed and sworn to before me this 11th day of June, 2018.



Notary Public/Clerk of Court

(SEAL)

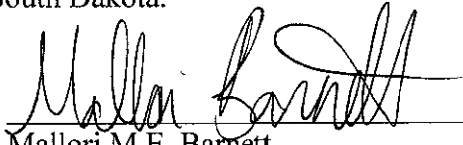
If Notary, my commission expires: 8-29-2022

CERTIFICATE OF SERVICE

I, Mallori Barnett, the undersigned, do hereby certify that on this 11th day of June, 2018, a true and correct copy of the Petition for Order of Liquidation, Judicial Declaration of Insolvency, and Injunctive Relief with respect to the above-titled action was sent U.S. First Class Mail thereon, to the following:

ReliaMax Surety
c/o Mark Payne
2300 E. 54th Street North
Sioux Falls, SD 57104

Dated this 11th day of June, 2018 in Pierre, South Dakota.



Mallori M.E. Barnett
Special Assistant Attorney General
Attorney for Petitioner State of South Dakota
South Dakota Division of Insurance