

WISCONSIN DEPARTMENT OF
FINANCIAL INSTITUTIONS,

Plaintiff,

vs.

Case Nos. 12-CX-44 and 44A

WISCONSIN FUNERAL DIRECTORS
ASSOCIATION, INC.

and

FIDUCIARY PARTNERS, INC., as Trustee
for the WISCONSIN FUNERAL TRUST,

Defendants.

MOTION BY THE RECEIVER
FOR AN ORDER CLARIFYING AND AUTHORIZING PAYMENTS AFTER TRANSFERS

PLEASE TAKE NOTICE that John M. Wirth (the "Receiver"), the duly-appointed receiver for the Wisconsin Funeral Trust (the "Trust") and certain rights of Wisconsin Funeral Directors Association, Inc. (the "Association"), by his counsel, will bring the following motion before the Court, the Honorable Peter C. Anderson presiding, in his courtroom at 215 South Hamilton Street, Madison, Wisconsin at 10:00 a.m. on September 6, 2013, or soon after such date and time as counsel can be heard.

YOU ARE NOT REQUIRED TO FILE ANY PAPERS OR APPEAR IF YOU DO NOT OBJECT TO THE MOTION. HOWEVER, IF YOU DISAGREE WITH THE MOTION, OR YOU WANT THE COURT TO HEAR AND CONSIDER YOUR VIEWS ON THE MOTION, THEN YOU MUST FILE A TIMELY WRITTEN OBJECTION WITH THE COURT OR APPEAR AT THE HEARING.

The Receiver moves the Court for an Order in the form attached to this Motion as Exhibit A.

In support of this motion, the Receiver states:

BACKGROUND

1. On September 14, 2012 (the "Filing Date"), WDFI filed a complaint against the Association and Fiduciary Partners, Inc., as trustee for the Trust (the "Trustee"), alleging violations of securities laws relating to the Trust.

2. On the Filing Date, Wisconsin Department of Financial Institutions ("WDFI") also filed, pursuant to Wisconsin Statutes Section 551.603(2)(b)1, a motion for appointment of a receiver of all assets of the Association and the Trust.

3. On the Filing Date, the Court entered an order appointing the Receiver as interim receiver for the Association and the Trust.

4. On October 24, 2012, with the stipulation of the Trustee and the Association, the Court entered an Injunction and Order Appointing Receiver over Wisconsin Funeral Trust (the "Trust Order") and an Injunction and Order Appointing Receiver over Certain rights and Assets of Wisconsin Funeral Directors Association, Inc. (the "Association Order").

5. In order to provide the greatest ongoing protection to consumers, and ensure the continued provision of services by funeral homes, the Trust Order included provisions regarding initial reimbursements.

6. In order to ensure the orderly administration of the receivership, and to protect the corpus of the receivership estate, the Association Order enjoined all persons and entities except the Receiver from commencing or prosecuting causes of action against various parties, including funeral homes.

REASON FOR MOTION

7. On July 8, 2013, the Court entered a First Amended Injunction and Order (the “Amended Order”) approving the form of the settlement agreement between the Receiver and participating funeral homes (the “Settlement Agreement”), and setting forth certain procedures for non-settling funeral homes.

8. The Amended Order and Settlement Agreement establish the procedures for transferring accounts from settling and non-settling funeral homes, as well as the liability of such transferring funeral homes, but fails to describe fully the procedure by which the transferee funeral home will be reimbursed.

9. Nothing in this Motion changes or diminishes any substantive rights of any funeral home that has entered into the Settlement Agreement. Rather, this Motion is intended to clarify the procedures set forth in the Settlement Agreement.

TRANSFERS FROM SETTLING FUNERAL HOMES

10. As set forth in Section 2.7 of the Settlement Agreement, within 30 days after the Trust provides notice to the transferring funeral home of a depositor’s funeral, the transferring funeral home is required to pay, directly or pursuant to a promissory note, the Transfer Balance (as defined in the Settlement Agreement) minus the fair market value of the depositor’s account as of the date of the depositor’s funeral (the “Transfer Payment”). The transferring funeral home then retains a claim against the Trust for the Transfer Payment.

11. If the transferee funeral home that provides the depositor’s funeral services is a settling funeral home, the transferee funeral home should receive the Trust’s payment of the then-current reimbursement percentage (in accordance with any regular reimbursement claim) *plus* the Transfer Payment the Trust received or is to receive from the transferring funeral home.

The transferee funeral home will retain a claim against the Trust for the account balance, less the payments it receives from the Trust.

12. If the transferee funeral home that provides the depositor's funeral services is a third-party funeral home that was previously not involved with the Trust, and is not considered either a settling funeral home or a non-settling funeral home, the third-party funeral home shall be treated as a settling funeral home.

13. The payment of the Transfer Payment from the Trust to a settling funeral home or a third-party funeral home provides the transferee funeral home an incentive to accept a depositor's transfer request. Without an incentive, the transferee funeral home is unlikely to accept a transfer because the transferee funeral home would be taking on an unnecessary risk.

14. If the transferee funeral home that provides the depositor's funeral services is a non-settling funeral home, the transferee funeral home should have the same rights to reimbursements as would otherwise be available to non-settling funeral home. A non-settling funeral home will not receive the Transfer Payment. A non-settling funeral home will retain a claim against the Trust for the account balance, less the payments it receives from the Trust.

15. A non-settling funeral home should not receive the benefit of the Transfer Payment when such non-settling funeral home is not a party to the Settlement Agreement. The Transfer Payment should be available only to funeral homes that have entered into the Settlement Agreement or to third-party funeral homes that were previously not involved with the Trust.

TRANSFERS FROM NON-SETTLING FUNERAL HOMES

16. After a transfer from a non-settling funeral home, the transferee funeral home should have the same rights to reimbursements as would otherwise be available to non-settling

funeral home, as set forth in Section 7 of the Amended Order, regardless of whether such transferee is a settling funeral home or a non-settling funeral home.

SERVICE OF MOTION

17. As required by Section 14 of the Trust Order, this motion has been served on the Primary Service List. Additionally, considering the effect of the relief requested on beneficiary funeral homes, this motion has been served on each beneficiary funeral home by prepaid first class mail addressed to the recipient at its address as shown in the records of the Trust.

RELIEF REQUESTED

18. The Receiver seeks entry of an order clarifying the reimbursement procedure for transferee funeral homes and authorizing the payment of claims in accord with such procedure as set forth in the order attached as Exhibit A.

Dated as of August 29, 2013.

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EXHIBIT A

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ORDER CLARIFYING AND AUTHORIZING
PAYMENTS AFTER TRANSFERS

Pursuant to the Motion by the Receiver for an Order Clarifying and Authorizing Payments After Transfers (the "Motion"), and having found that proper notice has been given of such motion, having heard no objection, and having heard from counsel at a hearing before the Court on September 6, 2013, and for the reasons set forth on the record of such hearing,

THE COURT ORDERS:

1. After a transfer from a settling funeral home, a settling funeral home that provides the depositor's funeral services shall receive from the Trust the then-current reimbursement percentage *plus* the Transfer Payment (as defined in the Motion). The transferee funeral home shall retain a claim against the Trust for the account balance, less the payments it receives from the Trust.

2. A third-party funeral home that was previously not involved with the Trust, and is not considered either a settling funeral home or a non-settling funeral home, such third-party funeral home shall be treated as a settling funeral home.

3. Provided the transferee is a settling funeral home or a third-party funeral home described in Section 2 of this Order, the Receiver is authorized to pay to the transferee funeral home the Transfer Payment.

4. After a transfer from a non-settling funeral home, the transferee funeral home should have the same rights to reimbursements as would otherwise be available to a non-settling funeral home, as set forth in Section 7 of the First Amended Injunction and Order, regardless of whether such transferee is a settling funeral home or a non-settling funeral home.

Dated _____, 2013.

BY THE COURT:

The Honorable Peter C. Anderson
Circuit Court Judge, Branch 17