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July 8, 2013

The Honorable Peter C. Anderson  
Circuit Court Judge, Branch 17  
Dane County Circuit Court  
215 South Hamilton Street - Room 6103  
Madison, WI 53703-3285

Re: *Wisconsin Dept. of Financial Institutions v. Wisconsin  
Funeral Directors Association*, Case No. 12-CX-000044;  
*Wisconsin Department of Financial Institutions v. Fiduciary  
Partners, Inc.*, Case No. 12-CX-44A.

**RECEIVER'S INTERIM LITIGATION REPORT**

Dear Judge Anderson:

We are the counsel engaged by Receiver John Wirth to investigate and pursue remedies on behalf of the Trust, and the claims of the WFDA owned by the Receiver, pursuant to your orders of October 24, 2012.

The Receiver has asked us to report to the Court on our progress to date. Since we were engaged on October 23, 2012, we have conducted the following activities:

1. We issued 39 discovery subpoenas; interviewed witnesses; and analyzed over 150,000 pages of materials obtained by subpoena or other means.
2. Based on our investigation, we prepared a confidential, preliminary 108 page draft complaint, containing 14 causes of action accompanied by an additional eight exhibits.
3. We identified prospective defendants, notified them of the Receiver's potential claims by demand letter, and allowed them to

confidentially review the draft complaint, as settlement communications protected by Wis. Stat. § 904.08. Of course, not all prospective defendants were preliminarily claimed to be liable on all 14 causes of action.

4. We entered into settlement negotiations with all prospective defendants who reviewed the draft complaint, and over the past five months we negotiated and settled with a number of prospective defendants.
5. We prepared and issued separate demand letters to service professionals including lawyers and accountants.
6. Investigation and negotiations continue.

This report, which we understand is being publicly filed, is limited by the following considerations:

1. Negotiations are not complete. For some prospective defendants, final settlement agreements are still being prepared and negotiated even though amounts for settlement have been preliminarily agreed. Some prospective defendants have not responded with settlement offers deemed worthy of consideration by the Receiver.
2. Part of the negotiated settlements is confidentiality as to amounts paid and the terms of settlement. The fact of settlement, and eventually the identity of the prospective defendant(s), is not confidential, but the terms of the agreements, including amounts, are. This form of confidentiality was extremely significant to prospective defendants, and in our judgment was essential to agree to in order to obtain the maximum amount of settlement money available. Accordingly, although we will eventually identify the prospective defendants with whom the Receiver has reached final settlement agreements, we agreed not to identify who has offered or paid what amount.
3. The general considerations of settling aggravated litigation are being applied. If the Receiver was satisfied based on sworn financial statements that a prospective defendant proved financially unable to pay more than offered (even if the Receiver felt the dollar amount was not adequate to address the liability exposure), settlement at a lower figure occurred. The Receiver weighed factors including: (1) the cost of pursuing certain defendants as against the settlement offered, both in time and

resources; (2) the forum that may have been required to pursue claims (arbitration vs. court); (3) whether statutes of limitation could be argued to limit a prospective defendant's exposure; (4) defenses a particular prospective defendant could interpose; (5) limitations of insurance coverage of prospective defendants (including applicable reducing policies, where cost of defense is subtracted from policy limits); (6) coordination with the plaintiff WDFI's interests in this case, and the state's overall regulatory policy with respect to some prospective defendants; and (7) variability in theories of damages suffered.

With the foregoing activities and considerations as background, at this time the Receiver is pleased to report that he has reached preliminary agreements with six sets of prospective defendants, as follows:

1. **Wisconsin funeral homes.** This settlement is public, and is the subject of the Joint Motion by the Receiver, Plaintiff Wisconsin Department of Financial Institutions, and Defendant Wisconsin Funeral Directors Association for an Order Approving Settlement Agreement With Funeral Homes and Modifying Appointment Orders. This settlement with funeral homes, if agreed to by all 172 funeral homes with burial agreements, will result in completion and compliance with 100% of all outstanding burial agreements outstanding with consumer depositors. The signatory funeral homes<sup>1</sup> will honor all contracts for funerals and burial merchandise, and there is a mechanism to honor requests to transfer homes, to receive less funeral services or burial merchandise than contracted for if the consumer wants that, and for refunds if the consumer depositor wants them. This landmark agreement allows the Receiver to turn his full attention to recovery on his claims for the losses the Trust suffered from third parties, for the benefit of the settled funeral homes who will be fulfilling the burial agreements, in full, in the first instance.
2. **Trust brokers and service providers.** The Receiver has agreed to preliminary (subject to final drafting) and final settlements with prospective defendants in the aggregate amount of \$9,500,000 cash, plus an estimated \$850,000 in future services to be provided to the Trust through 2017, for a total of **\$10,350,000**. As stated above, there are a number of additional

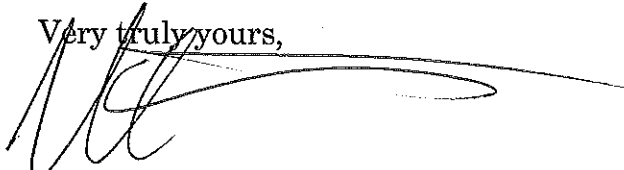
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<sup>1</sup> As of July 5, 2013, after about 10 days of circulation of the settlement agreement to the funeral homes (and prior to this Court's hearing on approval), the Receiver has signed agreements from 72 of the 180 funeral homes (40%). That accounts for 5,680 of the 10,827 burial contracts (52.46%) and \$36,124,647.23 of the \$67,229,834.00 in claims (53.73%).

prospective defendants with whom no agreement has been reached.

Investigation and negotiation continues. In the next reporting period, when final settlement agreements are executed and settlement proceeds are all deposited in the Trust, the Receiver anticipates identifying settled parties.

Very truly yours,

A handwritten signature in black ink, appearing to be 'S. Kravit', with a long horizontal flourish extending to the right.

Stephen E. Kravit

SEK:dmh

Cc: Lewis Beilin, Esq.  
John Wirth, Esq.  
Christopher Stroebel, Esq.  
Ian Pitz, Esq.