
In re WFT LIQUIDATING TRUST
(formerly Wisconsin Funeral Trust),

Case No. 12-CX-44

Receivership.

NOTICE OF MOTION AND MOTION BY THE RECEIVER
FOR AN ORDER TO RETROACTIVELY MODIFY
THE CREDITING RATE APPLIED TO ACCOUNTS

PLEASE TAKE NOTICE that John M. Wirth (the "Receiver"), the duly-appointed receiver for the WFT Liquidating Trust f/k/a the Wisconsin Funeral Trust (the "Trust"), 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 1:30 p.m. on September 25, 2014, 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 OBJECT TO THE RELIEF DESCRIBED IN THE MOTION, OR YOU WANT THE COURT TO HEAR AND CONSIDER YOUR VIEW ON THE MOTION, THEN YOU MUST FILE A WRITTEN OBJECTION WITH THE COURT PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 23, 2014 AND SERVE A COPY ON OTHER COUNSEL OF RECORD, INCLUDING COUNSEL FOR THE RECEIVER SET FORTH BELOW.

The Receiver moves the Court for an Order, in the form attached to this Motion as Exhibit A, retroactively modifying the crediting rate applied to accounts to correspond to the rate promised to consumer-depositors rather than the artificially and arbitrarily high rate established by the Wisconsin Funeral Directors Association, Inc. (the "WFDA").

In support of this Motion, the Receiver states:

BACKGROUND

1. On September 14, 2012 (the “Filing Date”), Wisconsin Department of Financial Institutions (“WDFI”) filed a complaint against the WFDA and certain rights of 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, 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 WFDA and the Trust.

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

4. On October 24, 2012, with the stipulation of the Trustee and the WFDA, the Court entered an Injunction and Order Appointing Receiver over Wisconsin Funeral Trust (as subsequently amended, the “Trust Order”) and an Injunction and Order Appointing Receiver over Certain Rights and Assets of Wisconsin Funeral Directors Association, Inc. (as subsequently amended, the “WFDA Order”).

5. The Receiver has entered into the Court-approved Settlement Agreement the “Settlement Agreement”) with every funeral home that was a beneficiary of the Trust as of the commencement of this action. The funeral home Settlement Agreement is intended to provide to consumer-depositors the full benefits and services promised to them when they entered into their burial agreements.

CREDITING RATE

6. When soliciting deposits to the Trust, the Trust and the WFDA guaranteed that deposits to the Trust would bear interest at a rate determined by using the “State of WI average of 3-Year CDs and adding 1% to that average.” As used in this Motion, the rate determined by that formula is referred to as the “Crediting Rate.” The materials stated that the Crediting Rate “will be adjusted every 6 months due to a change in CD rates.” A copy of the materials guaranteeing the Crediting Rate is attached to this Motion as Exhibit B.

7. Historically, the “State of WI average of 3-Year CDs” was published in some papers, including the Milwaukee Journal Sentinel. That no longer occurs. However, the Receiver has determined the source used by the Milwaukee Journal Sentinel when it published the three-year average certificate of deposit rate in Wisconsin. The Milwaukee Journal Sentinel and, upon information and belief, the WFDA and the Trust, used rates compiled by a Milwaukee-based company called Datatrac.

DEVIATION IN CREDITING RATE

8. The Receiver has obtained from Datatrac the three-year average certificate of deposit rate in Wisconsin and compared them to the rates used by the WFDA and the Trust in crediting interest to the Trust’s accounts. A table showing the comparison is attached to this Motion as Exhibit C.

9. Except for some slight rounding, the Trust and the WFDA consistently followed the formula for the Crediting Rate through the end of 2007.

10. Starting in 2008, and continuing through the appointment of the Receiver, the WFDA and the Trust used an artificially and arbitrarily high interest rate to credit the Trust’s

accounts rather than the Crediting Rate as correctly calculated. Based on various minutes of the WFDA's Preneeds Committee (the group the WFDA charged with overseeing the Trust), the decision to keep the interest rate artificially high was intentional.

11. As shown on the table attached to this Motion as Exhibit C, the Receiver estimates that the decision to charge artificially high interest resulted in the Trust over-crediting consumer-depositors by an amount of approximately \$1.83 million.

12. Effective as of the Filing Date, the Receiver adjusted the Crediting Rates applied to all accounts to 1.85% based on the then-current Crediting Rate information available to the Receiver. The Receiver has discovered that the 1.85% Crediting Rate was the *weekly* average rate in effect as of September 9, 2012, rather than the *quarterly* average rate of 1.95%, which was the correct Crediting Rate to apply.

13. As a result of the foregoing, there was a period of approximately 4 years when the interest credited to consumer-depositor accounts was artificially high or incorrect.

CORRECTING THE DEVIATION

14. The intentional deviation from the proper Crediting Rate to the artificially and arbitrarily high rate established by the WFDA has resulted in the funeral homes being liable to consumer-depositors for more than what the consumer-depositors were promised.

15. The correct and appropriate solution to cure the deviation is to retroactively apply the proper Crediting Rate to all current accounts in the Trust. All consumer-depositors will receive exactly what they were promised (and the funeral homes are required to provide under the Settlement Agreements), and the funeral homes will not be subject to additional, unintended liability.

16. The change in the Crediting Rate will result in a savings of approximately \$1.45 million for the Trust based on calculations as of December 31, 2013. Each consumer-depositor's adjusted balance for an account that was in the Trust as of October 1, 2008 will equal approximately 97% of the current balance using the artificially high rate established by the WFDA.

17. The excess interest would be booked as a liability on the trust records of each account that will be offset each year by the accrued interest on the account for such year, until the liability is reduced to \$0. The offset each year will not exceed the 1099 income for such year for a consumer-depositor, which eliminates the possibility of a loss for tax purposes for such year. If the consumer-depositor dies before the liability is reduced to \$0, the Stated Account Balance (as defined in the Settlement Agreement) will be reduced accordingly.

18. All consumer-depositors that paid taxes on the excess interest income received as a result of the artificially high interest rate pursuant to 1099s sent from the Trust will not be injured. As a result of the offset of the excess interest set forth above, a consumer-depositor's future tax liability will be similarly decreased to compensate for the previous increased tax liability.

19. The Receiver requests thirty (30) days from the Court's order granting this Motion (the "Rate Adjustment Date") to complete and finalize the calculations to appropriately adjust each account with the proper Crediting Rate, which final calculations will be made available to consumer-depositors and funeral homes (the "Adjusted Stated Account Balance").

20. The Receiver will not seek reimbursement from any funeral home for reimbursements paid by the Trust prior to the Rate Adjustment Date. However, the outstanding

reimbursement amount of 40% due on such claims will be reduced to an amount equal to 40% of the Adjusted Stated Account Balance.

21. The Receiver believes this is the appropriate and fair solution to correct the intentional deviation by the WFDA.

SERVICE OF MOTION

22. 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 and consumer-depositors, this motion has been served on each beneficiary funeral home and a notice substantially in the form attached as Exhibit D to consumer-depositor by prepaid first class mail addressed to the recipient at its address as shown in the records of the Trust.

RELIEF REQUESTED

23. The Receiver seeks entry of the order attached as Exhibit A.

Dated as of August 28, 2014.

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Attorneys for John M. Wirth, Receiver


By: 
Michael A. Marx
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EXHIBIT A

PROPOSED ORDER

See attached.

In re WFT LIQUIDATING TRUST
(formerly Wisconsin Funeral Trust),

Case No. 12-CX-44

Receivership.

ORDER TO RETROACTIVELY MODIFY
THE CREDITING RATE APPLIED TO ACCOUNTS

Pursuant to the Motion by the Receiver for an Order to Retroactively Modify the Crediting Rate Applied to Accounts (the "Motion"), and having found that proper and sufficient notice of the Motion has been given, and having heard from counsel at the hearing before the Court on September 25, 2014, and for the reasons set forth on the record of such hearing,

THE COURT ORDERS:

1. The Motion is GRANTED.
2. The Receiver shall modify, or shall cause to be modified, all accounts of the WFT Liquidating Trust f/k/a Wisconsin Funeral Trust (the "Trust") outstanding as of the date of this Order to apply the correct Crediting Rate (as defined in the Motion) for the periods set forth on the attached Exhibit A.
3. The Receiver shall have thirty (30) days from the date of this Order to complete and finalize the calculations to appropriately adjust each account, which final calculations shall be made available to consumer-depositors and funeral homes.
4. All excess interest credited to an account shall be booked as a liability and such liability shall be offset each year by the accrued interest on the account for such year, until the liability is reduced to \$0.

Dated _____, 2014.

BY THE COURT:

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

EXHIBIT A

PROPER CREDITING RATE

Rate Effective Dates	Datatrak Rate (a/k/a CD)	Datatrak Rate (CD) +1% ("Proper Crediting Rate")
1/1/2008 – 4/30/2008	4.45	5.45
5/1/2008 – 9/30/2008	3.71	4.71
10/1/2008 – 4/30/2009	3.30	4.30
5/1/2009 – 9/30/2009	2.72	3.72
10/1/2009 – 4/30/2010	2.26	3.26
5/1/2010 – 9/30/2010	2.07	3.07
10/1/2010 – 4/30/2011	1.84	2.84
5/1/2011 – 9/30/2011	1.53	2.53
10/1/2011 – 4/30/2012	1.33	2.33
5/1/2012 – 9/30/2012	1.08	2.08
10/1/2012 – 4/30/2013	0.95	1.95

EXHIBIT B

PROMOTIONAL MATERIALS

See attached.

WISCONSIN FUNERAL TRUST®

Administrative Manual



**Wisconsin
Funeral
Directors
Association**

A FOUNDATION OF SERVICE

Important Phone Numbers

Trust Company
Bev Nespodzany
920-380-9960
866-380-9969
(toll-free)

Smith Barney
Michael G. Hull
Natasha Augustine
800-356-4477

WFDA
Kim George
Mark Paget
800-648-5580

WISCONSIN FUNERAL TRUST®

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WISCONSIN FUNERAL TRUST®

OVERVIEW OF PROGRAM

The WFDA Master Trust Program was established May 1, 1999 to provide funeral directors and the families they serve with an option for their pre-need funds. The Wisconsin Funeral Trust® is owned and operated by the Wisconsin Funeral Directors Association.

The Trust complies with all state laws and has been approved by the Department of Financial Institutions as well as the Funeral Directors Examining Board. In addition the Trust forms were developed in conjunction with the Department of Health and Family Services as well as, Workforce Development. The Trust can be used to assist SSI/MA applicants in setting aside funds as permitted under SSI/MA guidelines for funeral and burial expenses. A pre-arrangement conference, whether or not the client is an SSI/MA applicant or recipient, provides an opportunity for every client to make his/her choices on funeral services and merchandise known in advance.

However, when the client is an SSI/MA applicant or recipient, it is essential that the client make specific choices on services and merchandise in order to set aside only that amount of funds that equals the current costs of services and merchandise selected. If a funeral home knowingly accepts funds in excess of the amount an SSI/MA applicant or recipient intends to spend on his/her funeral, the funeral home risks being party to a fraud.

INVESTMENT GOALS

The goal of the trust is to out-perform (beat) Certificate of Deposit rates of return by 1% annually. The rate is determined every six months by taking a State of Wisconsin average of 3-Year CDs and adding 1% to that average.

GUARANTEES OF THE TRUST

The trust is designed to provide you and your families with exceptional long-term returns. WFDA guarantees that the trust will earn the stated interest rate (1% above CDs), which will be adjusted every 6 months due to a change in CD rates.

WISCONSIN FUNERAL TRUST®

MAKING A DEPOSIT

The white copy of the completed contract along with a check payable to “The Wisconsin Funeral Trust®” is mailed in the envelope provided to:

*Wisconsin Funeral Trust
c/o Trust Services
47 Park Place, Suite 750
Appleton, WI 54914*

Upon receipt of the contract and payment, you will receive an acknowledgment of the deposit and a claim form. Be sure to notify your family that the transaction has been completed by sending a copy of this document. According to Wisconsin Statutes, it will show the amount of deposit, date received, custodian bank, trust company and account number. The written confirmation must be sent to the depositor within 15 business/working days from the date of the deposit.

MAKING A WITHDRAWAL

At the time of death, the funeral home will complete the claim form sent when the trust was established. The claim form and death certificate or affidavit of death can be mailed to:

*Wisconsin Funeral Trust®
c/o Trust Services
47 Park Place, Suite 750
Appleton, WI 54914
Fax: (920) 380-9961*

The claim is paid based on the previous day's balance on the day that it is received. A check is mailed to the funeral home as quickly as possible, usually the same day or next day.

CHECKING BALANCES

All of your trust's balances are available online. Every Funeral Home participating in the Wisconsin Funeral Trust® has been assigned a username and password that allows you access. The web-site can be accessed through the WFDA Web-site by selecting the “Wisconsin Funeral Trust” Button. The balances are adjusted on a daily basis. If you need assistance using the web-site, please feel free to call either WFDA or Smith Barney.

WISCONSIN FUNERAL TRUST®

INSTRUCTIONS FOR COMPLETING THE TRUST FORM

The Wisconsin Funeral Trust® Pre-Need Funeral Contract can be used for all elements of the funeral. A statement of Funeral Goods and Services must be completed. A copy should be given to the client as well as attached to the funeral home copy in the file.

Please note that, because social workers have considerable discretionary authority, some will permit funeral homes to enter and deposit the current and actual cost of professional services, even if that cost exceeds the \$3,000 irrevocable limit. The cash assets of the client would be decreased accordingly. Other social workers permit only the \$3,000 irrevocable limit to be deposited. This decision is left to their discretion on the assumption that they are familiar with the facts of the case of each SSI/MA applicant or recipient. Whatever the practice is in any particular county, SSI will consider only \$3,000 of the total funds deposited for services as irrevocable.

In addition to \$3,000 for services, individuals can purchase a casket and vault under the “burial space” exclusion. “Burial space” means burial plots, gravesites, crypts, mausoleums, urns, niches, or other customary and traditional repositories for the remains of deceased persons. The term also includes improvements or additions to or upon such spaces, including, but not limited to vaults, headstones, markers, plaques or burial containers (i.e. caskets) and the arrangements for opening and closing the gravesite.

Be sure to complete the entire contract, especially the funeral home name, address and signature of the funeral director.

The contract purchaser is the person paying for the trust. In most cases, this will be the same person owning the trust. Therefore, it is not necessary to complete the beneficiary section. However, if the person owning the trust is different from the purchaser, the owner is the beneficiary (Example: A son purchasing a trust for his mother would be the purchaser, she would be the beneficiary of the transaction).

GUARANTEED VS. NON-GUARANTEED

Funeral homes have the option of guaranteeing the funeral. Be sure to select the appropriate contract. If you have guaranteed the funeral, the cash advance items are not included in the guarantee. If you have guaranteed the funeral, the funeral home is entitled to retain all funds in the trust at the time of death.

WISCONSIN FUNERAL TRUST®

TAXATION OF FUNERAL TRUSTS

The Taxpayer Relief Act of 1997 allows trustees of funeral trusts to make a decision on who pays the taxes on earnings. As the trustee, funeral directors can choose to have the trust treated as a "Qualified Funeral Trust" (QFT). As such, the trust will not be required to report each beneficiary's share of income separately as taxable to the beneficiary. Instead, all taxable income is paid by the trust itself. Federal taxes are paid at a flat 15% and State taxes are paid at 4.77%. The beneficiary of the trust will not receive a 1099 each year. The idea of having the trust pay the tax is only an option. If your pre-need beneficiary has little or no other reportable income, you might be better off having the income reported to them rather than having the tax taken out of the earnings. Any tax taken out of the account will reduce the investment performance. The IRS currently has a cap of \$8,000 on the size of the funeral trust that can elect this option. It is adjusted for inflation each year. Once the election to QFT status is made, it cannot be revoked without the consent of the IRS Commissioner. Funeral directors wishing to make this election must complete and attach the pre-printed election letter available from Smith Barney or WFDA.

REVIEW OF CERTAIN FTC FUNERAL RULE REQUIREMENTS

In compliance with provisions of the FTC Funeral Rule, a General Price List, Casket Price List and Outer Burial Container Price List must be given to the client whenever funeral arrangements are discussed. A statement of Funeral Goods and Services should be completed to determine the amount of funds that should be set-aside in a trust.

ESTATE RECOVERY PROGRAM

By law, excess funds in the trust accounts of SSI/MA recipients must be returned to the state. Funeral directors are obligated to inform families of this and issue a check payable to the estate of the deceased. The deceased's family is responsible for returning the money to the state at:

**Estate Recovery Program
P.O. Box 309
Madison, WI 53707-0309
(608) 266-9435**

The Estate Recovery Program allows families to use excess funds to pay for funeral expenses not part of the initial trust. Because of the limits set by the state, many cash advance items (flowers, lunch, musicians, minister, etc) cannot be part of the original trust in Medical Assistance cases; however they can be paid before any funds are returned to the state.

EXHIBIT C

CREDITING RATE COMPARISON TABLE

See attached.

YEAR	QUARTER	Rate Effective Dates	Datatrac Rate		Rate as Reported to Preneeds Committee	Guaranteed Rate Determined by Preneeds Committee ("WFDA Rate")	Difference Between WFDA Rate and Proper Credit Rating	Trust Obligations as of Beginning of Quarter	Interest Based on Proper Crediting Rate for Six Months		Interest Based on WFDA Rate for Six Months	Estimated Over-Crediting
			Datatrac Rate	+1% ("Proper Crediting Rate")					Months	Six Months		
2007	3	1/1/2008 - 4/30/2008	4.45	5.45	5.54	0.09	\$38,526,319.83	\$699,894.81	\$711,452.71	\$711,452.71	\$11,557.90	
2008	1	5/1/2008 - 9/30/2008	3.71	4.71	5.54	0.83	\$38,526,319.83	\$756,079.03	\$889,315.88	\$889,315.88	\$133,236.86	
2008	3	10/1/2008 - 4/30/2009	3.30	4.30	5.54	1.24	\$41,644,517.39	\$1,044,583.31	\$1,345,811.99	\$1,345,811.99	\$301,228.68	
2009	1	5/1/2009 - 9/30/2009	2.72	3.72	4.00	0.28	\$45,910,810.78	\$711,617.57	\$765,180.18	\$765,180.18	\$53,562.61	
2009	3	10/1/2009 - 4/30/2010	2.26	3.26	4.00	0.74	\$49,311,442.52	\$937,739.27	\$1,150,600.33	\$1,150,600.33	\$212,861.06	
2010	1	5/1/2010 - 9/30/2010	2.07	3.07	3.50	0.43	\$53,250,166.61	\$681,158.38	\$776,564.93	\$776,564.93	\$95,406.55	
2010	3	10/1/2010 - 4/30/2011	1.84	2.84	3.50	0.66	\$56,976,631.52	\$943,912.86	\$1,163,272.89	\$1,163,272.89	\$219,360.03	
2011	1	5/1/2011 - 9/30/2011	1.53	2.53	3.50	0.97	\$60,343,445.65	\$636,120.49	\$880,008.58	\$880,008.58	\$243,888.09	
2011	3	10/1/2011 - 4/30/2012	1.33	2.33	3.15	0.82	\$63,374,350.43	\$861,363.05	\$1,164,503.69	\$1,164,503.69	\$303,140.64	
2012	1	5/1/2012 - 9/30/2012	1.08	2.08	3.15	1.07	\$66,899,326.41	\$579,794.16	\$878,053.66	\$878,053.66	\$298,259.50	
2012	3	10/1/2012 - 4/30/2013	0.95	1.95	1.85	-0.10	\$69,277,364.11	\$788,030.02	\$747,618.22	\$747,618.22	-\$40,411.80	
Estimated Total Difference											\$1,832,090.12	

EXHIBIT D

NOTICE TO DEPOSITORS

See attached.

In re WFT LIQUIDATING TRUST
(formerly Wisconsin Funeral Trust),

Case No. 12-CX-44

Receivership.

NOTICE TO DEPOSITORS

YOU ARE NOT REQUIRED TO DO ANYTHING IF YOU DO NOT OBJECT TO THE RECEIVER'S PROPOSAL SET FORTH BELOW. HOWEVER, IF YOU OBJECT TO THE PROPOSAL, OR YOU WANT THE COURT TO HEAR AND CONSIDER YOUR VIEW ON THE PROPOSAL, THEN YOU OR YOUR ATTORNEY MUST APPEAR AT THE HEARING ON SEPTEMBER 25, 2014.

On September 14, 2012, the Dane County Circuit Court appointed John M. Wirth as receiver for the Wisconsin Funeral Trust, now known as the WFT Liquidating Trust (the "Trust"). Prior to Mr. Wirth's appointment, you entered into a burial agreement with a funeral home, and the money you paid for your burial agreement was deposited in the Trust.

When the Trust solicited your business, it guaranteed that your deposit would bear interest at 1% over the Wisconsin average 3-year CD rate, and that the Trust would adjust your interest rate every 6-months to reflect the ever-changing average.

The Trust followed this practice until 2008. Starting in 2008, and continuing through the appointment of Mr. Wirth, the Trust stopped crediting your account at 1% over the Wisconsin average 3-year CD rate. Instead, the Trust used an artificial numbers that were not based on the Wisconsin average 3-year CD rate.

The Trust's decision to use an artificially high interest rate resulted in an over-crediting of approximately \$1.83 million to the Trust, and funeral homes have become liable for this overstated benefit to the Trust.

In an effort to fairly and accurately fulfill the obligations contained in your burial agreement, Mr. Wirth has proposed to retroactively apply the proper interest rate to all current accounts in the Trust. This proposal involves changing the artificial interest rates established by the Trust to the historically accurate and justifiable interest rates. By retroactively applying the correct interest rates, you will receive exactly what you were promised under your burial agreement. The interest rate corrections will also provide a savings of approximately \$1.45 million for the Trust.

This will affect your account balance. Mr. Wirth calculates that, after applying the correct interest rates, your account will equal approximately 97% of its current balance.

If you receive Forms 1099 from the Trust each year for tax reporting purposes, the interest reported on your Form 1099 will be reduced going forward so that you receive the tax benefit of this adjustment.

On September 25, 2014 at 1:30 p.m., Judge Peter Anderson will hold a hearing in his courtroom at the Dane County Courthouse, Room 6103, 215 South Hamilton Street, Madison, Wisconsin to consider Mr. Wirth's proposed solution. You are not required to appear if you do not object to the proposed solution. However, if you disagree with Mr. Wirth's solution, or you want the Court to hear and consider your views on the solution, then you or your attorney must appear at the hearing.

Mr. Wirth's proposed solution will not be applied to your account unless the Court approves it.

You can review the court papers asking for approval of Mr. Wirth's proposal at www.wisconsinfuneraltrust.org/_____.

The Wisconsin Department of Financial Institutions, represented by the Wisconsin Department of Justice, approves Mr. Wirth's proposal and will request that the Court approve it.

Mr. Wirth, in working for the best interests of depositors and all other people involved in the Trust, believes that the Court should approve his proposed solution.

Answers to your questions about Mr. Wirth's proposed solution can be found at www.wisconsinfuneraltrust.org/_____ . Otherwise, email us at WirthFuneralReceiver@gmail.com or call us at 855-947-9900. We cannot provide legal advice. If you require legal advice, please consult your lawyer.

Dated August _____, 2014.

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