

Current News and Comments from the Pennsylvania Cemetery, Cremation and Funeral Association /

President's Message

Our November newsletter is a little late as our efforts to bring the membership module online engaged our volunteers more than anticipated. Allow me to apologize for the delay and assure you that it is a significant step in moving our membership efforts forward. As membership letters have been coming out in January of every year, I understand some of our members have been concerned the e-mails coming from our new system and the membership year ending on December 31st. Actually, December 31st is the end of the membership year. The letters went out in January to avoid the confusion of the holidays, but unfortunately, last year we were still sending out renewal letters in August.

Here we are in January 2023! I continue to be encouraged every day by the resilience shown by



deathcare professionals. I would like to extend my personal thanks to all the industry professionals for their dedication and care during the continued global pandemic. Funeral directors, cemeterians, administrative staff, attendant staff, grounds crew, advanced planning representatives and all other support staff have all shown up, day after day, to serve our community. (*Applause*) You have all risen to the task with the dignified resilience we pride ourselves within this profession. Truly, our role is more than just disposition of the dearly departed and it is in times of great hardship that our opportunity to serve in this manner most presents itself. Knowing the unique suffering many of our families are experiencing, let us strengthen our commitment to excellence, knowing that how we treat people in their time of greatest

need is long remembered and, more importantly, it is what each and every family deserves.

It is important to us, that as your state association, you join with us and engage in programs to elevate your business; be protected from ill-conceived regulations; and hear of new trends that you can embrace or reject as your business requires. Put June 7th -9th on you schedule and join us for your PCCFA Spring Conference, and November 8th- 10th for the MidAtlantic States Cemetery and Funeral Conference.

May the new year make for a fresh and bright start. Cheers to you and wishing you a very a happy, healthy and prosperous New Year.

All the best,

Dagny Neel Fitzpatrick

President

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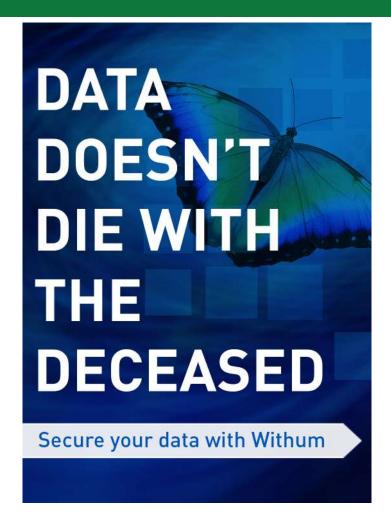
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PCCFA Website-www.PCCFA.com Ernie Petersen and Brooke



Benefits of Membership

By Craig Schwalm

- The eKeynews, a four times a year publication, delivered by e-mail.
- Two conferences a year with continuing education credits for funeral directors at PA locations. (Every other year, our fall conference is held in Atlantic City with four other states and there the education program provides credits and certifications.
- A discount on the MemorialPro insurance product from the Regan Agency, Inc.
- Constant Contact available for for rapid communications. Suppliers take note!
- Access to our supplier members network
- The PCCFA complaint hotline helping us help cemeteries with consumer issues.
- An annual legislative reception, to make sure your representatives know they can come to us for assistance with pending legislation and constituent issues.
- A lobbyist looking out for our best interests in Harrisburg.
- Access to other cemeterians to network and brainstorm amid the changing and evolving death care industry. Green burials, spotted lantern fly, etc.

Common Claims and Risk Management for Cemeteries and Funeral Homes

By Brennen Regan, CPCU, CPL I Nov. 4. 2022

If you've been in the Cemetery business long enough, chances are you've had to deal with an insurance claim of some sort. Let's face it, Cemeteries can be big places, with large expanses of open land, roads, sidewalks, paths, buildings, and stairs, all of which can be the ideal spot for a slip and fall claims. In addition, the records you keep, you're dealing with families at their time of need, and the sensitive nature of your business, are easy targets for emotional distress claims should something go wrong leading up to or at the time of burial.

That being said, one of the most frequent questions that we get from our clients is "How can we prevent claims at our Cemetery?"

For starters, its best to talk about the most common claims that we see at Cemeteries:

☐ Slip & Falls – while not the most frequent, these are by far the costliest claims. Depending on the injuries sustained, slip and fall claims can easily reach six figures.

Example – a wife is attending her husband's funeral. While leaving the Cemetery office, she trips on a raised sidewalk slab and falls. She sustains a fractured ankle that requires surgery. The claim settled for \$250,000 plus legal fees.

☐ **Professional Liability** – these are claims for emotional distress and mental anguish. Most often these claims occur at the time burial, but they can also stem from inaccurate record keeping or even human error.

Example – a burial crew is lowering a casket into a grave in front the family, in a section where the graves are known to be narrow. The crew is having difficulty fitting the casket in, and tries to "force" it, causing the casket to open. The incident is caught on video by several family members who were recording it on their cell phones. The claim settled for \$325,000 plus legal fees.

☐ **Property Damage Liability** – the task of maintaining a Cemetery involves a lot of equipment and personnel, and sometimes property of others is damaged inadvertently by cemetery workers. These are property damage liability claims.

Example – a worker operating a ride-on lawnmower cuts a corner too close and strikes a monument, knocking it off its foundation causing it to crack and chip. The cost to repair the monument is \$3,125.

*All of the examples above are actual claims, that were covered by the Cemetery's insurance.

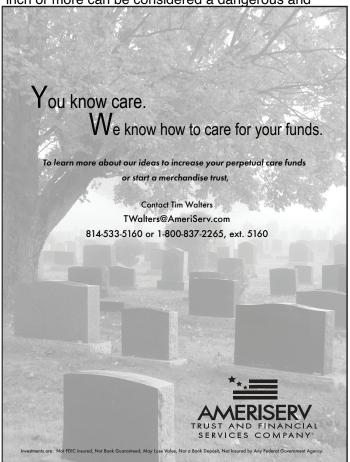
Now that we're familiar with the types of claims, what steps can be taken to prevent them?

Slip & Falls

As I mentioned previously, Cemeteries can be big places, and it's nearly impossible to stay on top of every square inch to make sure that there are no slip and fall hazards. You also have no control over the human component, like what people are wearing when they visit, if they are looking at their phone while walking and not paying attention, or just plain clumsy.

Under Pennsylvania Slip & Fall laws, a property owner is required to use reasonable care to make its property safe for visitors. The good news is that similar laws protect the property owner from liability due to certain weather-related slip and fall incidents. In addition, if due to comparative negligence the injured part is more than 50% responsible, they may be unable to recover damages from the property owner.

The best thing that you can do to prevent slip and fall claims is to be proactive. Routinely inspect the grounds, roads, paths, and sidewalks to see if there are any areas that may present a slip and fall hazard, and create a budget that goes towards repairs every year. The general rule is that a sidewalk slab that is raised ½ inch or more can be considered a dangerous and



Common Claims and Risk Management

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defective condition. In high traffic areas such as around the office or a community mausoleum, making small repairs as needed will go a long way towards preventing claims.

On the grounds, make a site survey part of the preparation for burial, if you aren't doing it already. A quick scan of the surrounding area to make sure there aren't any defective sidewalk conditions, holes covered with leaves (a common culprit), or uneven surfaces that can easily be corrected. And if it can't be corrected easily, place a cone or caution tape near the area to alert visitors.

Lastly, use your employees, they are your eyes and ears around the Cemetery every day. Educate them on how important it is to keep the grounds safe for visitors, and ask that they keep their eyes open, and report any potentially dangerous conditions to management or their supervisor.

Professional Liability

Claims under Professional Liability can be tricky. In some cases, it's obvious and hard to defend, such as a mishap during a burial, while other may involve record keeping, human error, or a family dispute.

In any case, training and documentation are key. Your employees who handle burial records should be thoroughly trained and up to date on state and local laws, and they should document every correspondence with family members. Ideally, one family member should be the designated point of contact, to prevent mixed message from other members of the deceased's family. In many cases, Professional Liability claims related to record keeping were caused by the Cemetery being told to do one thing by one family member, and something else by another, or performing a burial without proper consents. These claims can be avoided with proper training and documentation.

Advances in cemetery record keeping and mapping can also help. Mapping programs allow cemeteries to accurately track information, such as where graves are located, who is buried there, how many graves are in each plot, and how many graves are available. Knowing this information ahead of time is far better that finding when it may be too late.

At the time of burial, training is once again key. Your employees on the burial crew should be fully trained at their respective duties, and also trained on how to react when things go wrong. They should know when to ask for an extra pair of hands, or when to ask the family to

step back because the grave needs to be excavated a little more. A supervisor or designated responsible person should be present at all burials. Assume that everything your workers are doing is being recorded on cell phone video – because chances are that it is!

Property Damage Liability

Property Damage claims are typically small, but they can add up. And having too many of these claims may lead your insurer to apply a Property Damage Liability Deductible, which can get expensive.

More often than not, these claims are caused by employees rushing or simply not paying attention. A heavy piece of equipment like a mower or backhoe can cause extensive damage to a monument or private mausoleum, so extreme caution must be used.

Again, training is key. Employees should be thoroughly trained, and re-trained if necessary, on how to operate equipment so as to not damage property of others, or themselves.

Similar to driving laws, rules should be created and enforced with regard to cell phone usage. Distracted workers can easily lead to property damage.

Keep in mind as well that a Property Damage Liability claim can easily transition to a Professional Liability claim. If a family member visits the Cemetery and finds the monument of their loved one damaged or destroyed, they can claim emotional distress or loss of sepulcher.

Lastly, if damage is caused, employees should be instructed to report it as soon as possible so that you can take the necessary steps to alert the family and repair the damage.

Additional Insured's and Certificates of Insurance

On another equally important topic, at least once a week I get a call or email from one of our Cemetery clients asking us what measures should be taken to limit the Cemetery's potential liability for a new project that they are starting, or for routine work that is being done on the Cemetery grounds. This is one of my favorite questions, it shows that Cemeteries are actively seeking to control their exposure and reduce risk, and it also gives us the chance to meaningfully educate our clients on the subject of risk management.

What we have found over the years is that most Cemeteries have formal or informal processes in place to collect Certificates of Liability Insurance from contractors that are on the Cemetery grounds on a regular basis. Similarly, for new projects or large renovations most Cemeteries will collect Certificates of Liability Insurance from the contractors performing the work. As good as this may be, and we by all means encourage it, does the mere possession of a Certificate

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of Liability Insurance mean that the Cemetery is protected? Not always.

First, it's important to note that a Certificate of Liability Insurance does not extend or alter coverage, nor does it convey any rights to you, the Certificate Holder. If you look closely at a Certificate of Liability Insurance (ACORD 25) you will find the following disclaimer at the top:

"This Certificate of Insurance is issued as a matter of information only, and confers no rights upon the Certificate Holder. This Certificate does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policies below. This Certificate of Insurance does not constitute a contract between the issuing insurer, authorized representative or producer, and the Certificate Holder."

That being said, what can you do to ensure that the contractors working on your grounds have sufficient insurance coverage, and that appropriate measures are in place to limit the Cemetery's potential liability by transferring the risk to the contractors?

Additional Insured

For starters, it's important that you be named as Additional Insured on the contractor's liability policies. I cannot stress this enough. Additional Insured status will afford your Cemetery coverage under the contractor's insurance policy for claims arising out of their negligence, or the negligence of subcontractors working on their behalf. Additional Insured coverage should be "primary and non-contributory," meaning that your insurance isn't expected to respond first and their coverage will only act as excess.

We recommend that you take it one step further and ask for copies of the Additional Insured endorsements. There are many different Additional Insured endorsements out there, and many insurance companies utilize their own endorsements with their own language. It's important that you know what you are getting. The most common Insurance Service Offices (ISO) endorsements are CG2033 4/13 -Additional Insured – Owners, Lessees, or Contractors When Required in Construction Agreement With You. and CG2037 4/13 - Additional Insured - Owners. Lessees, or Contractors – Completed Operations. Note that these two endorsements serve specific purposes and are intended to be used together. CG2033 provides the Additional Insured coverage, and CG2037 adds the completed operations hazard. Failure to add CG2037 may exclude coverage for

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claims that arise once the contractor has completed the work.

On the topic of Additional Insured's, many Additional Insured endorsements, including the most recent versions of CG2033 and CG2037, will require that a written contract be in place that requires you to be named as Additional Insured on the contractor's policy in order for the Additional Insured coverage to be triggered. In the absence of a written contract, there is no Additional Insured.

Most large projects or ongoing maintenance work performed by outside contractors will involve a contract. Be sure that there is specific insurance language in the contract that requires the contractor to name the Cemetery as Additional Insured. Many standard construction contracts do not include specific insurance language, so you may need to attach a separate insurance rider to the contract.

Getting contracts in place with contractors that you hire directly may be simple enough, but what about contractors that are on the Cemetery grounds who aren't there to work for the Cemetery? An example would be a vault company or a monument setter, who may be there on behalf of the family. This relationship can be tricky, but since they are coming onto your property to do work for their customers, it puts you in a good position to enforce some basic insurance requirements with the use of a short contract. We use a one-page insurance agreement with our clients that serves the purpose and gains the Cemetery the protection that it needs.

How Much Insurance Should You Require From Contractors?

It really depends on the project. Smaller projects or those with lower perceived risk may not require the same limits of insurance as a large project, or one that presents an increased exposure to loss. However, that's not to say that a small project isn't susceptible to loss.

We recommend at a bare minimum that contractors have at least the General Liability industry standard of \$1,000,000 Each Occurrence and \$2,000,000 Aggregate Limit. The Each Occurrence Limit is the most that the insurance company will pay out for a single claim, and the Aggregate Limit is the most that the company will pay in a given policy term, regardless of the amount of claims that occur. Higher limits are typically achieved with an Umbrella Liability policy. Factors that should be considered when determining if higher limits of Liability are necessary should include:

☐ Type of Work☐ Size of the Project☐ Project Duration

We recommend that you review upcoming projects as well as the Cemetery's general insurance requirements with your insurance representative to determine what limits are suitable to protect the interests of the Cemetery.

The purpose of this article is to provide an overview of common claims and steps that you can take to prevent them, as well as basic risk management through the use of Certificates of Insurance and Additional Insureds. As always, all situations are different. We recommend that you consult with your insurance representative on what is best for your Cemetery.

I am happy to discuss this topic further if you have specific questions or areas of concern. I can be reached at (631) 669-3434 Ext. 224 or bregan@reganagency.com.

As a benefit of membership in PCCFA is a discount on the MemorialPro insurance proucts offered by the Regan Agency, inc., we are happy to include this extensive artcile so that our members can appreciate the importance of maanging risk at their facilities.

Spring Conference 2023

June 7-9, 2023

State Collegethe heart of Pennsylvania





You don't want to miss this one!

FTC Meets and Votes to Enhance Funeral Rule

It looks like funeral homes in the United States will soon be required to post their general price lists online. The Federal Trade Commission (FTC) voted 4-0 in October to update a 1984 rule governing this aspect of the funeral industry to reveal their pricing to consumers over the telephone. Additionally, they may soon be required to list these prices on their websites as well. This response is a step towards a national requirement could be possible as the industry has been almost completely unregulated at the federal level. Currently, under the FTC's <u>Funeral Rule</u>, consumers have the right to get a general price list from a funeral provider when they ask about funeral arrangements. They also have the right to choose the funeral goods and services they want (with some exceptions), and funeral providers must state this right on the general price list. If state or local law requires purchase of any particular item, the funeral provider must disclose it on the price list. with a reference to the specific law. The funeral provider may not refuse, or charge a fee, to handle a casket bought elsewhere, and a provider offering cremations must make alternative containers available.

It was also reported that Federal Trade Commission investigators, working undercover in five states, found failures to disclose timely itemized pricing information, as required by the Funeral Rule, in 17 of the 90 funeral homes they have visited since 2018.

PAC and Legal Defense Funds

Who works with our state representatives to protect your business, consumer grievances and protects us from overly burdensome laws? **PCCFA does!** Support our efforts with your personal donation to the PCCFA PAC Fund.

For more information: Ernie Petersen at (814) 243-3837 or e-mail southsidestray@mac.com

If you want to support PCCFA, with a business contribution, consider donating to the Legal Defense Fund.

For more information: Ernie Petersen at (184) 243-3837 or e-mail

pccfa.exec.team@gmail.com

Funeral Aid is Available-But Untapped- in Many States

The Pew Trust Research reports that many states offer payments to families to help them cover the cost of funerals, and some of the amounts are on the rise.

The funds are only available to people with low incomes, and sometimes the amount isn't enough to cover the full cost of funerals. But the money can be a help — if families know about it. Too often, they don't.

The state of Pennsylvania offers burial benefits to those who are already receiving assistance through social security or who are eligible for cash benefits through the Department of Human Services before death. Nursing home residents who have received state or SSI assistance since 1973 are also eligible. The program is administered through the county Human Services offices. The maximum benefit is \$750 which must be paid to an approved funeral director.

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For more information:

Call eKeyNews Editor Dagny Neel-Fitzpatrick (412) 655-4500 or e-mail dagny@jeffersonmemorial.biz

Join us at Atlantic City November 2023



Special Announcement!

On December 1st, webCemeteries will be uploading the members list to the PCCFA website. When your profile has been added, you will receive an automated email from donotreply@webcemeteries.com. Since this is an automated email, it may end up in a spam or junk folder, so keep an eye out.



If we have your e-mail, this will generate a welcome e-mail to you. Your login email will contain your username and a link to set your password. If you experience an error with the link to set your password, please try copying and pasting the link into your address bar.



You will be asked to create a password for the site.



The website will stipulate password requirements.



Then you will be able to login.



You will be directed to your Dashboard. Here you will fill-in information that the website will build our Member Directory

By completing these steps, you will be helping your cemetery, funeral home or crematory have access to:

- · Listing in the Member Directory
- Online payment for membership renewals and PCCFA conference events
- Presentations you may have missed at conferences and workshops.
- Information about the Legal Defense Fund and Political Action Committee.

If you experience any issues setting up your account, please contact PCCFA (<u>pccfa.info@gmail.com</u>) for assistance.

Please join us June 7-9 for the PCCFA 2023 Spring Conference in State College and then November 8-10 for the Mid-Atlantic

