

November 2007

American Cemetery

www.katesboylston.com

PERIODICAL

LARRY ANSPACH
AMER CEM MORTUARY CONS
1509 GOLDEN OAK DR
LAS VEGAS NV 89117-1451
*****AUTO**3-DIGIT 891
854 S 30 39

cemetery
finance

When Marian May fell into the grave of her friend at a town-owned cemetery in Highlands, N.C., she broke her hip. Shortly afterward, she filed a lawsuit against the funeral home handling the service as well as the town.

Beware of slip & fall

by thomas a. parmalee



“ Sometimes someone will slip and fall and say they are fine and later we find out that they went to an emergency room at the hospital because their wrist is sore or something is sore, so we make sure no matter what the individual says, we write up an incident report. ”

-Ted Mau, president and CEO, Washington Park Group

The fall, which occurred in June 2004 during the funeral of May's friend, Jean Murphy Henderson, is the subject of a continuing lawsuit. May had to have her hip replaced, and her 92-year-old husband, William, claims the accident cost him the affection of his wife. They are seeking more than \$75,000.

When May, who lives in Marietta, Ga., stepped toward the casket so she could place flowers on it, the ground – covered only by green carpeting – gave way and she fell six feet and hit a concrete vault. “It is not much fun being down there, where it's nice and black, and you are looking up, and I am saying ‘Jean, I don't want to go with you,’” May told the Citizen Times newspaper.

Bryant Funeral Home, which handled the services, said in court papers that it was not responsible for the accident. The town of Highlands also denies any culpability, and a lawyer told the newspaper that the town is not responsible for making the area near a grave safe.

An Everyday Occurrence

Daniel M. Isard, founder and president of The Foresight Companies, said it's a tough job for cemeteries to protect themselves against lawsuits. He noted that according to the Insurance Information Institute, cemeteries account for the second-largest number of slip-and-fall claims behind supermarkets.

It's not hard to figure out why cemeteries have so many problems with people falling. “The ground is not perfect to begin with, and we dig it up for the first time in the history of man and put something in and then try to recompact the ground,” Isard said. “Obviously, you can never get it back to level unless you really work on it.”

Good cemeteries will do their best to avoid mounding and add dirt to avoid pitting in order to prevent potential lawsuits from slip-and-fall cases, Isard said.

Ted Mau, president and chief executive officer of the seven cemeteries in the Washington Park Group with Flanner & Buchanan in Indianapolis, Ind., said that slip-and-fall is probably “the biggest liability issue we might

have." It's impossible to prevent them all, he said.

"But liability is something we think about," Mau said. "We try to put into place procedures and processes to minimize and eliminate the possibilities for liability."

Isard warned funeral directors that possible wrongdoing by a cemetery could end up hurting funeral homes as well. For instance, in the example provided at the beginning of the story, the funeral home likely did nothing wrong. "There are times when you are going to be sued based upon the actions of others," he said. "And this is a level of litigation that most people don't even see themselves being a party to ... What did the funeral home do in that case to cause to be sued? Did they insist the family use that cemetery? Obviously not. Did they hire the gravedigger? Well maybe, but I don't think the gravedigger did anything wrong." He continued, "But any business owner has got to look at the contingent liability."

The notion of getting sued because of someone else's mistake, however, runs both ways. Isard noted that he once was involved in a case where a funeral home was supposed to arrange for a vault and failed to do so. "Rather than everything falling in line, everything fell out of line, and the cemetery got sued in that particular case," he said.

Larry Anspach, president of American Cemetery/Mortuary Consultants, which provides consulting, valuation and brokerage services to cemeteries and funeral homes, added that flowers and vases can pose additional problems. "It is very dangerous when families place flowers in a metal container with a spike and then insert this vase in the ground at the gravesite." He continued, "There have been instances where a lawnmower has sheered off this metal vase and seriously hurt the operator of the mower. It could just as easily hurt a visitor standing nearby."

To guard against this, some cemeteries require lawnmower operators to stop their work whenever someone is visiting a grave nearby. Still, some lawnmower operators are not trained properly. "I know of instances where a cemetery will hire a high school kid to mow the lawn with a small push mower, and the mower got clogged up, and instead of turning off the mower to correct the problem, he reached in," Anspach said. "Fortunately, in this case, he only grabbed the side of the mower before someone stopped him. Obviously, this could have been tragic."

Old monuments can also pose a problem as they can tip over. "I know an instance in the Chicago area where a monument tipped over and hit a little

girl and killed her," Anspach said. "Although this is the exception, it is important for cemeteries to maintain their monuments in a manner so they will not fall over."

The financial implications of a lawsuit – be it against a funeral home, cemetery or other company involved in funeral service – can be significant. According to a 2005 study conducted by Jury Verdict Research in Palm Beach Gardens, Fla., which looked at cases filed against cemeteries, mortuaries, mausoleums and morgues, the median awards for various cases are the following (a median can be found by arranging a list of numbers from smallest to greatest and picking the amount in the middle):

- Cremation: \$23,750
- Delayed burial: \$5,300
- Improper Display: \$40,000
- Improper Embalming: \$90,000
- Wrong Grave: \$20,000
- Funeral Service Negligence, Overall: \$18,900

According to the study, less than 1 percent of the cases against funeral businesses were more than \$1 million. The award average was \$71,205.

Some examples cited in the study by Jury Verdict Research provide an idea of the amounts involved in typical cases.

- A May 2004 trial titled Miles v. Glennview Memorial Park, J and P

Cast Aluminum

SECTION D

NOTICE
NO PLANTING WITHOUT PERMISSION
NO ARTIFICIAL DECORATIONS ALLOWED FROM APRIL 1ST TO NOVEMBER 1ST
NO STONES SLAB OR MARBLE CHIPS
METAL GLASS OR BRICKS PERMITTED
NO BURNING CIGARETTES

Riverside Cemetery

RIVERSIDE SECTION 15 CEMETERY

LSI Lake Shore Industries
1817 Poplar St. P.O. Box 59 Erie, PA 16512-0059
ph: 800-458-0463 fax: 814-453-4293
www.LSISIGNS.com
Manufacturing quality signs since 1908

Memorials in Durham, N.C., involved a woman who suffered emotional distress when the cemetery placed her daughter's grave marker, which was made by J and P Memorials, on the wrong grave. The plaintiff contended the defendants used unfair and deceptive business practices. Both defendants said they were innocent.

The final demand by the plaintiff was \$25,000. In this case, the parties would have been smart to settle as the final award ended up being \$70,000, and the judge subsequently increased the award to \$210,000.

- The award in another case, which went to trial in June 2002, was much greater. In *Miller v. Akins Funeral Home* in Walker, Ala., a woman claimed that she suffered emotional distress when her husband's body was cremated and the wrong body placed in her husband's casket, which was opened in front of a large crowd at a memorial service in the funeral home. The mother of the deceased also claimed emotional distress. The funeral home denied liability.

The total award in this case ended up being \$600,000. Of that amount, \$450,000 was for compensatory damages and \$150,000 was for loss of services.

- And of course, every once in a while, there is that million-dollar case, which can absolutely devastate a

business. In a case that went to trial in Jefferson, Ala., in April 2002, titled *Srygley v. Johns-Ridout's Chapels*, eight plaintiffs accused a funeral home of placing the wrong body in their relative's casket, which caused the family undue emotional distress. Moreover, the family said the funeral home placed their relative's clothes on the wrong body and failed to properly supervise its employees. The funeral home denied any wrongdoing.

The final award ended up being \$1,270,000, with \$1 million being awarded as punitive damages.

If you are a combination operation, obviously there is even more for you to worry about in terms of liability. But even as a cemetery, it is easy to see that there is much that can go wrong, and you must protect yourself.

Working with Insurance Companies

This can be tricky. But Isard doled out three rules that every cemeterian should follow when dealing with insurance companies and agents.

- **Don't trust your agent.** "You may buy your coverage from that agent or agency, but take that coverage to a litigation attorney and buy his or her time and say, 'What are the areas that we are vulnerable in, and is this enough coverage,'" Isard advised.

- **Get insurance for your directors and officers.** This could possibly cover

your nonprofit status, Isard said.

- **Review your contracts.** According to Isard, cemeterians should take all of their contracts and bring them to a commercial litigator. "Ask if something should happen under these contracts, where am I vulnerable, what should I add, what should I bold, should I have someone initial each and every salient point in this agreement," Isard said.

Mau also had some suggestions on the subject of insurance.

- **Have a good look at your overall insurance coverage every year.** "We make sure we don't have any gaps in insurance coverage for particular things like cemetery liability errors and omissions," he said. "And if you have a crematory, you need to make sure your insurance provider understands your business."

- **Have an outside firm do an independent audit every once in a while.** Every seven to 10 years, Mau has an outside firm do an independent audit of the insurance coverage at the cemeteries included in Washington Park.

"It's just to make sure that our agent has done a good job in providing insurance coverage," he said. "It can be expensive and range in the \$5,000 to \$10,000 range, and it has been trending toward \$10,000." Mau noted that he knows not every operation can afford that, but for him, it's an



Every Rose has a Thorn

Start the Ensure-A-Seal Casket Protector Program today.

1-800-864-4174
www.ensure-a-seal.com



© 2006 Ensure-A-Seal



ENSURE-A-SEAL

important task to complete periodically.

- **Consider your coverage amounts carefully.** Obviously, it's important to have the right amounts or else you leave yourself open for some serious losses. In Mau's case, a number of years ago, the Washington Park Group of cemeteries increased its umbrella insurance from \$2 million to \$10 million after a review issued such a recommendation.

"It obviously doesn't cost five times as much to get that additional coverage, but it does give you a comfort level that helps you sleep better at night," he confided. "When you have a big organization like we do - close to 75 employees, seven cemeteries and upwards of \$10 million per year in business ... well, unfortunately, people think you have deep pockets."

- **Consider getting additional insurance brokers involved.** About every two to three years, Mau gets

two brokers involved in the selection process, he said. "The incumbent broker gets to pick first and the second broker gets to pick an additional three or four," he said. "If you have a good broker, the same type of situation can occur with just using one broker because he can go to all markets, but this is just another way that we make sure that we are getting the best value for our money."

- **Procedures are key.** Mau said cemeteries must have an incident report. "When somebody falls or something happens and our people know about it, they write up a report and describe as many things as possible and turn it into the office. And then we alert the insurance company, even though we don't know if anything will happen at that point." He added, "Sometimes someone will slip and fall and say they are fine and later we find out that they went to an emergency room at the hospital because their wrist is sore or

something is sore, so we make sure no matter what the individual says, we write up an incident report."

As far as the three combination operations that the Washington Park group is part of, it owns a separate corporation that owns the funeral homes. "It is a wholly owned subsidiary of the cemetery, and that is one of the ways that the IRS allows funeral operations in a nonprofit cemetery. They have their own insurance coverage separate and apart from the cemetery."

While some questionable lawsuits get filed, Mau noted that sometimes cemeteries must accept responsibility and even change the design of their cemeteries or funeral home. For instance, about five years ago, someone tripped over the curbing at the funeral center at Washington Park East, Mau said. "The curbing ran along the front of the funeral center, and the front door was right there, and people would have to step up over that curbing," Mau said. "We thought that people would walk around the landscaped area to get to the front door, but people would just walk over the landscaped curbing."

After one woman slipped and fell on the curb, the cemetery redesigned the landscape. Now, there is ramp that people walk up and the curbing is gone. "I'm not sure how much medical expense (the woman who fell) had - not a tremendous amount - but that told us we needed to fix that problem because we were going to have more people fall."

Overall, cemeterians just need to do a better job of considering all that could go wrong at their places of business. If you have a facility where you will allow people to bring alcohol on premises, you may want to consider buying additional liquor liability coverage, even if some is already included in your basic coverage. You need to be diligent about putting down ice melt in the winter time and making sure your sidewalks are even. Another step that Washington Park takes is whenever there is a wind advisory, employees do not allow a tent at a graveside service.

Casket Tray with Bag System Available

\$19.50



CASKET TRAYS

ULTIMATE IN PROTECTION for your Mausoleum! Durable and long lasting, this Tray is manufactured of High Density Polyethylene. The I.D. dimensions are 29" x 85" with an O.D. of 31" x 87" x 3" high **with lip**. The O.D. can be trimmed to 30" x 86" for smaller crypts. The lip that goes around the Tray allows for easier handling. The Trays nest for space-saving storage and shipping costs.

CA. JOSEPH CO., INC.

www.cajoseph.com

13712 Old Fredencktown Rd. • East Liverpool, Ohio 43920

Phone: (330) 385-6869 • Fax: (330) 385-5038

"It's not just for the safety of the families but our own guys," Mau said. "The tent could come down and someone could get hurt with a stake."

More Tips

Isard suggested that cemeteries should break down everything they do into three main groups of people that could result in litigation: the consumer, the employee and the visitor. Keeping the cemetery in good condition for all three groups is a particular challenge, he noted.

"Grave digging is not a surgical science," Isard noted. "You could have the best backhoe operator in the world, but if he's off by three degrees and Casket One goes in straight but Casket Two goes in three degrees different, what happens the next time around? It's one thing if you are trenching, where people are buried in order. But in a commercial cemetery, people typically pre-purchase. You may put the first casket in Grave One and the next one in Grave Nine. If Grave Nine is three degrees off, by the time you get to Grave Five, you may not have enough room anymore.

And that's where cemeteries can get into problems. Suddenly, a woman who expected to be buried next to her husband won't fit unless you break up vaults or dig up remains. Both, of course, can prompt lawsuits.

"The other big problem that happens in a cemetery is the problem of administration – recordkeeping," Isard said. "I defy someone to walk up to a grave they have not been to in three or four years without any difficulty."

And another aspect of avoiding lawsuits or at least lessening their impact is training, according to Mau. At the seven cemeteries that are part of Washington Park, managers conduct a safety program with the grounds crew once a month and go over things such as how to operate a forklift, how to lift properly and other important tasks. "And we have a safety manual," Mau said. "We hope that shows our insurance company that these guys are thinking about this, and hopefully it has an effect on our rates."

The manual was no easy task to put together, either. According to Mau, it took six or seven months to put together, was done in house and completed in 2005. "Our employees can't say that we don't want them to work in a safe environment," he said. "We give little perks – when you have an accident-free month, they'll get a little perk, and if we have a number of accident-free months in a row, perks get a little bigger." The perks can include items such as pizza, free meals, a gas card, clothes and other such items. The Washington Park cemeteries spend about \$5,000 per year on such perks.

Each maintenance leader has the manual, and they go over it with their employees. Over the course of a year, the entire manual is discussed with every employee, Mau said.

Isard agreed that training is key. "It starts with a procedures manual, and everyone involved in every cemetery has got to recognize that they are

going to have some public interaction and what they do and how they do it could play upon the good will of that family," he said. "So even a gravedigger that wasn't hired for their savvy, if a family goes up to them and says, 'We have a problem,' they need to know how to handle it – what the first step is, the next step and most importantly – what not to say."

Anspach added that when a cemetery does realize something is wrong, they should not be afraid to disclose it to the consumer. Usually, people understand. "Never try and correct the problem unless you talk to the family first," he said. "Even though, in your rules and regulations there is always a provision that says you have the right to correct your mistakes." •

Thomas A. Parmalee can be contacted at tparmalee@katesboylston.com

