



## 'How To Avoid Grave Cemetery Problems'

### A Primer On A Few Cemetery Liability Issues

Read this article by Poul Lemasters, NCBVA Legal Counsel to make sure you know the risks - and more importantly - the process of how to handle and reduce your liability at the graveside.

When we think of the cemetery, we typically focus on death. After all, it is the final resting place for everyone. (OK, I know that everyone doesn't go to the cemetery. In this day and age of cremation, many people keep cremated remains in their home. In some cases, families don't even pick up their loved one's cremated remains from the funeral home! But, let's try to focus here on the cemetery.) While death may be the most common theme among cemeteries, the truth is that accidents happen at the cemetery too. The problem is that many professionals don't really think about the potential accidents; and even if they think about the accidents, they don't think about how or why they may be responsible.

This article is a look into a few 'accidents' that, unfortunately, do occur at the cemetery. The focus will be to identify the potential accident; understand who is responsible (aka liable); and then share ways to avoid the problem. In no way is this meant to solve every potential accident, but hopefully **this article will provide the framework to help in these accidents**, as well as others.

#### The Tent Blows Away!

In all honesty, if the tent just blew away, there probably is no issue. You don't have to worry until it falls – and hits someone – then the problems start. While this may not seem probable, there have been recent cases dealing with concert stages and riggings collapsing and causing injuries and even death. A recent case that continues to make national headlines was the stage collapse at the Indiana State Fair due to high winds. In that case almost every party involved was named in the numerous lawsuits that followed and are still ongoing. Needless to say, equipment in general is an issue to be aware of.

As mentioned above, in the case of equipment failure, all parties are potentially at risk. However, the party in charge of the equipment is definitely higher on the list. Knowing this, it is critical that you have safeguards in place to assure that you have policies for the use of all your equipment, the tent being just one of them. A few quick policies to have in place are:

- inspection

- installation
- walk-away policy

In regard to inspection, it seems pretty obvious that employees will keep an eye on equipment and report when it's getting worn or in need of repair. **But do you really have a written program on this? If you don't, then liability for faulty equipment can quickly escalate. More so, defending a claim that is based on faulty equipment is nearly impossible to defend if you do not have any type of written inspection and maintenance program.**

*Action item:*

Take the time to implement a program where equipment is inspected and tested on a regular schedule. Make sure that this is all documented and somehow tracked. For example, if you have 3 tents, they need to be marked/identified so that you know which tent was inspected and can show the records if ever needed. Inspections' checklists should identify:

- when equipment was inspected
- what issues were found (if any)
- what was fixed or repaired.

Installation policies and procedures are another area that should be documented. There is no common sense when it comes to how you set up your equipment; nor is there a defense of 'this is how we always do it.' Policies need to be in place to set out exactly how all your equipment is used/installed and also various conditions that would alter these policies. **Keep in mind having the policies is only part of the program. Training all your personnel on the policies is equally, if not more, important.**

The last item you need to address is a walk-away policy. The example cited earlier was the Indiana State Fair case where the roof on an outdoor stage collapsed due to severe weather. Part of the lawsuit focused on the fact that the weather was known, yet everyone kept going forward with the event, despite the potential outcome. **Do you have a walk-away policy where your company says, 'Due to the circumstances we cannot OR will not continue'?**

The reason this is critical is that while you can never remove all your liability, you can increase your liability by continuing with certain processes despite safety concerns. In the case of equipment – back to our tent blowing away – you also pose liability risk with your employees if you put them in a position of an unsafe workplace. Remember, under OSHA, you have to provide a safe workplace and if the weather changes that environment, yet you force them to work, you could be subjecting yourself to even more potential liability.

For customers, and your employees, **you should consider a written policy on when certain services will not be provided.** This could be due to high wind; severe temperatures; snow; ice; rain; I think you get the idea. Don't leave this to just guess

though. You should have some guidelines and some written agreement that gives you the out in case of any condition that poses a potential harm/danger to any guests or employees. There are even reported cases of insurance companies that will not cover claims if the harm happens under certain weather conditions. **It is worth a check to your general liability carrier to see if there are any provisions or limits on claims due to weather!**

## **Someone falls in the grave!**

There is no good response when someone falls into a grave space. How does it happen? There are numerous examples of this happening and include cases where the family gets too close to pay final respects; cases where the pallbearers are walking along the site and slip in to the grave; and cases where the grave is dug and left unattended and someone walks by and falls in the grave. These are just a few, but it outlines the general potential issue.

Who gets sued when someone falls into a grave? You know the answer – you do. To be clear, ultimately, everyone will most likely face some responsibility and potential liability when this occurs. There is a reason, in this type of case, why everyone typically faces some liability. There is never any clear indication or understanding of who is in charge. **As you read this right now – can you say unequivocally that your employees know their role and responsibility when it comes to graveside services?** Most likely the answer is no.

When it comes to 'who is in charge', most parties quickly assume that it is the other party. Funeral homes think the cemetery is in charge; the cemetery thinks the vault company is in charge; the vault company thinks the funeral home is in charge. Meanwhile the family is listening to everyone, not knowing who anyone is.

Consider the following example from a recent case. A family is escorting a casket to the graveside. The ground is very wet, and there were issues not only digging the grave but also keeping water out of the grave. The cemetery dug the grave; the vault company set the equipment for the vault; and the funeral home brought the family and the deceased. The funeral home pulled to the graveside and instructed the pallbearers to grab the handles and walk to the site. The cemetery stood off to the side; the vault company stood way off to the side.

As the pallbearers approached the graveside, the side of the grave collapsed and one of the pallbearers fell in the grave. The casket dropped while the other pallbearers tried to keep their footing and prevent falling in as well. Ultimately the pallbearer crawled out and the service continued. Their services ended; shortly after the lawsuit was filed. They all got sued.

In this case, it became apparent that the cemetery was aware of the issues with the grave but didn't report the info properly to the vault company. The vault company was also aware of the poor conditions but simply covered them with grass and failed to report any issues to the funeral home. The funeral home (who ultimately had the best defense) walked the pallbearers into the grave. What could or should have been done?

These cases show the importance of recognizing responsibility as well as communication. I understand that funeral homes don't like the cemetery talking to 'their' families. I also know cemeteries and funeral homes don't like vault companies talking to 'their' families either. However, this doesn't limit communication between the parties. In this case ANY of the parties could have prevented this accident if they had taken the time to communicate the issues present. **There is a common reason communication does not occur and that is because most companies fail to empower their employees.**

*Action item:*

Train your employees to be empowered. Employees need to know that they are responsible for their job and are empowered to speak to anyone if it is required. Numerous cases are built on the facts where someone 'saw the accident about to happen' but failed to say anything. When asked why they didn't speak up, the typical response was that it wasn't their job. It is their job. Your employees own the site. They need to know where and when people – this includes cemetery officials, funeral directors, and families – are allowed to be at the graveside. Issues like these are preventable if employees know that they can - and should – take ownership of the situation.

## **We need to open that casket!**

It happens. The family just left the graveside and the funeral home walks up to the vault company and says, 'We forgot to get the ring off the deceased. We need you to pull the casket back up out of the vault so we can get that ring.' Do you do it? Does it matter if the casket is still on the lowering device? What if the vault is closed? What if you just started filling the grave? What if the grave was already closed completely? What if it was the following day? Can you quickly see how a simple request can change by just adding a little time to the scenario?

In a case like this you may be asking where the liability is. For this case example, let's consider the casket was still on the lowering device. The family has left so it's just you and the director. The director explains that he totally forgot and just needs in the casket to remove the ring. You comply and walk away to allow him access the casket. He removes the ring (a nice diamond ring by the way) and then closes the casket. You finish your job. No problem. Right?

Fast-forward one year. You learn that the family heard that their mother's diamond ring was stolen by the funeral home. And it sounds like you were involved. Weren't you? Are

you liable? There is a good chance you defend your actions, but to say you won't be involved in this case is not as likely. How do you handle an issue like this so you can avoid being involved?

This is another example of ownership. Vault companies in particular rely on the cemetery and funeral home to tell them what to do. While they may have the contract with the family, once the vault company becomes involved with handling any part of the service with the casket – you have ownership as well. A defense built on 'they told me to do it' is not the best defense. You and your employees need to recognize your responsibility and then take steps to document the process which you decide to follow.

In the perfect world, we want to document anything that is outside the normal proactive. Yes, opening the casket after the family has left is outside the normal. (As an aside – you do know why the funeral home is waiting until the family leaves to ask to open the casket – right? It's because they don't want them to know they made a mistake. When you help them cover up their mistake, you are in complicity with them. Not a good thing. This is why we want to document the request.) **Documentation is the key to your protection.**

Ideally, your document should include

- a description of the request (open the casket)
- a reason why (forgot the ring)
- a permission from the family (yup – the family should say it's ok)
- a permission from the cemetery (keep in mind that some cemeteries have a written rule that a grave or urn cannot be open on the grounds of the cemetery).

This may sound like a lot, and it is. But again, please know that opening a casket, especially to remove something without the family present, is a lot and requires heightened protection. Remember that this was just to open the casket when it was on the lowering device! If the casket has been placed in the vault; and vault closed; we risk other issues: what if the vault breaks; is this a disinterment?; again more things that would need to be addressed in your written document.

If you haven't seen the theme for all of these issues – **it's recognizing that there are risks in everything we do.** Most businesses that have a problem admit that they never talked about the potential problem – even though they knew it could happen. Ultimately, it is up to your business to decide what risks are prevalent; and what steps your business is willing to take to reduce your potential risks. As you can see by this article, one of the simplest solutions is just communication. I can't make you do anything – I can only lay out the issues and a plan – but I hope you take the time and do the easiest part of what was laid out, and communicate this with your business.