

THE LORD & WHIP FUNERAL LAW REPORT

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THE MANAGEMENT OF LITIGATION RISK:

PART I: HOW TO PROTECT YOUR FUNERAL HOME FROM LAWSUITS

Business owners must be aware that with today's litigious environment, they must take steps to protect against personal injury lawsuits. In this issue of the *Funeral Law Report* and the next issue, we will discuss how funeral homes can effectively manage their litigation risks.

The typical loss prevention program for funeral homes may simply be the placement of non-slip mats on the floor or under a rug, the regular cleaning of areas open to the public, the appropriate placement of warning devices, the preparation of accident reports and the prompt correction of unreasonably dangerous conditions on the premises. Even though funeral homes may take the appropriate steps to establish a loss prevention program, additional steps must be taken to anticipate litigation and then manage the litigation. The loss prevention program must anticipate that a lawsuit will be filed and posture the funeral home to defend the claim before an accident occurs.

The first step is the use and completion of an Incident Report after an occurrence. Unfortunately, in defending these types of cases, we usually see an "Accident Report" completed by the plaintiff and defendant. When trying a case in front of a jury, the fact that there is an "accident report" further supports the plaintiff's case and appears as an admission that an accident actually occurred. A jury generally views an accident report as evidence that an accident has occurred or a report would not have been filled out in the first place. The better approach would be to use an incident report specifically developed for your business. An incident report indicates something out of the ordinary or unusual has happened. It does not implicitly accept that the occurrence was an "accident".

Not only is the name of the form presented to a jury important, but also how the form is completed. The time must be taken to accurately complete an incident report and obtain the information concerning exactly what happened, who was involved, where it happened, and obtain a statement signed by the plaintiff describing exactly what occurred and what parts of the body were involved. In defending personal injury claims, an accurately and thoroughly completed incident report will help establish that the plaintiff was at fault or possibly to minimize the damage and limit the body parts that were claimed to be injured. As you can see, without properly managing the litigation risk, a

defendant can inadvertently provide to the jury written documentation which represents an initially strong common sense case against the defendant.

We recommend the following steps to manage your litigation risk:

- Any documents prepared in the ordinary course of business should be titled an “incident report”.
- An incident report should contain the verbatim statement of the individual involved and the signature.
- Proper use of video or digital cameras can be an extremely helpful litigation tool. It is important to preserve video/digital recordings from the date the incident took place.

This is just a brief sampling of how funeral homes can manage litigation risk. A few simple steps to anticipate potential claims and develop the appropriate response and records after an incident can minimize monetary damages and assist in identifying a fraudulent claim. Lord & Whip, P.A. offers risk management analysis to our clients in the funeral service industry. Please contact Mr. Ranier or Mr. Daney if we can be of service to your business. In the next edition of the *Funeral Law Report*, we will address other steps to manage your litigation risk and limit your exposure in personal injury claims.

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The contents of this publication should not be construed as legal advice and should not be acted upon without consulting an attorney.

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