

The background of the top half of the page is a photograph of a stage. Red velvet curtains with gold tassels are pulled back, revealing a dark blue or black stage backdrop. The floor is made of light-colored wooden planks.

Cremation

By Emily Ann Albrecht

Pulling Back the Curtain: Risk Management Strategies for Dealing with Third-Party Crematories

While undoubtedly a valuable – if not the only – option for many funeral homes today, outsourcing cases to third-party crematories as a matter of convenience or necessity certainly does not come without significant risk; specifically, that of incurring potential liability for someone else's mistakes.

The most notorious example of this risk, of course, being in 2012 when the Georgia Environmental Protection Agency discovered that Tri-State Crematory had failed to cremate 339 bodies, instead leaving the remains strewn across its property. In the aftermath, 56 funeral homes from three states (Georgia, Tennessee and Alabama) that had been sending bodies to Tri-State were sued in a class-action lawsuit alleging that they had been

negligent in selecting the third-party crematory in their failure to monitor and/or inspect the facility, ultimately resulting in the funeral homes (and/or their insurance companies) paying more than \$36 million in damages.

First and foremost, it is important to keep in mind that any third-party crematory that you work with is ultimately going to be seen as an extension of your own establishment in the eyes of the families

that you serve. As such, you should be taking the same steps to protect yourself externally that you practice in your daily operations, just as you would if you were operating a crematory internally. This begins with a process of significant vetting in your selection of a third-party crematory. Do not work with any third-party crematory whose representatives you would not be comfortable hiring to work in your own funeral home. Do not

work with any third-party crematory whose policies and procedures do not align, at the very least, with the minimal requirements for your state. And above all, recognize that any third-party crematory's lack of transparency about the aforementioned standards is a huge red flag.

Selecting a third-party crematory is no different than interviewing a job candidate. After all, that is precisely what you are doing – but on a larger scale. Ask to meet with their management, as well as personnel. As with everything else in this industry, documentation of this process is key – so prepare a list of specific questions to ask each interviewee and take notes of their responses. Gather information about the crematory staff, facilities and operations.

Ask about the facility's history – when it was constructed, how many owners it has had and when, if ever, it last changed ownership. Find out how many employees it has and what its hiring process looks like. What type of training and/or certification does it require for its crematory operators? Are background checks a part of the hiring process? What is the staff turnover rate?

Ask about facilities and equipment – the make, model and year of retort(s) being used and what type of processing station is used. Find out whether they have refrigeration and, if so, how many bodies the business is equipped to properly store at any given time. What are the procedures for equipment inspection, maintenance and repair? Does the facility have an alarm or security system?

Ask about day-to-day operations. Focus on the procedures being used to identify remains awaiting cremation, remains in the cremation chamber, cremated remains in the processing station and the urn or container holding cremated remains. Find out where

and how remains are stored when awaiting cremation. How long is a body typically held before cremation? How are cremations scheduled? Does the business sell or offer cremation services directly to the public? Does it allow witnesses to cremation and, if so, what type of facility is set up to accommodate witnesses?

Ask how the business deals with commingled cremated remains dust. Is there a policy in place for handling excess cremated remains? What are the requirements for cremation containers? What are the procedures for the recovery, handling and disposition of jewelry, dental gold, prostheses, medical devices and casket hardware? Does the business allow metal caskets and, if so, what does it do with the charred shells afterward? How does it identify and label cremated remains in urns or temporary containers? What are its policies for packaging, shipping and delivering cremated remains? How does it handle unclaimed cremated remains? Does the firm offer a scattering service, and if so, how does it work?

Find out how many cremations it has performed in the current year, to date, as well as the previous year. Ask if it has ever been involved in previous litigation, funeral board complaints, etc., and, if so, when was the last time it had such an issue?

After the interview, ask to tour the facility on the spot. Take note of the environment as you walk through – are the crematory operators and employees dressed appropriately and conducting business in a professional manner? Are the overall crematory facilities maintained in a neat and orderly fashion? Are human remains that are awaiting cremation in the holding area or present elsewhere in the crematory covered, being handled in a respectful and dignified manner? Is the facility

sufficiently staffed with crematory operators to monitor the number of cremations taking place at the time?

Confirm that a satisfactory identification system is in place by which human remains awaiting cremation, remains in the retort, cremated remains being processed and cremated remains in storage are being properly identified at all times. Ask to see the storage area for cremated remains, and verify that it is maintained in a clean, sanitary and secure condition. Confirm that there are no visibly detectable cremated remains, fragments or dust anywhere in the crematory.

Make sure that any and all equipment is clean, maintained and operational. Refrigeration equipment should preserve a 38 degrees Fahrenheit holding temperature. Verify that all deceased are stored in proper containers, one per shelf, without evident leakage of bodily fluids. Take a close look at the retort(s) to ensure things are working properly, that the primary chamber is clean and allows for complete retrieval of cremated remains. Check between the loading door and frame or rear/side clean-out for residual cremated remains. Observe the use of processing equipment to ensure that remains are being reduced to powder with no identifiable fragments, that processing stations are clean and free of dust and that there is no outside venting. Ask to see the equipment maintenance schedule, verify annual inspections and calibrations, note repairs and confirm that everything is up to date. Similarly, ask to take a look at the crematory log, verify that it is up to date with current operations and take note of how diligent the staff is about record-keeping.

Current licenses and permits should be posted in plain sight. Check the expiration date for the crematory license, environmental

permit(s) and operator certifications to make sure they are all still valid and in effect. Confirm that their insurance policy is still in effect and note the date of expiration or renewal. Request a copy of the employee handbook, along with any other written policies or procedures, so that you can review them to verify that they comply with industry standards. Similarly, ask for a copy of the facility's authorization form to ensure that it complies with all state and federal requirements, fully explains the entire process, discloses what is and is not returned, clearly states disposition of nonreturnable items, clearly states that there will be some incidental commingling, explains what happens when cremated remains are not picked up within 30 days, covers all implants (radioactive, mechanical, prosthesis) and outlines the policy on removal and disposal of casket

hardware. Consult with an attorney, as necessary.

Management should be cooperative and forthright in allowing such an inspection to take place, without exception. If you have any concerns, raise them with crematory management at the conclusion of your inspection. Pay close attention to their responses. Ask for a time frame to follow up and find out whether/when any such issues have been addressed and resolved to your satisfaction, and make sure to do so before proceeding.

As a final matter, before working with any third-party crematory, make sure that it is willing to list your funeral home as an additional insured on its professional liability insurance policy and request policy documentation to the same effect. As an added layer of protection, if your professional liability insurance policy does not cover

errors and omissions by third-party crematories, the best practice is to invest in an umbrella policy as backup coverage in the event that litigation is pursued against your establishment for a mistake made by the third-party crematory.

And last, but certainly not least, always, always, *always* confirm that any third-party crematory you are considering working with permits unannounced inspections by funeral home personnel. Then take the time to actually conduct an inspection at the very least once a year – but more often if you can. Do not be afraid to pull back the curtain – if your due diligence is met with reservation whatsoever by a third-party crematory, be grateful that you found out sooner rather than later because you should not be working with that crematory anyway. •

Change the Way You Do Cremation

Emily Ann Albrecht will be sharing information on avoiding cremation liability at the Cremation Strategies Conference in Nashville, Tennessee, Dec. 6.

To learn more, visit www.cremationstrategies.com.

CREMATION STRATEGIES

DECEMBER 6, 2017 • NASHVILLE

CONFERENCE

EARN
UP TO
5.75 CEUs
in most states