



# Funeral Consumers Alliance of Idaho

## THE THOMAS LYNCH AFFAIR

One day in September, 2008, a curious email came to us from Lisa Carlson, long-time activist and author of the useful reference book, *Caring for the Dead*. The subject was “Lynch lawsuit” and it contained a hyperlink to the website of the Michigan Eastern District Court, with the caption of a complaint: Lynch & Co. Funeral Directors, PLLC and Thomas Lynch vs. the Funeral Ethics Organization, Lisa Carlson, the Funeral Consumers Alliance of Idaho, and the (national) Funeral Consumers Alliance.

### *The Funeral Consumers Alliance of Idaho?!*

The complaint claimed damages exceeding \$75,000, and the Plaintiff demanded a jury trial. Needless to say, Lynch’s action commanded our attention.

Mr. Lynch is a larger-than-life presence in the funeral trade, an award-winning author, poet, and the most public figure in a large and successful family in the funeral business in Michigan. The title of his 1997 book, *The Undertaking: Life Studies from the Dismal Trade*, was used for a film by *FRONTLINE* producers, discussed in several items in the FCAI’s Fall 2007 newsletter, including one by Carlson.

There has been no love lost over the years between Carlson (styled as a “full-time consumer activist and sometime hell raiser”) and Lynch, and it seems that Carlson’s comment about the *The Undertaking* that we published was the last straw. It wasn’t the *only* allegation in the complaint, by any means, but it was what drew our tiny nonprofit organization into the maelstrom of a decade-long feud.

Over the next couple of months, we had a crash course in the practical implications of the U.S. Constitution’s First Amendment, and some of the complexities of our legal system. There were private conversations with lawyers willing to advise us *pro bono*, teleconferences with Lynch’s counsel, carefully worded emails with disclaimers at the bottom about “privileged communication” and so on. Our volunteers invested time that would have cost the Alliance several thousand dollars in legal fees if we’d had to hire a lawyer.

One month after this started, our President had a telephone conversation with Mr. Lynch, in an attempt to find an amicable solution between us. We offered to publish his point of view in our newsletter, but he disdained the notion. “I’m not going to audition with you,” he said. We noted that were he to prevail and take all our assets, they wouldn’t even begin to pay his legal expenses. He said he knew that. The conversation went nowhere useful.

We had better luck talking to his lawyer, and satisfied him that we were not properly a party to the suit, given the lack of our business of any kind within the state of Michigan. He agreed to dismiss us, with no further action needed on our part. (Which is not to say he got right to it: after many telephone and email

## FCAI ANNUAL MEETING

**The Library! at Cole and Ustick**  
(Corner of Cole and Ustick Rd. in Boise)  
**Saturday, May 15, 12:30pm**

All FCAI members and the general public are invited to our annual meeting. Following a brief business meeting, Ed Rush will present:

### “Death as Part of Life”

Our culture often treats life as precious, more important than pain, suffering, or the loss of what makes an individual life worth living. The death of his mother, at age 97 gave Rush a personal experience of this conflict. In spite of de facto social law, the times might be changing, toward acceptance of the right to die with dignity, on one’s own terms. Voter initiatives in our neighboring states of Oregon and Washington have passed Death with Dignity laws in recent years, and we can draw on their experience.

Rush is a technical writer and editor, with degrees in journalism and computer science, and he lives in Boise.

A question and answer session will follow his presentation.

(Continued on page 2)

(Continued from page 1)

inquiries had been ignored and *five months had passed*, we finally heard, second-hand, that it had stated on the record that we would be dismissed from the lawsuit.)

Had the suit gone farther, we're confident we could have shown that the particular allegations against us had no merit. It took almost a year of legal grinding, but the suit against the remaining defendants was dismissed with a summary judgment on July 31, 2009.

Mr. Lynch had his say on the result, in a message published by U.K. blogger Charles Cowling ("The Good Funeral Guide") after the dismissal, expressing his contempt for the current Executive Director of the FCA, Josh Slocum, by referring to him as Carlson's "factotum" in his opening salvo. Lynch wrote:

*"It took them three attorneys, ten hours of deposition, and most of a year to dismiss this item, which could have been dismissed with an apology. The court ruled that as a public figure, I am not entitled to the same protections against libel as a private citizen, especially in relation to a pair of feckless bloggers from Vermont with mailing lists and readerships in the several dozens. Their triumvirate of attorneys (apparently they do not believe in do-it-yourself lawyering) argued that I had not proven sufficient 'damages' to bring this to trial. Oh well, I suppose that may well be so. In the year since the lawsuit started, we bought another funeral home, I finished two books that will be published next year, another of our third generation got licensed, and the documentary film about our family's work won an Emmy Award. It seems we thrive in spite of Ms. Carlson's ad hominem."*

Lynch demonstrated his own capacity for filing "ad hominem," as well as employing the considerable and expensive power of the Federal Court in his home state to harass his critics elsewhere.

Everyone's entitled to his own opinion, but we must share facts. Here are a few:

† We *defended* ourselves, successfully, thank you, against a lawsuit which should have never been filed.

† The FCAI *did* use "do it yourself lawyering" because we had no alternative. The volunteers who met the challenge were gratified by their success, but had our strategy not been as immediately effective, the Court's rules would have required us to file an appearance in Michigan and hire a lawyer.

† In the 9 hours it took to depose Mr. Lynch (with a break for lunch), one of the more interesting admissions he made was that he had not *actually*, to his knowledge, suffered the damages he claimed. He "just thought this type of damage might go over [\$75,000]," the threshold for filing a complaint against parties in multiple states in

federal District Court. Asked if he had actually *suffered* those damages when the lawsuit was filed, there was nothing for Lynch to say but "no."

† While we worked overtime to defend ourselves from Lynch's frivolous lawsuit, the National Funeral Directors Association presented Lynch & Sons Funeral Directors a President's Award (honoring "funeral homes for going beyond the expectations of families and the communities they serve, while adhering to the highest ethical standards") for "profoundly improv[ing] the public's understanding of the work of funeral directors" through the film in which they were depicted.

This is a different set of ethical standards than we know.

If there is any consolation for us, it is that Mr. Lynch's legal bill was considerably greater than those of the FCAI, FCA, FEO, and Lisa Carlson *combined*. (Most of the expense inflicted by Lynch was borne by insurance companies as it turns out.) Whatever damage our criticism of his business practices may have caused, his self-inflicted expenses surely reached well into 5 figures. The botched job of bolstering his bully pulpit was not cheap.

The source of some of Lynch's legal adventure funds is apparent. The General Price Lists of the Lynch & Sons funeral homes in Michigan show the least expensive package price (for Direct Cremation, and *not* including the crematory fee itself) starting at \$1920, and going up to **\$17,920**. That's *starting* at almost *three times* the FCAI Member price at our cooperating mortuary in the Boise area, and up to *twenty-five* times as much.

## THANKS TO OUR DONORS

We received financial contributions from **Paul Forsythe, Richard and Elisabeth Jay, and Will Fred and Mary Ann Primrose.**

**Valerie Curnow** volunteered to serve as Membership Secretary this year, **Bryan Jennings** stayed on the Board as Treasurer for a fourth year, and **Tom von Alten** completed a sixth year on the Board, his fifth as your President.

Volunteer effort is everything to us!

*The Funeral Consumers Alliance of Idaho is a 501(c)(4) nonprofit corporation. Donations to it are not tax-deductible.*

## BOARD NOMINEES & HELP WANTED

We're pleased to have two members who have accepted the nomination to stand for election to our Board of Directors at our May 15 annual meeting:

**Loyal Perry**

**Nancy Pierce**

Ritta Nielsen's term continues through 2011. That leaves **two vacancies** on the Board. Board members serve three year terms, and provide the core of our volunteer effort.

Over the last year, we responded to 65 phone inquiries, signed up 30 new or transferring members, noted the deaths of 20, gave 2 presentations on funeral planning, tried to keep track of the Idaho Board of Morticians and Legislature, celebrated the dismissal of a lawsuit against us, published a small but high-quality newsletter, and once again surveyed prices of funeral homes in the state.

We need help. We need *your* help. We need more of our members willing to share the work. Our most pressing needs are for **members of the Board**, and of the **nominating committee**.

The work is relatively light, but it's interesting, rewarding, and we think it's pretty important, don't you?

## FUNERALS AND CEMETERIES ARE BIG BUSINESS

What owns 1,250 funeral homes, 364 cemeteries, can be found in 43 states, 8 Canadian provinces, the District of Columbia and Puerto Rico, and has **\$2 billion** in annual revenue? The answer is Service Corporation International, the largest provider of deathcare products in services in North America, after it completes its merger with Keystone North America (which was the 5th largest business in the industry). Less than 4 years ago, SCI absorbed Alderwoods Group, which was then the 2nd largest conglomerate in the industry. (Two Idaho funeral establishment licenses still show "Alderwoods [Idaho] Inc." as owner.)

SCI's "key brand" is Dignity Memorial®, now comprising 1 in 8 funeral homes nationwide, and more than half a dozen in Idaho. You might not see that brand right away: SCI likes to keep a "family name" on funeral homes as long as possible. Others still have the "Key Memories" brand of Keystone. SCI has also registered a trademark on "National Cremation Society," although they don't have any facilities in Idaho. Yet.

## IDAHO LEGISLATURE 2010

### A NEW DEATH TAX

Two pieces of legislation of interest to FCAI members made it into law this session. House Bill 492 raised the fee the state charges for a death certificate by a dollar (to \$14 for each certified copy), with the money earmarked for training and continuing education of county Coroners. The Governor let it become law without his signature, expressing his concern over the precedent of raising funds by a state agency instead of through the counties themselves. The Department of Health and Welfare "is the only bureau that is self-supporting, using no general fund dollars," Otter wrote. "Adding fees for other purposes simply erodes the integrity of the system."

"Citizens of Idaho are legally required to file records of vital events. The Bureau of Vital Records and Health Statistics is the steward for recording these events, protecting the records, and producing certified copies when requested by those legally authorized. I am not convinced that select citizens should have to pay an additional fee to obtain certified records they are required to produce for other purposes later in life because the County Coroners deemed this a reasonable avenue for acquiring education funding. I believe in user pay, and while there is a nexus between the fee imposed by this legislation and the service, it is tenuous at best."

In their statement of purpose, the Bill's sponsors said "there will be no impact on the State general fund or any taxing entity," as bereaved families pay an estimated **\$50,000 more each year** for the education of Coroners.

### YOUR PROVIDER'S CONSCIENCE MAY TRUMP YOURS

Senate Bill 1353 also passed both houses and became law without the Governor's signature. It adds a new section to Idaho Code, titled "Freedom of Conscience for Health Care Professionals," stating that "no health care professional shall be required to provide any health care service that violates his or her conscience." Except in a "life-threatening situation" where no other health care professional is available to provide treatment (and the provider must provide care "until an alternate health care professional capable of treating the emergency is found"), the law exempts providers from liability for declining to provide service. As defined by the law, "health care service" includes, among other things, "end of life treatment and care." Otter found it "problematic" that the law may "negatively impact patients' rights – especially when it comes to end-of-life decisions."

The Catholic Bishops' Directive 58 instructs that "it is not permissible to remove a feeding tube from someone who is unconscious but not dying, except in a few circumstances." Catholic hospitals, including three in the Treasure Valley (Saint Al's in Boise, Mercy Medical Center in Nampa and Holy Rosary in Ontario) are likely to treat this directive with higher priority than your own Living Will. Now Idaho law says that's OK.

## RIGHTS AND RESPONSIBILITIES OF MEMBERSHIP

When we used up our stock of membership cards recently, we had a discussion with the national office and other affiliates about whether we should even have such cards, and if so, what they should say. We decided to continue to provide them, but accepted the suggestion to clarify what “membership” means. Thanks to the folks at People’s Memorial Association for their statement of rights and responsibilities, which your Board has adapted for the FCAI.

### YOUR MEMBERSHIP ENTITLES YOU TO:

- Information and educational materials about cremation and burial options
- Planning documents to authorize your choice of final arrangements (the *Putting My House in Order* form)
- Discounted prices at our cooperating mortuary
- Be treated with dignity and respect
- Freedom from sales pressure
- Participate in the democratic process of the organization, by attending and voting at our annual meeting

### YOU HAVE A RESPONSIBILITY TO:

- Educate yourself about end-of-life options and how to make cremation or burial arrangements
- Choose the type of funeral arrangements you would like and put your detailed information in writing by completing the *Putting My House In Order* form
- Discuss your wishes with your family or survivors and make sure that they understand what actions to take at the time of your death
- Inform your survivors if there are any funds set aside for your funeral expenses; membership in the FCAI is not a prepaid funeral plan
- Inform FCAI if you move, change your name, or your contact information
- Promote and support the work of the Funeral Consumers Alliance so that it may be available for future generations

## PRICE SURVEY OF IDAHO FUNERAL HOMES

If you have a business and want to publish information to potential customers, it’s never been easier than it is today. Put up a website and the sky’s the limit. (Most consumers are starting to expect businesses to have a presence, in fact.) Name, address, and contact information at a minimum, but there are no space limitations. Driving directions! Attractive pictures! What it is that sets your business apart! A funeral home could easily put up its 4 or 6 or 8-page General Price List and help families plan for their needs from the comfort of their own homes.

On the other hand, for the low volume, high margin funeral business, there seem to be a lot of providers who prefer to avoid publicity. Fewer than *half* of the 80 licensed Funeral Establishments in Idaho have even a perfunctory website that we could find. Of the 30-some websites we did find, only 8 of them—one in ten of Idaho licensees—make their full price list readily available. And as usual, only a handful of business owners responded to our inquiries by mail (or email, when we could find an address).

We do appreciate those businesses that are willing to share this basic information with us. And even with only 16 responses (24, if you include results from our 2008 survey), some patterns are clear enough:

- ◆ It’s possible to obtain inexpensive services in southwest Idaho, whether or not you’re an FCAI member (and our member price remains the least expensive price for minimum cremation and burial services);
- ◆ The further you are from the Treasure Valley, the more you’re likely to pay; and
- ◆ The unwary may pay 2, 3 or even 4 times as much for the same services, depending on which business you go to.

Many of us have experienced negotiating to buy a car, or real estate, but imagine if one dealer was selling a particular model for \$15,000 and another, a few miles down the road was charging \$40,000 for the exact same car! (Maybe that dealer has better coffee and donuts?)

The Federal Trade Commission requires funeral businesses to provide you, the consumer, printed price information in a particular format, at the *beginning* of any discussion about funeral arrangements, however. If you contact them by phone, they’re required to give you the price information you ask for; but you have to know what to ask for! The pamphlet “How to Read a Mortuary’s General Price List,” available from the Funeral Consumers Alliance of Idaho, describes what you need to know about a GPL, required items, how to interpret the information, how to make comparisons.

If you look at our price survey on the web, you’ll find links to the websites of the funeral homes. The connection doesn’t imply any endorsement on our part, but it is “free advertising” for them, which we’re happy to provide, in return for their willingness to present themselves to consumers, and to foster a tiny bit of transparency in a much too secretive business.

## COMPARATIVE COST OF FUNERAL SERVICES IN IDAHO, APRIL 2010

This survey is based on information provided in the General Price List (GPL) of responding mortuaries for minimal services (removal of the body, immediate burial or direct cremation with no funeral service, no cremation container, and no casket). Cremation price shown includes the crematory fee. Cemetery costs for burial are not included.

Funeral Home	Location	Region	Direct Cremation	Immediate Burial	Comments
<b>FCAI Cooperating Mortuary</b>	Meridian	SW	<b>680</b>	<b>705</b>	FCAI member price at Accent Funeral Home
Accent Funeral Home	Meridian	SW	1,190	960	
Alden-Waggoner Funeral Chapel	Boise	SW	1,200 *	1,450	* Direction cremation price \$1,700; \$500 discount if paid at time of arrangement.
Baxter Funeral Home	Ashton	SE	1,775	1,495	
Boise Funeral Home Aclesa Chapel	Boise	SW	780	1,400	
Bowman Funeral Parlor	Garden City	SW	845	895	
Demaray Gooding Chapel	Gooding, Wendell, Shoshone	S-central	1,600	1,600	
Downard Hansen Funeral Home	Pocatello	SE	1,154	2,836	
Flahiff Funeral Chapel	Caldwell	SW	1,395	1,290	
Malcom's Brower-Wann Funeral Home	Lewiston	N/central	1,000	1,363	
Relyea Funeral Chapel	Boise	SW	1,475	1,675	
Serenity Funeral Chapel	Twin Falls	S-central	1,495	1,595	
Vassar Rawls Funeral Home	Lewiston	N/Central	1,105	1,230	
Wilks Funeral Home	Chubbuck	SE	1,450	1,450	
Wood Funeral Home	Idaho Falls	SE	1,655	1,617	
Wood River Chapel	Hailey	S-central	2,239	2,515	

There are 89 current "Funeral Establishment" licensees in Idaho, with 76 different business owners. The Funeral Rule, enforced by the Federal Trade Commission requires funeral directors to give you itemized prices in person and, if you ask, over the phone

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**Funeral Consumers  
Alliance of Idaho**

PO Box 1919  
Boise ID 83701-1919

Phone: 208 426-0032  
E-mail: [fcai@fortboise.org](mailto:fcai@fortboise.org)  
Web: [fcai.fortboise.org](http://fcai.fortboise.org)

**Board members**

Tom von Alten  
Valerie Curnow  
Bryan Jennings  
Ritta Nielsen

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## MORTICIANS IN THE MAGIC KINGDOM

Last August, in a meeting held by conference call, the Board of Morticians decided to approve expenses for three people to attend “the upcoming convention to be held by The Conference in February 2010.”

The Conference? A bit of industry jargon: it’s the nickname assumed by the century-old International Conference of Funeral Service Examining Boards, a nonprofit association with the vision of being “the collective voice of the funeral service regulatory community.”

Their 106th Convention was held in Anaheim this past February, conveniently located for a little R&R at Disneyland after the presentations, which featured “Everything You Wanted to Know About The Conference,” “Legal Basics for Regulatory Board Members,” “Exam Security,” “Inspection Procedures,” “Cremation Regulation” and “Pre-need: How Does Your State Rate.”

As near as we can tell by the Board’s financial reports, Idaho’s representatives did attend economically. \$2,000 or so for all three of them? It’s hard to be sure; we’ve never seen any kind of trip report on the Board’s website, or in its meeting minutes.

The presentation about pre-need sales did have one useful piece of information in the handout (found online at [theconferenceonline.org](http://theconferenceonline.org)): the National Funeral Directors Association guidelines for trusting requirements are that “**100% of the preneed funds paid by the consumer**, plus all interest and accruals thereon, shall remain in trust. The only permissible expenditures from the trust funds shall be taxes, trustee fees and trust administration expenses.”

More than half the states meet the NFDA’s recommendation. But Idaho Code only requires **half** of consumer payments for a marker, monument or secondary container to be put in trust, and only **85%** of payments for all other funeral or cemetery merchandise and services.

If our Board of Morticians would take the NFDA recommendation to heart and propose a change to Idaho law for **full trusting of preneed payments for funeral goods and services**, the occupational license fees put toward the trip to California this year would be well spent on behalf of the citizens of Idaho.