

Haunted by the Final Farewell

Identifying Plaintiffs and Maximizing Damages in Mishandling of Remains Cases

by Anoush Lancaster and Karman Guadagni

Our experiences around the deaths of those most dear to us, whether positive or not, tend to stay with us for an eternity. It follows, then, that the knowledge, the memory, or even the idea that the remains of a loved one were mutilated or mishandled by a company entrusted with properly handling them can haunt us forever.

Negligent mishandling of human remains cases are the products of careless business practices, a “profits over people” mentality, and disregard for human decency during one of the most difficult times in a family’s life. There are many factual scenarios that can qualify as negligent mishandling, including, for example, mishandling of remains leading to decomposition, denigration of the body, mislabeling, or even losing bodies or cremains. Family members may actually see the mishandled body or may only learn of the mistreatment of their loved ones’ remains and be traumatized by that knowledge. While the facts in these cases can be shocking, sadly, these cases are not unusual.

Consider Claims of All Possible Plaintiffs

In these cases, plaintiffs’ claims stem from general negligence principles - a duty is owed to the decedent’s close relatives to handle and care for the body of decedent in a competent and professional manner. The duty extends beyond the scope of a contract, as the services to be performed by the funeral services provider and its agents are for the benefit of the decedent’s living relatives that are aware that the services are being performed and on whose behalf or for whose benefit the services were rendered. (See *Christensen v. Superior Court*, (1991) 54 Cal.3d 868, 890; see also *Quesada v. Oak Hill Improvement Co.* (1989) 213 Cal.App.3d 596, 610.) Thus, this duty extends to those family members who meet that criteria. When a decedent’s body is mishandled and the family becomes aware of said mishandling, it is foreseeable that emotional distress will result. In fact, California case law extends the group of foreseeable plaintiffs in mishandling of remains cases beyond those that are usually eligible for negligent infliction of emotional distress claims to include “close family members.” During a tumultuous time, immediate family caught in the throes of grief often rely on other close relatives to deal with funeral arrangements. Those “close family members” are trusted enough to assist with intimate end of life decisions, and similarly, are close enough to decedent to suffer emotional distress when a decedent’s remains are mishandled. While close family members for purposes of a Negligent Infliction of Emotional Distress (“NIED”) cause of action typically include parents, siblings, children, and grandparents of the decedent, exceptional circumstances may properly enlarge the group to include other relatives, such as those who lived with the decedent. (*Quesada*, 213 Cal.App.3d at 610; *Christensen*, 54 Cal.3d

at 882 fn.12; *Thing v. La Chusa* (1989) 48 Cal.3d 644, 668 fn.10.)

While the naming of “close” but not immediate family members is likely to trigger a demurrer, case law lends some guidelines for who is considered “close,” but it will ultimately rest on a fact-specific inquiry and determination, as it is up to the court to determine whether “exceptional circumstances” exist in a case. Focus on the nature and quality of plaintiff’s relationship with the decedent. Did they cohabitate for any significant period? Did they communicate regularly? Did the plaintiff hold power-of-attorney or participate in any other important decision-making for the decedent? What about the plaintiff’s relationship with the family led to the family’s reliance on the plaintiff to assist in end of life arrangements? Including very specific language regarding the nature and extent of each putative plaintiff’s relationship with the decedent, involvement in the funeral and burial plans, and knowledge or experience with regard to the nature of the mishandling itself will be to plaintiff’s benefit in terms of getting past a demurrer.

Be Creative in Thinking About Damages

While all major religions have customs, norms and common practices concerning funeral and burial rites, the area in which they overlap is a mutual respect for the body.

For example, many in African-American churches hold a viewing, then funeral, and end with a Re-pass, or home going, where the family members end their mourning and celebrate the life of the decedent. Often special colors are chosen, pallbearers selected, and large floral arrangements flank the opulent casket. New Orleans tradition can include a parade, band, and dancers. Many of these African-American traditions date back centuries. A funeral can be held many days or even weeks after the death if family is traveling from far away.¹



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By contrast, Muslim and some Jewish traditions favor burials within one to two days after death. Muslims may wash the body and wrap it in white cloth to show respect for the body and to avoid decay. Jewish custom “insists that in the interim between death and interment, the integrity and dignity of the body be respected and preserved.”² Jewish tradition may discourage embalming or cremation as it alters the body and emphasis is placed on returning to the earth the way one came.

In the Catholic tradition, the body is present in a casket at the church for the funeral and then buried or cremated afterwards. Scattering the ashes is frowned upon as the body is considered God’s gift, and scattering ashes is seen as disrespectful.³

When bringing these cases, it is worthwhile to investigate the traditions, culture, religion, and expectations as to the funeral and burial process for each of your plaintiffs to get a sense of what would have been their wishes versus what was actually carried out. The funeral and burial is typically the last opportunity for a family to frame the life of the decedent. It is a time to come together and remember, celebrate, and grieve. When a family loses the right to exercise control over that process as a result of negligent mishandling, it is a lasting affront.

Organ Donation

Death provides many of us with a one-time chance to make a valuable gift to humanity. All major religions approve of body and organ donation for medical and dental teaching, research, and transplants. According to public opinion polls, most people believe that such donations are desirable. In a recent case handled by our office, a decedent had been a manager at the DMV for decades. She was an advocate for organ donation, travelling

around educating her community about the benefits of donation. Her desire to donate was noted on her driver’s license and medical records. Her death was reported to transplant agencies that deemed her a viable donor. Yet, the storage facility holding her remains refused to allow access to her body and the opportunity for organ donation passed. Her family grieved not only their loved one’s mishandling after death but also the disregard of her wishes to turn tragedy into life for others. This loss was developed as an element of plaintiffs’ damages and used to show the careless disregard the defendant had for decedents “in their care” and the decedent’s families.

Whether potential plaintiffs actually witnessed the mishandling of their loved ones’ remains, learned of it firsthand or was left to imagine the desecration of the body of their deceased family members, it is impossible to overstate the impact of these horrible situations. Plaintiffs who become aware that their loved one’s bodies have been mishandled will suffer some level of emotional distress: determining the extent of said distress requires a deep dive into the family’s history and the relationships and dynamics among family members. It is a worthwhile effort to obtain just compensation for plaintiffs in mishandling of remains cases. **■**

1. <https://www.theatlantic.com/business/archive/2016/01/black-funeral-homes-mourning/426807>; <https://agoodgoodbye.com/funeral-traditions/celebrating-the-history-of-african-american-funeral-traditions>.
2. The Basics of the Jewish Funeral, https://www.chabad.org/library/article_cdo/aid/282505/jewish/The-Basics-of-the-Jewish-Funeral.htm.
3. <http://www.usccb.org/prayer-and-worship/bereavement-and-funerals/cremation-and-funerals.cfm>.



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