

Funeral directors' insurer says it doesn't have to pay lawsuit claims

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The insurer for the embattled Illinois Funeral Directors Association says it's under no obligation to pay claims arising from lawsuits filed in connection with a troubled pre-need funeral trust fund.

In a federal lawsuit against the IFDA filed March 16 in Chicago, Federal Insurance Co. says it can't be required to cover the funeral directors association because the association didn't promptly notify the company of claims and because any damages may arise from wrongful conduct by the IFDA and its officers.

"We plan to vigorously contest the claims," IFDA director Duane Marsh said in an e-mailed response to questions.

In two lawsuits, funeral homes and consumers say IFDA mismanagement led to losses totaling tens of millions of dollars in a pre-need funeral fund once administered by the funeral directors association. The plaintiffs compare the fund to a Ponzi scheme, saying it paid out interest to funeral home directors even while it was running deficits.

The fund, believed to total about \$300 million, was written down by \$59 million last fall to balance the books, forcing funeral home directors to pay for pre-need funerals out of their own pockets.

Attorneys for the insurance company and funeral home operators could not be reached for comment last week. John Duggan, an Aurora attorney who is suing on behalf of consumers, says it's too soon to say what effect the lawsuit might have on his case, but even without insurance, damages could still be collected.

"Obviously, the beneficiaries are more secure to the extent the defendants have insurance," Duggan said. "The (fund) trustees are, by and large, people with financial significance."

According to a Jan. 21 letter from an insurance claims examiner to the IFDA, the association's policy has a \$5 million liability limit, far short of the fund's losses. In its lawsuit, the insurance company says the IFDA should have notified the company when the association received a letter from the state comptroller in 2006 stating that the funeral fund had a \$39 million deficit, that it had collected more than \$8.5 million in excessive fees and that the situation was "intolerable."

The allegations in the lawsuits and the comptroller's 2006 letter fall outside the scope of the IFDA's insurance policy, according to the lawsuit.

"The actions allege dishonest and fraudulent acts and omissions and the willful violation of statutes and laws by the Insured defendants," the insurance company's lawyers write. "The actions further allege that by virtue of their wrongful conduct the insured defendants were unjustly enriched and gained profit to which they were not legally entitled. Thus, there is no coverage for damages arising out of these allegations under the ... policies."

Money that was supposed to pay for funerals for nearly 50,000 Illinois residents was invested in life insurance policies on funeral home directors and IFDA insiders. Rather than pay fixed benefits upon death, the policies paid based on the performance of investments made with premium money, according to lawsuits against the association. Unlike stocks or bonds, the policies can't be liquidated without significant tax liabilities.

"They just ran a Roman holiday on other people's money — 'All we have to do is die, don't bother me, just keep paying the premium,'" Duggan said. "The whole premise of this plan is the hope that these guys die young. That's a pretty pathetic thing, don't you think?"

The state comptroller's office in 2007 revoked a license under which the IFDA had managed the fund, saying the license should never have been issued.

U.S. Sen. Roland Burris was comptroller when the IFDA got its license in 1980, but the senator, who was hired as an IFDA lobbyist two years ago, when the fund was under scrutiny by regulators, has refused to answer questions.

Delmarie Cobb, a Chicago public-relations specialist hired by Burris, said via e-mail that the fund slipped under the watch of current Comptroller Dan Hynes. Cobb did not address questions about Burris' role as an IFDA lobbyist.

According to a letter from Burris to Hynes written in the summer of 2007, the IFDA hired Burris to lobby state officials who were scrutinizing the fund.

"I don't know what he has to say is relevant given that he left the comptroller's office in 1991," Cobb wrote. "When he left, the pre-need fund was in the black."