

- “Defendants, by and through Defendant Eirkson, also remarked to several directors of funeral homes that he was going to have the Board’s prosecuting attorney pursue those funeral homes using CFC and any pre-need salespeople who are not licensed funeral directors.”

- “In the Fall of 1999, Defendant Eirkson contacted a funeral home director and offered him ‘immunity’ from any State Board of Funeral Directors’ prosecution in exchange for his testimony against Plaintiffs.”

All of these actions, the complaint states, caused Commonwealth Funeral Consultants to lose a significant number of customers. “I can’t quantify the damage,” Rae says. “My expert witness did an analysis and estimated between \$3.8 million and \$9 million in losses.” He adds, “I was nearly bankrupt when I filed the lawsuit.”

Rae says he laid off 30 of his 32 employees, changed the name of the company to Golden Considerations and focused on getting the company back on track. “It was a very difficult time back then, and we slowly began to flourish again,” Rae says. “We are now one of the largest independent third-party marketers, and we will have sales between \$65 million and \$70 million. We are licensed and have premium dollars coming in from 23 states, but the bulk of our business comes from the Northeast.”

For his part, Eirkson denies all the charges. “They can say that and can make those statements, but the fact of the matter is that there was nothing ever in a newsletter of ours or anything else that claimed they were operating illegally,” he says. “I denied the charges during the entire 10 years of going through this stuff.”

Eirkson does note that he did file a complaint against the company with

### Dan Isard’s Take on Events in Pennsylvania

Dan Isard, founder of The Foresight Companies and publisher of the Preneed Perspective newsletter, has been following the case involving Commonwealth Funeral Consultants and the Pennsylvania Funeral Directors Association, Eirkson and Pinkerton closely. He finds it fascinating and notes that it raises the following key issues:

- The financial reliance of a state association on preneed
- The potential of a conflict of interest of a state association and its endorsed products and methods
- Who can sell preneed in a state
- Who is qualified to arrange a funeral

While there has been a settlement in this particular case, these are the issues at the core of the case. Isard explains that it used to be that most state associations met their financial needs from dues and revenue brought in from annual conventions. “But as preneed came into being, states learned that they can get an ‘endorsement fee’ or commission override from coordinating their members to use one product,” he says. “Whether this was insurance or trust, this annual fee suddenly started to mount up to a large amount. Ironically, as this increased, the convention income decreased as trade shows are expensive, and attendance by exhibitors and members declined.”

All this can lead to a potential conflict of interest involving a state association and its endorsed products and methods, Isard says. “I think in this case PFDA had an interest in a product, and they promoted that product,” he says. “They modified the law marketing preneed so that only funeral directors can sell a preneed contract, which might have been to stop companies such as this one and others like them.”

Isard says that while a number of states require a preneed salesperson to be a licensed funeral director, he sees no reason why a licensed insurance agent can’t sell a final expense policy to a consumer. “Is it illegal for insurance agents to tell a family, ‘You need insurance to cover your funeral and burial expenses?’” he asks. “I don’t think it is. If an agent is armed with the average costs of a funeral as determined by the General Price List of a nearby funeral home, is that a point of reference or making a preneed sale? If they knew the cost of burial at local cemeteries, is that illegal? I don’t happen to think it is illegal.”

Isard concludes, “I know there is a fine line here, but frankly I don’t think there should be a line at all.”