

**HOUSE CONSUMER AFFAIRS COMMITTEE  
HEARING ON H. B. 2458  
SEPTEMBER 18, 2014  
1:00 PM  
DELAWARE COUNTY COURT HOUSE  
MEDIA, PA**



**TESTIMONY  
KATHLEEN K. RYAN, ESQUIRE  
GENERAL COUNSEL  
PENNSYLVANIA FUNERAL DIRECTORS ASSOCIATION**

Mr. Chairman, Members of the House Consumer Affairs Committee:

Thank you for the opportunity to present our comments. My name is Kathleen Ryan and I am the General Counsel for the Pennsylvania Funeral Directors Association. With me today is Norman Shropshire, President-Elect of PFDA. Norm and I are the spokespersons for the association today.

The Pennsylvania Funeral Directors Association represents over 1100 of the 1600 licensed funeral homes in Pennsylvania. We are the oldest and largest association of professional funeral directors in this country. There are well over 2,500 funeral directors who are employed by the funeral homes who are PFDA members.

We are here today to voice our support of H.B. 2458. This Bill proposes to amend the Future Interment Act to provide for 100% trusting of all consumer money, allow cancellation of contracts by consumers, prohibit constructive delivery, and mandate that interest follow principle such that no monies are accessed by the seller until the time of need.

Unfortunately, there have been far too many instances of missing money and inappropriate sales trusting causing consumer harm. There are cemeteries in Philadelphia (Mt. Moriah) and in Plains, Pennsylvania (Good Shepard Memorial

Park), which are neglected, and in terrible physical condition and with missing perpetual care funds.

In May of this year, civil suits were brought against Shalom Memorial Park in Philadelphia (owned by SCI) for over-selling graves. Service Corporation International (SCI) is the largest publicly-held death care company in the world. In December 2013, a man in Reynoldsville, PA was charged for the third time for failing to deliver tombstones that were paid for to consumers at Crown Crest Cemetery and Lakelawn Cemetery in Western Pennsylvania.

On a national level we have seen:

- Clayton Smart was sentenced in 2011 for stealing millions in prepaid funeral and cemetery funds in Michigan and Tennessee;
- In 2010, Indiana state officials charged the owner of Covington Memorial Gardens with stealing \$27 million in perpetual care funds for his own personal use;
- In 2006, the state of Michigan took over operations of 28 cemeteries due to mismanagement of cemetery trust funds totaling \$61 million;
- In 2013, a Mississippi cemetery owner was sentenced to four years in prison and ordered to pay restitution of \$500,000 for failing to properly trust preneed burial funds; and

- NPS, an insurance preneed company out of Missouri, was sent into receivership (2008) for failing to account for \$600 million of consumers' preneed money affecting funeral directors from 19 states. Sadly, the executives of the company only received 9-1/2 years in prison.

Thousands of elderly consumers were affected by these criminal and civil breaches and, in many instances; the consumers will never receive the services or merchandise for which they contracted.

These stories illustrate the compelling need for comprehensive regulation and oversight of funeral and cemetery funds. A review of the statutes in Pennsylvania reveals that despite the fact that cemetery sales people need to be licensed, there is little to no oversight regarding the actual sales process. The inequity that currently exists in Pennsylvania is that cemeteries only have to trust 70% of consumer monies while virtually all other licensed professionals who handle consumers' money are required to retain 100%. Attorneys must keep 100% in their escrow accounts. Real Estate brokers must keep 100% in their escrow accounts. Funeral Directors must trust 100%. Why should consumers be subjected to anything less than 100% trusting for their cemetery needs? Doesn't the consumer have greater protection of what they bought being delivered 10-20 years from now if 100% of the monies are put in trust?

While many of the scandals involving cemeteries involve private ownership, corporate-owned entities have bigger problems. Service Corporation International (SCI), as previously mentioned, is currently the largest provider of funeral and cemetery services in the world. Within the past decade, they have been found liable for a host of violations:

- In 2004, SCI paid \$100 million in settlement in Florida for mishandled burials and grave desecration at their cemeteries;
- IN 2012, the TV show *60 Minutes* reported that the cemetery business needs more oversight in order to prevent fraud and misrepresentation. This conclusion was reached based upon many alleged violations of cemeteries owned by SCI in California and Illinois, as well as others.
- The second largest company in the U.S. that owns cemeteries and funeral homes is StoneMor, LLP. Currently, it owns 277 cemeteries and 92 funeral homes in 28 states and Puerto Rico. It evolved through three to four different companies (Lowen, Alderwoods, OSIRIS, Cornerstone, StoneMor) with its current CEO, Larry Miller, rising from the Lowen Bankruptcy in 2001.

Cornerstone, StoneMor's predecessor, was sanctioned by the State Board of Funeral Directors in Pennsylvania in 2004 for selling cremation services directly to the public without a license.

In 2012, Stone Mor "published audited financial statements [that] disclosed a \$39.2 million operating deficit for that period as well as several very significant and ongoing balance sheet liabilities that measure in the hundreds of millions of dollars." <sup>1</sup>

In September 2013, StoneMor entered into a 60-year lease agreement to manage eight Archdiocese of Philadelphia cemeteries in the Greater Philadelphia Area. This lease required up-front payment of \$53 million, and \$1 million thereafter annually for 35 years.

In November 2013, during a transcript of Earnings Call, Larry Miller, CEO of StoneMor, is quoted as stating:

- The Agreement with the Archdiocese "... will allow us to market all five counties in Philadelphia and the surrounding area currently perform 7,000 burials per year.

Historically, the Archdiocese's has only sold the burial right. So there are thousands and thousands of property owners that have never purchased [a merchandize] and other

services. \* \* \* ... we will hire between 75 and 100  
counselors and substantially increase their sales and profits.  
This is a huge opportunity for StoneMor.... “

According to Larry Miller, StoneMor CEO, he intends to hire a large sales force to penetrate the greater Philadelphia area, charged with the duty of increasing sales, to seek out the elderly; people who at their most vulnerable stage of life -- often grieving -- and pitch them an over-zealous, high pressure presentation cloaked with the imprimatur of the church. This is a recipe for over-selling and over-paying with no regard for what the consumer really needs and can afford.

It is important to point out that the business of death concerns individuals, often elderly, who are at the most fragile stage of life. Often, their intellectual capacity is diminished and complicated by grief. These are the last people in the world that should be subjected to high pressure sales, often time using the last of their resources to plan for their death.

Cemeteries or their institutional trustees currently are obligated to submit an accounting of their perpetual care funds to the Pennsylvania Courts of Common Pleas and the State Real Estate Commission. Courts, by statute, have the power to order an audit of these funds at the expense of the owner.

Unfortunately, in Pennsylvania, few, if any reviews, challenges or audits ever occur.

Even though funeral homes are inspected on a regular basis and as part of that inspection, preneed contracts are reviewed but without follow up verifying the money is where it is supposed to be. It is PFDA's position that stronger enforcement and a more detailed accounting of all preneed funds would go a long way toward ensuring that consumers' monies are protected.

Funeral directors have never been "commissioned", but rather, are professionals who provide a service with attendant merchandise when needed. They have professional standards and ethics by which they are legally mandated to operate. Many are pillars of their community, being actively involved in many public services. In this era, when costs of death have skyrocketed, there is every reason to hold cemeterians to the same standard. The death of a loved one is not an instance where survivors should be subjected to hungry sales persons that have no ethics or responsibilities other than to make a commission.

Some suggestions for inspectors of both funeral homes and cemeteries include:

- 1) Inspectors choose which files to review and have the ability to independently verify the presence of the money;



- 2) Give the State Board of Funeral Directors and the Real Estate Commission the power to order/mandate audits by an independent CPA if probable cause exists at the expense of the owner;
- 3) Prohibit owners of funeral homes/cemeteries from borrowing trusted funds for their own collateral or use; and
- 4) At each renewal for licenses, owner must sign off indicating he/she is in compliance with respect to 100% trusting of monies and provide the state licensing boards with the name, address and contact information for where monies are placed.

House Bill 2458, together with our suggestions, would raise the bar for the security of consumers' money, tighten the oversight of all providers, and prevent large corporate entities from taking money prior to need under the guise of "constructive delivery."

On behalf of the Pennsylvania Funeral Directors Association, I thank you for the opportunity to testify today in support of HB 2458 and encourage you to consider the suggestions we have made to strengthen it for the benefit of all consumers.

I will take any questions you may have at this time.

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Good Afternoon, Mr. Chairman and Members of the House Consumer Affairs Committee. My name is Kathleen Ryan, General Counsel for PFDA. You have already met Mr. Norm Shropshire, our current President-Elect.

The Pennsylvania Funeral Directors Association represents 1100 of the 1600 licensed funeral homes in Pennsylvania. We are the oldest and largest association of professional funeral directors in the country. There are well over 2,500 funeral directors who are employed by PFDA member firms.

PFDA is here today to support House Bill 2458. We believe that this legislation will improve the protection afforded consumers who purchase prepaid burial vaults, caskets and markers.

We have submitted our Statement for the record. I would like to deviate from that for a few minutes to address another matter.

In September of 2013 the Archdioceses of Philadelphia entered into an agreement with StoneMor Corporation to manage their cemeteries for the next sixty years. StoneMor has initially paid over \$53 million dollars, in addition \$1 million dollars per year will be paid for the next 35 years to the Archdiocese. This relationship has now opened the door for aggressive preneed burial merchandise sales to all

Catholics in the Philadelphia area with the blessings of the Catholic church, according to StoneMor to be “60-80 thousand living members of the Catholic community in Philadelphia.”

PFDA’s concern is the protection of consumers’ monies which are pre-paid for burial merchandise. Currently, cemeteries are only required to place in trust 70 % of monies collected but not until the final payment is made. They can withdraw the earnings, dividends and interest. They can keep all of the money if the consumer changes his/her mind after three days, or refund 70% less earnings if the consumer moves out of state. Finally, they can bury the vault and warehouse the casket and marker effectively allowing cemeteries to withdraw all of the funds.

Our concern is the long- term viability of this agreement. Consumers may be at risk in the future to not receive what they purchased. I would like to read you the headlines from a stock research website, “Seeking Alpha”, which raises a number of questions. We did not cherry pick the articles. Let me just say, I am not a stock analyst but the headlines raise interesting points.

The complete articles on StoneMor are on the “Seeking Alpha” website if you want more in depth analysis. As you can see, there are real questions about the

future. Another concern is the current Trust Funds of StoneMor, which, according to their Vice Chairman Bill Shane, “are now almost \$700 million and sitting in cash and marketable securities. And it’s over 50% of the entire assets.” Since when are trust funds an asset?

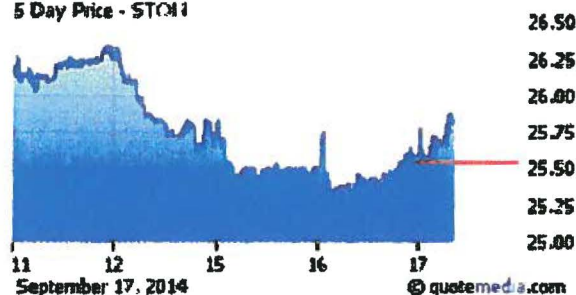
I don’t know the long term viability of this company and its relationship with the Archdiocese. I can’t tell you which analyst is correct. The best way to assure consumers they are going to get what they paid for is passing House Bill 2458. It will help remove any questions about delivery 10, 15, or 20 years from now.

Thank you for your time, and I would ask that you favorably move House Bill 2458 to protect consumers in the future.

# STON \$25.820.28(1.10%) StoneMor Partners L.P.- NYSE

9/17/2014, 12:00 PM ET

5 Day Price - STON



Today 5d 1m 3m 1y 5y 10y

52wk high: 26.69

52wk low: 21.75

EPS: -0.22

PE (ttm): N/A

Div Rate: 2.44

Yield: 9.55

Market Cap: 739.71m

Volume: 60,706

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### Summary

- Growing, 10% yielding MLP is moving ahead of its historic growth curve.
- Potential 100% increase on investment over next 5 years, based upon combination of 4% CAGR distribution coupled with stock price appreciation.

- Risk of StoneMor losing its MLP status is more than offset by the potential 40% valuation upside for the business if it is valued as a C-corporation.



[High-Yielding StoneMor's Value Masked By GAAP Reporting Complexities](#)



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[StoneMor Partners: My Reason For Selling This 10% Payout MLP](#)

[Henry Nyce](#)•Thu, Jun. 19 • [109 Comments](#)

### Summary

- StoneMor Partners L.P. is the only publicly-traded death-care MLP.
- STON has been losing money over the past 5 years using GAAP accounting.
- At some time in the near future, cash flow and unit payout must meet.



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