

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

HOUSE CONSUMER AFFAIRS COMMITTEE

HEARING ON H.B. 2458

AMENDS THE CEMETERY & FUNERAL
MERCHANDISE TRUST LAW (Act 459 of 1963)

DELAWARE COUNTY COURTHOUSE & GOVERNMENT CENTER
201 West Front Street
Media, Pennsylvania

Thursday, September 18, 2014
1:00 P.M.

BEFORE:

HONORABLE ROBERT W. GODSHALL, MAJORITY CHAIRMAN
HONORABLE MATTHEW D. BRADFORD
HONORABLE TINA M. DAVIS

Reported By: Dianna R. Pugliese, RMR

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ALSO PRESENT:
SENATOR ROBERT M. TOMLINSON
JOSIAH SHELLY
REPUBLICAN RESEARCH ANALYST
NED SMITH
LEGISLATIVE AIDE, REPUBLICAN CAUCUS
BRETT J. BIGGICA
DEMOCRATIC RESEARCH ANALYST

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1 over to Representative Micozzie for an opening statement.

2 REPRESENTATIVE MICOZZIE: Thank you
3 very much. And I want to thank everyone for attending
4 this Committee meeting.

5 Good afternoon, Chairman Godshall and
6 members of the Committee. I thank you for holding the
7 hearing on my Bill, House Bill 2458.

8 Currently, the Cemetery and Funeral
9 Merchandise Fund, Trust Fund Law, Act 459 of 1963,
10 requires sellers who provide funeral services and
11 merchandise that are to be delivered to -- at a future
12 date to deposit 70 percent of the purchase price into a
13 trust fund account.

14 I believe the consumers who entered into
15 these pre-need contracts should be afforded more
16 protections than what is provided in the current law.
17 Consumers need assurance that a hundred percent of their
18 funds are protected and will be available when a death
19 occurs.

20 For that reason or for this reason, I have
21 introduced House Bill 2458 which amends Act 459 to
22 require 100 percent of a purchase price to be placed in a
23 trust and the return of all funds, including interest
24 earned, if a purchaser cancels a contract prior to
25 performance.

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1 for mispronouncing.

2 MR. SHROPSHIRE: Not a problem. It
3 happens all the time.

4 REPRESENTATIVE GODSHALL: I looked at it
5 real quickly.

6 MR. SHROPSHIRE: No apologies necessary.

7 I'm the owner of the Minshall Shropshire-
8 Bleyler Funeral Home in Media, Pennsylvania, and I have
9 been a licensed funeral director for over 43 years, and I
10 remain active seeing families on a regular basis for both
11 pre-need and at-need arrangements.

12 Generally speaking, the prearranging and
13 pre-financing of one's funeral and cemetery expenses is
14 good for the consumer. However, in my experience, the
15 vast majority of persons who are prearranging their
16 funerals are those who are spending down their assets to
17 qualify for SSI or Medicare assistance -- Medicaid
18 assistance, excuse me. Some are terminally ill and some
19 have no family members left.

20 Many parents choose to prearrange and
21 prepay for their funeral services and merchandise to take
22 the burden off their children at the time of need. These
23 issues are highly personal and emotional in nature.

24 Funeral services and pre-funding, they are
25 not a commodity. I have often met with families who have

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1 had the unpleasant experiences of having been exposed to
2 high-pressure sales tactics for funeral and cemetery
3 products. They come to my funeral home asking for help
4 to get out of the contract.

5 They realize they spent more than they
6 would have had to, and perhaps they are moving and don't
7 want to use the cemetery merchandise, but cannot get all
8 their funds back.

9 I have also had families come in to tell
10 me, mom, dad, they've taken care of anything --
11 everything when, in fact, the only thing that was paid
12 for was the grave opening and closing and perhaps the
13 purchasing of a vault.

14 As you might imagine, this leaves the
15 survivors feeling unprepared, angry, and many times in a
16 financial bind. These feelings are -- these feelings are
17 -- these feelings, that no grieving survivors should have
18 to endure.

19 House Bill 2458 addresses two of the
20 primary concerns facing the Pennsylvania consumer today.
21 The first is House Bill 2458 would mandate -- mandate a
22 hundred percent of the consumer's monies be placed in
23 trust. The second is there would not be any constructive
24 delivery permitted, saving the consumer from receiving
25 used vaults merely to bill out cash flow for the

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1 cemetery.

2 I would strongly suggest and urge this
3 Committee to move House Bill 2458 forward. It protects
4 the consumers in this Commonwealth.

5 I thank you for the opportunity to address
6 this Committee and will address questions you might have
7 now or after the testimony given by our general counsel,
8 Kathy Ryan.

9 MS. RYAN: Good afternoon, Mr. Chairman
10 and members of the House Consumer Affairs Committee. My
11 name is Kathleen Ryan. I'm general counsel of the
12 Pennsylvania Funeral Directors Association. You've
13 already met Mr. Shropshire, our current president-elect.

14 PFDA represents 1100 of the 1600 licensed
15 funeral homes in Pennsylvania. We're the oldest and
16 largest association of professional funeral directors in
17 the United States. And there's well over 2500 funeral
18 directors who are employed by our member firms.

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

23 We've submitted our statement for the
24 record, but I would like to deviate from that for just a
25 moment to address another matter that is relevant to the

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1 situation today.

2 In September of 2013, the Archdiocese of
3 Philadelphia entered into an agreement with the StoneMor
4 Corporation to manage their cemeteries for the next 60
5 years. StoneMor has initially paid over \$53 million for
6 this purchase. And in addition, a million dollars per
7 year will be paid for the next 35 years to the
8 Archdiocese.

9 This relationship has now opened the door
10 for aggressive pre-need burial merchandise sales to all
11 the Catholics in the Philadelphia area, with the
12 blessings of the Catholic Church. According to StoneMor,
13 this is to be a -- 60- to 80,000 living members of the
14 Catholic community in Philadelphia will be affected by
15 this.

16 PFDA's concern is the protection of
17 consumers' money, which are prepaid for burial
18 merchandise and other burial services. Currently, the
19 cemeteries are only required to place in trust 70 percent
20 of the monies that are collected, but not until final
21 payment of the bill is made.

22 The cemeteries can withdraw the earnings,
23 the dividends, and the interest, then they can keep all
24 of the money if the consumer changes his or her mind
25 after three days or refund 70 percent less the earnings

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1 if the consumer moves out of state.

2 Finally, they can bury the vault and
3 warehouse the casket and marker, effectively allowing the
4 cemeteries to withdraw all the funds prior to the actual
5 death of the individual in question.

6 Our concern is long-term viability of this
7 agreement. Consumers may be at risk in the future not to
8 receive what they purchased.

9 I would like to read to you one of the
10 headlines from a stock research website called Seeking
11 Alpha, which raises a number of questions. We didn't
12 cherry-pick these articles, and let me just say I'm not a
13 stock analyst, but the headlines do raise interesting
14 points. I'm not going to read all of these, but I do
15 want to highlight just a few.

16 Why StoneMor is a Risky Proposition.
17 StoneMor: With Dividend at Risk, Shares Could Fall
18 Sharply. StoneMor Partners Combines 9.4 Percent Yield
19 With a Perpetual Industry. Death, Taxes and Baby
20 Boomers, Ingredients for StoneMor's Success. Resurrect
21 Your Income Portfolio With 10.25 StoneMor Bonds.
22 StoneMor's Distributions Are Sustainable. StoneMor
23 Dividend Unsustainable.

24 These articles on StoneMor are on the
25 Seeking Alpha website if you would like to read those or

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1 any of the additional ones that are listed. And as you
2 can see, there's real questions even among the analysts
3 about the future of this company.

4 Another concern is the current trust funds
5 of StoneMor which, according to their vice chairman, Bill
6 Shane, are now almost \$700 million and counting, sitting
7 in cash and marketable securities, and it's over 50
8 percent of their entire assets.

9 The question has to be raised as to how
10 consumer trust funds can become an asset of a company. I
11 don't know the long-term viability of this company nor
12 its relationship with the Archdiocese, but I can tell you
13 the analysts are divided on this issue.

14 The best way to assume -- assure that
15 consumers are going to get what they paid for is by
16 passing House Bill 2458. It will help remove any
17 questions about the future for the delivery of the
18 services and the merchandise for consumers that are
19 purchased today or in the next 10 or 20 years.

20 Thank you for your time. I would ask you
21 to vote favorably for this Bill. And if you have any
22 questions for either Mr. Shropshire or I, we'll be happy
23 to answer them.

24 REPRESENTATIVE GODSHALL: Question?
25 Senator Tomlinson.

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1 SENATOR TOMLINSON: Yes, just briefly.
2 This is new news to me. The act -- the \$700 million in a
3 trust fund, but they list it as an asset of the
4 corporation?

5 MS. RYAN: That's correct.

6 SENATOR TOMLINSON: Which means that the
7 stockholder would anticipate that they could just
8 withdraw or draw down that \$700 million?

9 MS. RYAN: It's difficult to understand
10 that, Senator.

11 SENATOR TOMLINSON: Thank you.

12 REPRESENTATIVE GODSHALL: Is the genesis
13 of this legislation really the StoneMor issue?

14 MS. RYAN: I would say it's probably the
15 straw that broke the camel's back.

16 REPRESENTATIVE GODSHALL: I'm sorry?

17 MS. RYAN: I would say it's probably the
18 straw that broke the camel's back, Representative
19 Godshall.

20 Because if you look at the other testimony
21 that was submitted by myself, we listed many instances,
22 both within Pennsylvania and outside Pennsylvania
23 nationally, where there have been terrible scandals that
24 involve cemeteries and third-party sellers that have
25 affected consumers negatively in that they never got what

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1 they paid for.

2 REPRESENTATIVE GODSHALL: Okay. I mean,
3 this is news to me. You know, it's a new Bill, it just
4 came to our Committee very quickly and so forth. And I'm
5 just trying to get my feet wet, you know, really at this
6 point.

7 Representative Micozzie.

8 REPRESENTATIVE MICOZZIE: Could you
9 explain what the 30 percent is used for?

10 MS. RYAN: I believe it's used to help
11 reimburse and pay commissions to their salespeople, to
12 provide marketing materials, operating expenses.

13 REPRESENTATIVE MICOZZIE: Advertisement
14 and everything else?

15 MS. RYAN: Yes.

16 REPRESENTATIVE MICOZZIE: Yes. Okay.
17 Thank you.

18 REPRESENTATIVE GODSHALL: Could it also be
19 used for maintenance of the cemeteries and upkeep of the
20 cemeteries?

21 MS. RYAN: That's a separate fund, sir.
22 That is a perpetual care fund, which is totally different
23 than the 30 percent left from the sale of these items.

24 REPRESENTATIVE GODSHALL: Okay. And where
25 does that fund come from?

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1 MS. RYAN: It's part of the purchase price
2 when purchases are made at the cemetery for maintenance
3 of the grounds of the cemetery. Perpetual care fund.
4 It's an entirely different statute.

5 REPRESENTATIVE GODSHALL: From the 30
6 percent?

7 MS. RYAN: No. No. It's in addition to,
8 but it's for different things.

9 REPRESENTATIVE GODSHALL: Okay. I do know
10 we have some work to do here because I'm -- as I said,
11 it's totally new to me and it's also new to my Committee.
12 And I have no further questions.

13 Do you have any other comments?

14 MR. SHROPSHIRE: Just, Mr. Chairman, I
15 just wanted to mention to you, we as funeral directors,
16 we trust 100 percent of those monies that have been
17 placed in trust for -- by the families. Okay. So those
18 -- we have a fiduciary responsibility to make sure those
19 funds are there and those funds are not used until the
20 time of death.

21 So when a consumer comes in to prepay or
22 pre-fund a funeral, we take a hundred percent of those
23 funds and we place them in -- usually in irrevocable
24 trusts.

25 Those funds are not used by us as funeral

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1 directors until the actual death occurs, nor are the
2 assets. In other words, those funds that have been
3 trusted are not my funds. They are still the funds of
4 the families until the death occurs.

5 REPRESENTATIVE GODSHALL: Why is there a
6 differential, you know, 30 -- 70 percent and a hundred
7 percent? I was told at one time there wasn't, it was
8 equal, it was 70 percent across the board. But, you
9 know, I don't know that. I haven't checked it.

10 MS. RYAN: No. The funeral directors have
11 always been required to trust a hundred percent of the
12 consumer funds.

13 SENATOR TOMLINSON: Mr. Chairman, I don't
14 have -- I don't have a great history in this, but when I
15 did arrive, I've been a funeral director most of my life.
16 There was -- everybody was doing a hundred percent.

17 Back in the 60's I understand, and maybe
18 Mr. Cavanagh or some of the other people could talk to
19 this, they did -- the cemeteries did get the right to do
20 -- to split 70/30. The funeral directors did not get the
21 right to split 70/30.

22 And I'm not sure why that happened, I
23 don't know when it happened, I don't know how it
24 happened. I know that over the years, we have tried
25 several times to come together, funeral directors and

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1 cemeteries.

2 In fact, in the 90's when I was in the
3 House with you, I was working on a piece of legislation,
4 what I thought cemeteries and funeral directors to do an
5 85/15 so that everybody could be on the same plane, so
6 everybody could be in the same playing field. And one
7 group wouldn't have advantages over the other group.

8 That fell apart. I think the cemeteries
9 in the end were able to defeat that in the House. But we
10 did try, we always tried to get everybody on the same
11 playing field, get everybody playing by the same rules,
12 get everybody to be equal in this, and it's not worked.

13 We even had the funeral directors say,
14 okay, let the cemeteries alone and we'll do 85/15 and
15 we'll just live by our rules because they felt the
16 cemeteries would never agree to that.

17 So this has been a long-running battle.
18 We've had funeral directors who do not agree with each
19 other. We certainly have cemeteries who don't agree with
20 funeral directors.

21 So the trusting of the hundred percent to
22 the 70/30 has been traditionally always a hundred percent
23 for the funeral director, which puts him at a somewhat of
24 a competitive disadvantage, and it's always been 70/30
25 for the cemetery. So it's a long history.

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1 The cemetery people are here, they can --
2 they can tell their version of it. It happened long
3 before my time. So I can only tell you what I've related
4 to. But as long as I've been here, I've always tried to
5 bring the two sides in the funeral industry together and
6 also bring the sides of the cemetery together so that we
7 had everybody playing by the same rules. And,
8 unfortunately, I don't think we'll ever get to that.

9 And what I'm amazed at is that we actually
10 have funeral directors who have always wanted a hundred
11 percent and we had funeral directors who wanted 70/30 or
12 85/15, they all now agree there's just too much chance
13 for abuse, too much chance for playing games, and
14 everybody should end up playing on the same playing
15 field.

16 So the history is a little before my time,
17 and so -- and it's been very difficult to bring the
18 competing interests together. As you know, we used that
19 herding sheep, one time you get one group in, the other
20 group's out. So the history here is long. It's not a
21 good history.

22 Not even within the funeral director
23 industry, there's been some divisions amongst the funeral
24 directors of whether we should do 70/30, 85/15, 90/10.
25 And over the years, I've tried to broker that deal, but

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1 we've never been able to come to an agreement.

2 REPRESENTATIVE GODSHALL: Thank you.

3 I think it even goes back beyond
4 Representative Micozzie's time and my time.

5 SENATOR TOMLINSON: That's very hard to
6 believe. I understand that, but it does.

7 REPRESENTATIVE GODSHALL: I thank you.

8 Next?

9 Okay. I'm sorry, I thought you were
10 testifying with the other --

11 MR. CAVANAGH: Well, you called my name
12 when you called theirs, so I got up.

13 REPRESENTATIVE GODSHALL: Okay. I
14 apologize.

15 MR. CAVANAGH: That's all right.

16 REPRESENTATIVE GODSHALL: Go right ahead.

17 MR. CAVANAGH: Mr. Chairman, members of
18 the House Consumer Affairs Committee, thank you very much
19 for this opportunity to make my comments. My name is
20 Bart Cavanagh, Sr. I'm a graduate of the School of
21 Commerce and Finance of Villanova University and have
22 been a licensed funeral director in this Commonwealth for
23 over 49 years.

24 The purpose of my testimony is to make you
25 aware of a possible financial and emotional disaster for

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1 consumers in the state of Pennsylvania if the Future
2 Interment Act of 1963 is not reformed.

3 The current act regulates what is done
4 with money paid in advance of need to cemeteries.
5 Cemeteries conveniently only trust 70 percent of that
6 money and must be required to trust a hundred percent to
7 accommodate changes that have occurred in the last 50
8 years. Existing law has not kept pace where consumer
9 protection is key. Allow me to illustrate.

10 Consider in 1963, it cost approximately
11 \$100 to open or, in the vernacular, dig a grave. In
12 2014, cemeteries charge approximately \$2,000 for the same
13 service with extra charges on Saturday in many cases.

14 Consider that 50 years ago, cemeteries
15 were owned by the church adjacent the graveyard. They
16 were owned by local community organizations or private
17 family ownership. Not so much today. Large corporations
18 are acquiring them in the hundreds.

19 Once acquired, these large corporations
20 are now targeting existing cemetery lot owners, selling
21 monuments, caskets, burial vaults, niches, urns, and any
22 other accoutrements of final disposition. In the
23 cemetery industry, it's called reload.

24 The large corporations use the untrusted
25 30 percent to pay high commissions to salespeople. This

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1 is due to the flaw that exists in the law now not
2 requiring a hundred percent trusting, along with several
3 other issues that I want to call to your attention.

4 Funeral directors provide pre-need.
5 They're small business people, and they trust a hundred
6 percent. Now, to preempt any comments from the cemetery
7 industry, funeral directors, yes, have had problems with
8 pre-need. They police it. They inspect it. They audit
9 it.

10 But even the SEC couldn't prevent Bernie
11 Madoff or some of the other investment advisors in the
12 financial world that drove off the track. We only ask
13 that cemeteries be held to the same hundred percent
14 standard.

15 Recently, I quote an article, a remark
16 made by Mr. Miller, the CEO of StoneMor. He said,
17 Funeral directors don't like pre-need. I take great
18 exception to that because between the PNC Bank and the
19 Philadelphia Trust Company, funeral directors have
20 entrusted for the benefit of their clients over a hundred
21 million dollars of hundred percent dollars.

22 Second, when a consumer asks to cancel a
23 contract because they found out that they paid 35 to 40
24 percent more for funeral merchandise than they would from
25 a funeral director or other third-party provider, the

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1 current law requires the corporation only return 70
2 percent of the money paid in advance.

3 The consumer needs a hundred percent
4 refund from the corporation and should, in fact, be
5 paying the consumer damages. Cancellations arise because
6 consumers are not advised of their options by totally
7 unqualified salespeople.

8 May I note that when a funeral director --
9 or before a funeral director even sits down to discuss
10 merchandise costs, he's required by the Federal Trade
11 Commission to present a consumer with a price list.

12 Consumers need to know. We want them to
13 know. We want them to know if they wish to buy a casket
14 that costs \$300, we have it for them. The revolving cast
15 of cemetery salespeople is an army, many selling
16 kitchenware, Cutco cutlery, whatever.

17 I have served as a funeral director for
18 over 49 years and would not consider myself qualified to
19 counsel a buyer about a monument. I don't know stone. I
20 don't know proportion. I don't know design.

21 Cemetery memorials are yet another product
22 hustled by the big corporations. No liquidated damages
23 for Mr. Big Corporation when a consumer realizes what's
24 happening. Give them back a hundred percent, plus the
25 interest.

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1 And I might add here another remark made
2 by StoneMor, it was, Well, Costco and BJ's sell caskets.
3 At need, not pre-need.

4 Time payments are received, and we want
5 the repository of them changed so that when you get a
6 time payment, you immediately place it in trust.
7 Presently, the cemetery has constructive use of that
8 money until the last payment is made.

9 And one more thing, cemeteries have a
10 little trick to liberate the 70 percent they couldn't
11 take initially. It's called constructive delivery.
12 Remember that the funds paid by the buyers are to be for
13 services rendered in the future. But, no, the
14 corporation will say the casket is warehoused for the
15 buyer, equating it with the buyer taking possession.

16 Crematories can cost a consumer up to a
17 thousand dollars. The cemetery will say, Well, it's
18 right here for you. It's yours. And then they'll take
19 that thousand, not the 700 that should go in trust,
20 according to present law.

21 Even more ridiculous, they will say that
22 we've installed your burial vault. Now, follow me,
23 they're saying to the people, we dug the grave, we put
24 the concrete box in the grave, we've put the lid on it,
25 we filled the grave back in and re-sodded the grave.

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1 Now, when it's needed in at need, are you
2 telling me they're going to bring a backhoe up to that
3 grave, they're going to dig that grave and expose a vault
4 that is usable? Can't happen. You'd have to have
5 surgical precision in digging the grave.

6 Recently, I quote an article by Bruce
7 Rushton. He talks about StoneMor. He says, The
8 company's critics point to the involvement of top
9 StoneMor executives with the Loewen Group, a Canadian
10 company that was once North America's largest funeral
11 corporation. The company went bankrupt in 1999.

12 Two years before that, a Minnesota auditor
13 issued a critical report stating that cemeteries owned by
14 the company are under-funded trust accounts and weren't
15 solvent. In one case, a Minnesota auditor determined the
16 company claimed that burial vaults sunk into the ground,
17 but no vault was found upon investigation when metal rods
18 were put down into the grave.

19 After the State began investigation of
20 Loewen in 1977, that it had under-funded funeral trust
21 accounts by nearly 3.8 million in the space of three
22 years. Loewen also installed a new management team to
23 replace the executives who ran it into the ground who now
24 run StoneMor.

25 In the course of the bankruptcy

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1 proceedings, Loewen said that it owed 2.1 billion and
2 had mortgaged funeral homes to secure loans, and that it
3 had cut back on its acquisitions as a result of this.
4 Between 1995 and 1998, the company acquired 651
5 properties, including 348 cemeteries.

6 In short, the liabilities are staggering,
7 Loewen officials wrote in a press conference. At the
8 commencement of insolvency proceedings, Loewen's credit
9 sources were fully tapped, bearing in mind that the
10 executives that ran Loewen are now the executives that
11 are running StoneMor.

12 For StoneMor executives, including Miller,
13 they were the top Loewen managers when the company
14 tanked. All left the troubled firm in 1988, 1999, after
15 Minnesota regulators began their investigation of the
16 company's finances --

17 REPRESENTATIVE GODSHALL: Mr. Cavanagh, in
18 all due respect, this is not a hearing on StoneMor.

19 MR. CAVANAGH: All right.

20 REPRESENTATIVE GODSHALL: It's a hearing
21 on whether this Bill should go --

22 MR. CAVANAGH: I'm trying to tell you why
23 the Bill should go forward because --

24 REPRESENTATIVE GODSHALL: Because of
25 StoneMor. Then the hearing maybe should be before the

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1 Archdiocese rather than this Committee. We're right
2 now --

3 MR. CAVANAGH: They're running a -- let me
4 close by saying this, and I will only take another 60
5 seconds of your time.

6 It's come to my attention that lobbyists
7 are wandering the halls in Harrisburg claiming that this
8 is an anti-Catholic Bill. As I noted in my statement
9 previously, I'm a graduate of Villanova University, and
10 prior to that I had 12 years of Catholic education,
11 launching my trip in faith, and now to say that I would
12 do something anti-Catholic is not true.

13 One final thing, and I'll leave you. Just
14 to illustrate the pain that this law causes because of
15 the behavior that it promotes. This letter came to me
16 from a woman who would be here today if it wasn't for the
17 fact that she was in terrible grief.

18 She says, To whom it may concern -- which
19 is you gentlemen. I am a mother who very suddenly and
20 unexpectedly lost a 32-year-old son. As you may imagine,
21 this has been a devastation for me and my family.

22 From almost the onset of this catastrophe,
23 I have received numerous phone calls from Saints Peter
24 and Paul Cemetery to sell me a headstone for my son. At
25 the moment, I am in no position to deal with this issue,

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1 and even though I tell each caller that I am not ready,
2 they continue to prey upon me at this vulnerable time.

3 This is a despicable practice and in the
4 name of common decency I urge them to cease and desist
5 immediately.

6 And the reason they can do that,
7 gentlemen, is because they have the 30 percent. They're
8 paying high commissions to unsavory possible sales
9 tactics.

10 I thank you for your time. Sorry I
11 rambled on, but I was trying to make the point why you
12 have to reform this law.

13 Now, I'll answer any questions that you
14 have, and I'll be brief.

15 REPRESENTATIVE GODSHALL: I have no
16 questions.

17 REPRESENTATIVE MICOZZIE: No.

18 REPRESENTATIVE GODSHALL: And I'd like to
19 recognize Tina Davis from Bucks County who has joined us.

20 MR. CAVANAGH: Are there any other
21 questions?

22 SENATOR TOMLINSON: Just one question,
23 Mr. Chairman.

24 If someone comes into your funeral home,
25 Mr. Cavanagh, and they want to select a casket pre-need,

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1 do you furnish them with a price list?

2 MR. CAVANAGH: Absolutely. It's a federal
3 law.

4 SENATOR TOMLINSON: On the price list,
5 does it describe the casket?

6 MR. CAVANAGH: It describes the casket in
7 detail.

8 SENATOR TOMLINSON: Does it describe the
9 20 gauge, 18 gauge, wood, poplar --

10 MR. CAVANAGH: It describes the material,
11 the type of metal --

12 SENATOR TOMLINSON: Interior?

13 MR. CAVANAGH: -- the type of wood,
14 interior, the gauge of metal, everything. And any
15 contract that I've seen that's been brought to me by a
16 consumer from a StoneMor salesman, they may as well write
17 it in crayon to make it more childish. They give no
18 description of what the consumer is buying.

19 SENATOR TOMLINSON: But they're not under
20 FTC rules. They don't have to do that; correct?

21 MR. CAVANAGH: No, they don't, and they
22 should.

23 SENATOR TOMLINSON: Thank you.

24 REPRESENTATIVE GODSHALL: Thank you very
25 much.

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1 MR. CAVANAGH: Thank you for bearing with
2 me.

3 REPRESENTATIVE GODSHALL: Thank you.

4 Our next panel presenter is Cathy Grebey
5 and Linda Winter.

6 MS. WINTER: Good afternoon, Mr. Chairman
7 and the Committee. My name is Linda Winter. This is
8 Cathy Grebey. We have a cemetery plot at Saints Peter
9 and Paul.

10 We've received a call from a Frank Holtman
11 to set up an appointment to discuss a booklet about
12 burial arrangements. When we arrived, he wasn't able to
13 find proof of our plot. He said that that documentation
14 might be at another cemetery. And, of course, our
15 question was, if we bought it here, why is our
16 documentation at another cemetery?

17 He finally found the document which stated
18 we did have a plot and that it was to be used for two
19 burials. He explained all the expenses involved in a
20 funeral. We went through each aspect with him selecting,
21 of course, the cheapest way because we're cheap.

22 He quoted us a price of \$11,556 for the
23 two of us. He then explained that we could write a check
24 out that day, charge it or finance the entire amount.
25 And he told us that the finance rate of course would go

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1 up according to how many years we would finance it. He
2 wasn't very professional in writing up the quote. He
3 scribbled figures on a separate paper.

4 We explained to him that it sounded like
5 he was in this to get more money out of us and not really
6 caring about our situations. He was just interested in
7 his commission for this sale. We even told him he was in
8 this to make money. And he said, Well, we aren't in it
9 to lose money.

10 We asked about using our insurance
11 policies for this and his response was, Well, that's for
12 your loved ones. You would have to pay outright. We
13 told him that we have been paying for insurance to handle
14 our burial arrangements and not saving it to be used just
15 for our loved ones.

16 He reminded us that we only had 30 days to
17 get the quote he offered us. He said it was a good idea
18 to do this now because the prices would go up and could
19 possibly double within a year. We told him we would
20 think about it.

21 After leaving his office, we felt like he
22 was trying to pressure us into what he was selling. We
23 have great faith in the Cavanagh Funeral Home, so we made
24 an appointment with them to discuss this. We felt very
25 good after our meeting with Paul Cavanagh because he gave

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1 us the quotes, he gave us the prices of everything
2 involved in a funeral, and he took the time to go over
3 everything with us.

4 We feel that our final arrangements would
5 be handled in a family-like manner and to our
6 specifications if we use Cavanagh Funeral Home.

7 The StoneMor company at Saints Peter and
8 Paul are doing this to put the family-friendly funeral
9 homes out of business is how we felt. This is what most
10 people want and not an uncaring company taking over their
11 final arrangements. We can only hope that other people
12 check in to everything before they commit to the StoneMor
13 company and could possibly become victims.

14 Frank Holtman called us on September 11th,
15 2014. We told him we had decided to just use our
16 insurance policies. He said, You don't even want to do
17 one to lock in the price for emergencies? We told him
18 no, and he said he would make a note of that and he
19 wouldn't bug us anymore. This was another pressure
20 tactic that we felt he was doing to us.

21 REPRESENTATIVE GODSHALL: Thank you.

22 Do you have --

23 MS. WINTER: We don't have any more.

24 REPRESENTATIVE GODSHALL: You don't have
25 anything else at this point?

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1 MS. WINTER: No.

2 MS. GREBEY: Not at this point.

3 REPRESENTATIVE GODSHALL: I appreciate
4 your testimony.

5 Senator?

6 SENATOR TOMLINSON: Did this gentleman
7 call your house or --

8 MS. WINTER: Yes, he did.

9 SENATOR TOMLINSON: -- were you in the
10 office? He called your house.

11 MS. WINTER: He called our house.

12 SENATOR TOMLINSON: Did he, when he was
13 going over these items, did he give you a price list or
14 description of anything that you were to purchase, did he
15 tell you what kind of casket it was?

16 MS. WINTER: This is their kind of
17 paperwork for you to, like, put your figures on, and this
18 is what -- I don't have it. Where is that other paper?
19 There was -- the other paper isn't in here. He just
20 scribbled figures on a paper, and then he --

21 SENATOR TOMLINSON: So there was a form?

22 MS. WINTER: No, it wasn't actually a
23 form.

24 SENATOR TOMLINSON: This is StoneMor's?

25 MS. WINTER: This was a price protection

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1 guarantee that he wrote up. This was his 30 day, if I --
2 if we didn't sign up to --

3 SENATOR TOMLINSON: If you bought?

4 MS. WINTER: -- it in 30 days, then the
5 price would definitely go up.

6 SENATOR TOMLINSON: Does it describe the
7 casket or vault --

8 MS. WINTER: It just says --

9 SENATOR TOMLINSON: -- or any merchandise?
10 Is there any description of anything?

11 MS. WINTER: It just says that the vault
12 was Heritage, and the casket would be Hartley Basic.
13 That's all it says.

14 SENATOR TOMLINSON: Okay.

15 MS. WINTER: So there was no real
16 description.

17 SENATOR TOMLINSON: Did they represent to
18 you that you had to purchase anything at the cemetery,
19 like a right of interment or anything else?

20 MS. WINTER: He went over all the vaults,
21 like the waterproof vault.

22 SENATOR TOMLINSON: But he agreed that you
23 owned two spaces?

24 MS. WINTER: Well, it was one space, two
25 burials.

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1 SENATOR TOMLINSON: I'm sorry, one space,
2 but two burials.

3 MS. WINTER: Yes. Finally, yes, he did.

4 SENATOR TOMLINSON: All right. Okay.

5 MS. GREBEY: In the beginning, he didn't.

6 MS. WINTER: Yeah, in the beginning, he
7 didn't.

8 MS. GREBEY: He only said it was for one.

9 SENATOR TOMLINSON: In the beginning he
10 only told you you had one grave for one burial?

11 MS. WINTER: Yes.

12 SENATOR TOMLINSON: Did he ever try to
13 sell you a second right of interment?

14 MS. WINTER: No. No.

15 SENATOR TOMLINSON: But he told you you
16 only owned one grave, one burial. You'd have to buy
17 another grave?

18 MS. WINTER: No, he actually did find the
19 paperwork eventually.

20 SENATOR TOMLINSON: Okay. All right.

21 MS. WINTER: But he wasn't very
22 professional in this. I mean, I felt like I was being
23 pressured into buying what -- everything that he was
24 trying to sell, like the opening of the casket, the
25 closing of the casket. Why don't you want a waterproof

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1 vault, I believe is what he said. Do I really care?

2 Where am I going to go? I'm dead.

3 SENATOR TOMLINSON: Right. Okay. My main
4 question, I think, which I think is relevant is if we
5 want to have competition, if we want to have people
6 shopping, then they need to know what they're -- they
7 need to be able to compare.

8 MS. WINTER: Exactly.

9 SENATOR TOMLINSON: And you weren't really
10 given an opportunity to see or compare, or even go back,
11 go to another -- I mean, you've got to use those graves,
12 they're yours, you purchased them.

13 MS. WINTER: Exactly.

14 SENATOR TOMLINSON: But if you wanted to
15 go to Cavanagh or a competitor or you were dissatisfied,
16 I mean, the important thing is that if you don't like
17 Cavanagh, you go somewhere else.

18 MS. WINTER: Exactly.

19 SENATOR TOMLINSON: You really don't have
20 a choice to go anywhere else with that cemetery.

21 MS. WINTER: Right.

22 SENATOR TOMLINSON: You know, you do have
23 a choice with other funeral directors. But at least you
24 could go from funeral director to funeral director --

25 MS. WINTER: Exactly.

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1 SENATOR TOMLINSON: -- and compare the
2 prices of equal merchandise.

3 MS. WINTER: Yes.

4 SENATOR TOMLINSON: Okay. Thank you,
5 Mr. Chairman.

6 MS. WINTER: Thank you.

7 MS. GREBEY: Thank you.

8 REPRESENTATIVE GODSHALL: You know, coming
9 down here, I didn't know that StoneMor existed. And I do
10 know now that they exist, and it's -- everything I've
11 heard so far has been a problem with StoneMor.

12 But, it's -- anyway, we're going to
13 continue on, and I'm hoping we can get away from
14 StoneMor, maybe get on to the subject of the Bill.

15 Representative Micozzie.

16 REPRESENTATIVE MICOZZIE: Maybe what
17 they're trying to indicate what's happening in the total
18 industry.

19 StoneMor is a large, large corporation.
20 And there may be other large corporations since the
21 Archdiocese throughout Pennsylvania are selling off all
22 these -- all these cemeteries. So whether it be a large
23 corporation, it may boil down to a small corporation and
24 have basically the same type problems that are amplified
25 in StoneMor, Mr. Chairman.

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1 saw in private cemeteries owned by conglomerates or owned
2 individually was their practice because what I think
3 being maintained is the 30 percent was such a high
4 incentive for sales as opposed to service. And I think
5 that's why you're hearing that is because it's a cultural
6 shock for many of the customers that are not used to that
7 kind of high-pressure tactic.

8 So this just happens to be the company
9 that took over the Archdiocese cemeteries and has been
10 merchandising to pay back their \$53 million, I guess.

11 Thank you.

12 REPRESENTATIVE GODSHALL: We're going to
13 continue with our next panel presenters, Jack Sommer and
14 Guy Saxton, past presidents of Pennsylvania Cemetery,
15 Cremation and Funeral Association. I don't know if you
16 guys own any --

17 MR. SAXTON: StoneMor stock, no.

18 REPRESENTATIVE GODSHALL: -- any StoneMor
19 stock or any of their cemeteries, you know, or if you're
20 operating on the same level of StoneMor.

21 Gentlemen, identify yourselves and go
22 ahead.

23 MR. SAXTON: My name is Guy Saxton. Good
24 afternoon. Thank you, Representative Godshall.

25 REPRESENTATIVE MICOZZIE: Turn the mic on,

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1 speak louder. The back of the room can't hear you.

2 MR. SAXTON: Thank you, Representative
3 Godshall, thank you Representative Micozzie for having
4 the hearing so we can talk to you about this. It's nice
5 to see you again, Senator Tomlinson, one of the good
6 funeral directors in the state.

7 I'm going to try to not start with
8 StoneMor.

9 REPRESENTATIVE GODSHALL: Can you speak
10 louder?

11 MR. SAXTON: I'm going to try to not start
12 with StoneMor. Cemeteries in the state of Pennsylvania
13 have been selling goods and services to their customers
14 since long before the Future Interment Act. Cemetery
15 operators supported and helped pass this Act to ensure
16 delivery of those items.

17 The current law has served Pennsylvania
18 cemeteries and consumers well. With some hundred
19 thousand, plus or minus, deaths in the state per year, it
20 would be a surprise if there were not some issues
21 somewhere with some cemetery or funeral home. However,
22 the problems are rare and anecdotal. And if there are
23 problems, the current law clearly covers what to do if
24 there's a consumer issue.

25 Now, the StoneMor issue, it seems that the

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1 rest of us in the rest of the state outside Southeast
2 Pennsylvania, who are small businessmen, are collateral
3 damage in a war between the local funeral directors and
4 StoneMor. We will and would work in good faith with
5 anybody.

6 I would love to sit down with Senator
7 Tomlinson and work in good faith on any consumer issue,
8 and I heard a couple. Absolutely a contract ought to
9 have what somebody's buying. I'm not sure if that's not
10 covered under law now. But if it's not, it should be.
11 That's just one. Maybe I've got some others written
12 down.

13 Cemeteries and funeral homes are
14 competitors. They have opposing interests. They're not
15 the same company. And we should not allow those
16 competitive interests to have a negative impact on the
17 consumer.

18 Cemeteries sell interment rights, graves,
19 markers, vaults, and even some caskets. Funeral
20 directors sell funeral services, embalming, caskets,
21 vaults, and even some markers. Cemeteries don't sell
22 funeral services. Funeral homes don't sell interment
23 rights. However, they compete in the middle for those
24 items.

25 The PFDA is also a competitor of sorts.

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1 They've got something called unit choice, secure choice.
2 I believe that's a preplanning -- some -- a preplanning
3 organization they offer to their members for trusting and
4 life insurance, and I think it's through the Philadelphia
5 Trust Company. I don't know, the phone -- the phone
6 number rings at their office.

7 For many cemeteries, most of the items
8 they sell are purchased ahead of time by consumers. In
9 this transaction, a customer would purchase, for
10 instance, graves, vaults, markers to be used in the
11 future. They lock in the price and the cemetery is
12 responsible for delivering those items at no additional
13 cost.

14 At the Northampton Memorial Shrine in
15 Easton, Pennsylvania, where my mother and father are, we
16 have been doing that -- I have been doing it for 25 years
17 without a problem. Consumers are helped by that and
18 consumers like that.

19 I know you don't like StoneMor, but I'm
20 not StoneMor. And this Bill puts me out of business.
21 And everything I've heard today tells me that this Bill
22 is not in good faith, it's not trying to help the
23 consumer, it's trying to put StoneMor out of business,
24 and we're collateral damage.

25 This preplanning has the benefit of

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1 eliminating the need to purchase those things at the time
2 of the death of a loved one.

3 The attempt to change this act is not
4 driven by any compelling consumer interest. It's
5 conceived of and put forth by the PFDA and the Southeast
6 Pennsylvania funeral directors who fear a competitor in
7 the form of the Archdiocese teamed up with StoneMor.
8 They're afraid they will start offering items the funeral
9 directors are now selling to families.

10 In the press, it is said that 7,000 church
11 members are buried in Archdiocese cemeteries every year.
12 Now, if you sit back for a second and think about those
13 numbers, at an average price we're talking of, perhaps,
14 \$50 million. Now, I know I'm not from Southeast,
15 Philadelphia, the big city; I'm from up in the country in
16 the Lehigh Valley. But \$50 million at play is a lot of
17 money at play. And I think we know why these competing
18 interests are fighting with each other.

19 It's noteworthy that the PFDA and the
20 funeral directors pushing this Bill, it doesn't regulate
21 them, it only regulates us. Whether intended or not, the
22 few words changed in the Future Interment Act, which was
23 well thought out, would end the long-standing practice of
24 cemeteries offering these choices to their customers
25 before need.

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1 The changes are designed to keep us from
2 selling these items to our customers. This would have
3 the effect of funneling all consumers' purchases through
4 the funeral home. I have a hard time believing that this
5 is not the intended consequence. And the irony of it is
6 that StoneMor is the only company big enough to possibly
7 keep doing it if this is enacted. I would have to stop.

8 Raising the trust requirement to 70
9 percent -- from 70 to 100 deprives us of the ability to
10 pay our employees and fund our operations. Seventy
11 percent is and has been more than adequate reserve to
12 ensure the future delivery of the death benefits that we
13 sell.

14 No life insurance company can or does
15 reserve a hundred percent of a premium. They reserve
16 enough to adequately ensure the death benefit can be
17 paid, and the rest is used for wages and operations.

18 The raise to a hundred percent is not
19 meant to help consumers; it's meant to deter us from
20 continuing our operation, and it does. I'm sure the life
21 insurance sold by the PFDA plan Unichoice does not
22 reserve a hundred percent.

23 Whether intentional or not, the changes
24 also requiring all interest to be retained would make it
25 difficult or impossible for us to find a trustee. It may

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1 be an oversight, but not allowing for accounting fees,
2 trustees fees, legal fees, and income taxes would make it
3 impossible.

4 It makes me question the good faith of
5 this Bill. In their haste to put it together, if they
6 really didn't want to drive StoneMor out of business,
7 they might have put something in there that would allow
8 for that so we could get a trustee.

9 Full refundability with interest at any
10 time makes entering into a contract or a non-contract
11 with our customers untenable and has negative
12 consequences for the consumer. We would bear all the
13 expenses and be faced with paying the customer a hundred
14 percent of the purchase price with interest. It would
15 prevent us from doing this.

16 Not offering this choice is not the only
17 detriment to the consumer. This also keeps the consumer
18 in play and would create a situation where customers
19 could be pressured into changing their contract at a
20 vulnerable time, the loss of a loved one.

21 Or, perhaps, if a funeral director's life
22 insurance person was trying to sell them life insurance,
23 they could easily tell them that the cemetery, by law,
24 has to give you your money back, and you can use that
25 money for our premiums.

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1 In aggregate, by removing cemeteries as
2 competition, this would give consumers no choice but to
3 buy from the funeral home. But perhaps the most
4 insidious transparent attempt to keep customers from
5 finalizing their choices before they die is the
6 prohibition on the delivery of the items that people
7 purchase and want before they died.

8 Nothing in the Future Interment Act
9 protects customers more than giving them the items they
10 have purchased. When people buy a memorial or a marker
11 ahead of time, they often want to see it. They often
12 want it in their lot that they own.

13 It eliminates all question and ensures
14 that they get what they want and the funds are used for
15 the right purpose. It protects them against price
16 increases. It protects against all the questions about
17 trusting and funding.

18 Many consumers want to see their marker
19 ahead of time. Many are comforted by knowing that items
20 they purchased are actually on the lot that they own.
21 Why on earth would you want to pass a bill where a
22 consumer couldn't get what they pay for and they want --
23 and they want?

24 Combined with the cancellation piece,
25 there is no finality. And at the time of death, a

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1 funeral director can step in and attempt to change a
2 customer's mind.

3 Under Pennsylvania funeral law, funeral
4 directors can enter into contracts that are not
5 refundable. On a regular basis, we have funeral
6 directors who sell double items to our customers. They
7 sell our customers items that they already have. And
8 that is without the refundability.

9 This is not the right thing to do to
10 consumers in the state of Pennsylvania. Consumers should
11 not have to worry that on the worst day of their life or
12 -- or when approached by a life insurance -- life
13 insurance salesman from the funeral home that they're
14 subject to that kind of a tactic.

15 All the items we're talking about end up
16 at the cemetery. The cemetery has a relationship with
17 the family and the extended family of our lot owners that
18 lasts forever.

19 The cemetery that I manage was
20 incorporated in 1928. We have acres and acres of grass
21 to maintain, several miles of roadway, as well as other
22 landscape functions. The cost of properly maintaining
23 any cemetery is challenging and difficult at best. That
24 challenge is provided for in several ways.

25 Up until now, we have been talking about

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1 the trust setup under the Future Interment Act. But
2 there is another trust set up by statute. Kathy Ryan
3 made mention of it. It's the endowment care trust.
4 Unfortunately, her concept of it is not right.

5 What the endowment care fund is is it's a
6 retirement account for the cemetery. Fifteen percent of
7 the interment rights sale goes into that care fund. It's
8 similar to a retirement account for an individual in that
9 money billed throughout the life of the cemetery and when
10 the cemetery is full and no longer has revenue coming in
11 from operations, the income earned from that trust is
12 used to maintain the property.

13 Much of the cost of maintaining the
14 cemetery is derived from the income generated from
15 operations, including the sale of vaults and markers to
16 lot owners.

17 So just like somebody who's working, they
18 don't dip into their retirement fund until they retire.
19 They actually live on the money they make while they're
20 working. So that money that we make from selling those
21 vaults is necessary for us to maintain the cemeteries.
22 It's become a necessary and important source to meet our
23 needs.

24 A change such as the one contemplated here
25 would have catastrophic effects on the operations of any

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1 cemetery that has come to rely on that source of income.
2 This may not concern any PFDA member, but it is of great
3 concern to our lot owners.

4 I've heard some things about
5 pre-installing vaults. I don't pre-install vaults. Not
6 that it's a bad idea or it can't be done. I started
7 working in a cemetery when I was 16 on the grounds. I've
8 done, myself, thousands of burials. I've done
9 disinterments, entombments, disentombments, interments,
10 lawn crypt, ground-covered mausoleum.

11 There is not any difference between
12 opening a grave that's a lawn crypt, and lawn crypts can
13 be either poured in place or they can be pre-installed,
14 and opening a vault, opening a grave with a vault.

15 It's not any different than installing a
16 vault. You can break a vault installing it. You can
17 break a vault on a double depth vault that you're going
18 back in to do the second burial. It doesn't happen
19 often, but it can happen. And if it does, you have to
20 fix that, use a new lift.

21 I know about -- I know about opening
22 graves with a vault already in there. It's a little
23 harder. You have to dig down to the vault lift and
24 there's some hand work you have to do around it. But
25 there's no reason, and I know we're going to hear from

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1 some vault guys later, there's no reason that there
2 should be a high instance of breaking those. And if
3 there is, I would drug test that backhoe operator.

4 We've also heard about the level playing
5 field. Senator Tomlinson, I would love to sit down and
6 talk with you about letting funeral homes do 70 percent.
7 But I also have to tell you that cemeteries and funeral
8 homes are very different. Cemeteries have acres to take
9 care of and roads to take care of.

10 We've come to rely on the ability to sell
11 those items to our customers. I have one cemetery that
12 would survive. I have two small cemeteries that I manage
13 which would probably go insolvent if this Bill was
14 enacted.

15 That's not StoneMor. That's not going to
16 hurt StoneMor. I don't have anything about StoneMor in
17 here. But I think we all know that that's why we're here
18 now is StoneMor and the collateral damage is all the
19 employees who don't work for StoneMor. StoneMor may be
20 the only one, the only one that can continue under such a
21 Bill.

22 I'll take questions if anyone has any.

23 REPRESENTATIVE GODSHALL: Mr. Sommer, do
24 you have any --

25 MR. SOMMER: I'm sorry, sir?

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1 REPRESENTATIVE GODSHALL: Are you --

2 MR. SAXTON: Do you have any questions for
3 me?

4 REPRESENTATIVE GODSHALL: Are we going to
5 go with Mr. StoneMor first and then questions --

6 SENATOR TOMLINSON: That's not
7 Mr. StoneMor.

8 REPRESENTATIVE GODSHALL: Mr. StoneMor,
9 yeah. I'm sorry.

10 MR. SOMMER: Not hardly.

11 REPRESENTATIVE GODSHALL: Sommer and
12 StoneMor, it's just about the same.

13 MR. SOMMER: Yes, my name is Jack Sommer,
14 and I am a cemeterian from York County. I operate
15 Prospect Hill Cemetery that is over 165 years old,
16 created in 1849 by an act of the Pennsylvania
17 legislature. In addition, a few miles away, I operate
18 Green Mile Cemetery, which was chartered in 1895. So
19 both cemeteries enjoy a long and rich history of serving
20 the families in those geographic areas.

21 Lady and gentlemen, I appreciate the
22 opportunity to appear before you today and offer
23 testimony on my strong opposition to House Bill 2458. My
24 opposition to this proposed change to the more than
25 50-year-old Cemetery and Funeral Merchandise Trust Act is

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1 based on a career in the cemetery profession that began
2 in 1970.

3 In the intervening years, I have been a
4 cemetery executive, active state associate member, past
5 president of the State Cemetery Association, and for over
6 five years I was the cemetery member of the Pennsylvania
7 State Real Estate Commission, the licensing authority for
8 the Commonwealth's many cemeteries.

9 Make no mistake, this is not a
10 pro-consumer Bill, and it is not a new issue. The only
11 new aspect of it is that the Diocese of Philadelphia has
12 entered into a contractual agreement with a company to
13 operate their cemeteries and to market cemetery
14 merchandise. This has created panic among the other
15 sellers of these products, the funeral directors of
16 Delaware County and surrounding areas.

17 To prevent this new competition, they are
18 promoting this Bill in the hopes it will prevent
19 consumers from selecting cemetery merchandise in the
20 advance of need. As I said, this is not a pro-consumer
21 Bill but, rather, a market battle by a competing trade
22 group that is masquerading as consumer protection.

23 If this Bill's language reflected its true
24 consequences, it would correctly read following enactment
25 of this provision, Pennsylvania consumers will not be

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1 permitted to preselect and prepay for cemetery
2 merchandise of their choice.

3 It's also not a new concept as there have
4 been at least, in my long career, two other bills with
5 strikingly similar language, and the intent backed by
6 exactly the same trade group that you see here today, the
7 PFDA, the Pennsylvania Funeral Directors Association.

8 This is a trade battle wherein the
9 consumers of Pennsylvania will be caught in the
10 crossfire, and their right to make thoughtful
11 arrangements in advance of need will be collateral
12 damage.

13 So why is there a battle? Simply,
14 cemeteries and funeral homes operate on two very
15 different business models. The average cemetery in
16 Pennsylvania that is offering merchandise to their
17 property owners derives about three-quarters or more of
18 its income from the prearrangement of property and
19 related merchandise from their client families.

20 Funeral homes, on the other hand, operate
21 on the opposite premise. The vast majority of their
22 income is derived from selling goods and services to
23 client families at the time of need.

24 I would suggest to you that both groups do
25 their jobs very well on the whole. Cemeteries do not and

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1 cannot, by Pennsylvania law, offer or deliver -- deliver
2 funeral services like embalming, cosmetology,
3 transportation of the deceased, viewing, and the like.

4 Funeral directors do not generally sell
5 cemetery graves. But it is in that middle ground of
6 shared merchandise that trade competition and friction
7 exist. The merchandise in dispute is the concrete burial
8 vaults installed at the cemetery to receive the casket at
9 the time of burial: monuments and bronze markers and
10 caskets and other similar goods.

11 Again, cemeteries have historically
12 offered these products to families in advance of need
13 while funeral directors have done so at the time of
14 death.

15 Ironically, the Cemetery and Funeral
16 Merchandise Trust Act was created in 1963 with strong
17 cemetery industry support and involvement. Our industry
18 recognized that families did want to enjoy the important
19 advantages to them that prearrangement and purchase of
20 inevitable expenses represented.

21 Inflation protection, once purchased,
22 prices could not be increased. The opportunity to make
23 the decision together as a family rather than force the
24 surviving spouse to make these necessary choices at the
25 time of death. And the ability to budget for this

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1 expense rather than the need to pay it entirely at the
2 most financially vulnerable time for most families, the
3 time of death.

4 At that time in 1963, funeral directors
5 and their trade association had the opportunity to
6 include themselves in this regulatory proposal. And
7 because of their prevailing reliance on their business
8 model, selling goods and services at the time of death,
9 they clearly opted out.

10 Interestingly, in the intervening 50
11 years, there were some funeral directors who sought to
12 participate in prearranged sales utilizing the 70 percent
13 trust requirement of the current law.

14 I'm not a funeral director. I was never
15 involved in that, but some set up separate sales
16 companies affiliated, directed by them, funded by them,
17 and used 70 percent. And it was their own trade
18 association acting through their licensing board that
19 took them to court and denied them the opportunity to
20 compete using this law.

21 What is astonishing to me is that this
22 proposed change to a 50-year-old statute would normally
23 be precipitated by a significant number and pattern of
24 failures to deliver merchandise that had been pre-funded
25 that obviously that's a failure on the part of

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1 cemeteries.

2 Lady and gentlemen, this has simply not
3 been the case. This law was originally created as
4 working in Pennsylvania. During my five years of service
5 on the Pennsylvania Real Estate Commission, not one, not
6 one disciplinary hearing or action was taken relative to
7 a Pennsylvania cemetery not delivering merchandise.

8 Further, during my time as president of
9 the Cemetery Association, I did not have to deal with any
10 issue of nondelivery of cemetery merchandise. Frankly,
11 this is a misguided, suggested solution in search of a
12 problem.

13 So what are the merits of 2458? Frankly,
14 I cannot offer you even one. The Bill requires 100
15 percent trusting of all merchandise purchases, thus
16 effectively destroying legitimate incentive for any
17 cemetery to enter into such a transaction.

18 The current requirement of 70 percent
19 allows the cemetery to make a trust deposit that has
20 proven adequate for more than half a century while
21 retaining 30 percent to cover the cost of acquiring and
22 administering the contract.

23 Further, the Bill provides that any
24 contract can be canceled at any time for any reason and
25 all funds returned. I am not an attorney, but an

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1 agreement that is this one-sided cannot be correctly
2 called a contract.

3 Also, since any money must be retained in
4 the trust fund, the cemetery must not only bear all the
5 costs of acquiring and servicing these non-contracts, but
6 must also bear the expense of paying trustees' fees.

7 Members of this Committee, this is not a
8 new and improved method to regulate prearranged sales in
9 Pennsylvania. It is a poisoned pill designed to thwart
10 and prevent these contracts.

11 While thousands of Pennsylvania consumers
12 choose to enter into these arrangements annually with PA
13 cemeteries, choose of their own pre-accord, there are
14 very vulnerable consumers who need to enter into these
15 arrangements.

16 Many of our elderly and medical assistance
17 neighbors who need to make these arrangements,
18 non-revocable -- you know, irrevocable so that they can
19 sequester these arrangements from their personal assets
20 when they are applying for help.

21 So lady and gentlemen, in the final
22 analysis, what we have in House Bill 2458 is thinly
23 disguised attempt to prevent trade by a group who
24 preferred to not directly deal with legitimate
25 competition. They urge you to replace a working system,

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1 the current 70 percent requirement, with their scheme,
2 100 percent funding.

3 You only need to Google search for
4 Pennsylvania funeral director licensees who have been
5 arrested to find three instances in the last 18 months
6 alone of the failure of this hundred percent formula.

7 I urge you to reject this change to the
8 Cemetery and Funeral Merchandise Trust Act. I thank you
9 for your time and the opportunity to address you, and
10 obviously Guy or I would be happy to answer any
11 questions.

12 SENATOR TOMLINSON: Thank you very much,
13 Jack.

14 Of the 30 percent, what would go to
15 commissions? You said -- and I understand your business
16 plan, you're using the 30 percent, are you using that to
17 cut the grass, plant flowers, make the cemetery look more
18 attractive, so you're -- I understand the perpetual care
19 fund. That's, I understand that totally.

20 The 30 percent you are using for at need
21 or current work around the cemetery?

22 MR. SOMMER: I can only speak for myself,
23 Senator. In my situation, yes. My job as a cemetery
24 executive is to try to make those acquisition costs and
25 administration costs as low as possible so that there are

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1 net monies available for the other operating needs of my
2 cemetery.

3 SENATOR TOMLINSON: Got it. Not a bad
4 question, just trying to understand.

5 MR. SOMMER: Sure.

6 SENATOR TOMLINSON: Of that, what kind of
7 commissions would you be paying a salesperson out of that
8 30 percent?

9 MR. SOMMER: Typically, in a range of, I
10 would -- the sales cost would be probably in the 15 to 20
11 percent range.

12 SENATOR TOMLINSON: Okay. And I think
13 that's what you're hearing from the other side here,
14 Jack, is that they think that there's such an incentive
15 by people who aren't as reliable or honest as you as
16 owners, people who come in and out of the sales forces of
17 different cemeteries that they look at this commission
18 and that's all they want to get and that's all they care
19 about.

20 That's what we're hearing back from our
21 customers is, you know, the commission is so great that
22 they're pushing, when people come in to sign up for
23 interment, they won't let them go until they get some
24 kind of sales out of them because that's all they're
25 making. They're not getting paid other than a

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1 commission, so 15, 20 percent whatever sales they make
2 would be a commission.

3 Guy, did you want to just add to that? I
4 only have one more.

5 MR. SAXTON: Yes. We don't necessarily
6 pay a commission. We have people who have a salary for
7 the week and, you know, they help families arrange. I
8 understand that paying the commission is available, but
9 this isn't really about commissions. You know, nothing
10 in this Act addresses that.

11 And if there is some kind of concern about
12 how -- how, you know, the people who help people
13 prearrange at cemeteries are paid, you know, we'd like to
14 sit down and talk about that.

15 SENATOR TOMLINSON: And the Chairman is
16 nodding at me.

17 The other big concern that I have is this
18 constructive delivery. And you don't have any
19 complaints, but -- and my mayor hasn't seen this in
20 Bensalem yet, but apparently this -- these are delivered
21 vaults. These are acres of delivered vaults,
22 constructively delivered.

23 So, I mean, I can just see the mayor of
24 Bensalem as this company we won't mention anymore starts
25 delivering trailer load and trailer load of vaults to the

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1 ground, not interring them, but constructively delivering
2 them, and if I were the customer of 502, I'd be very
3 concerned about the condition of my vault.

4 So I really think one of the big concerns
5 here is constructive delivery just to take advantage of
6 using more than 30 percent for your -- for your stock
7 dividend, for your publicly held company, for your buying
8 out another company.

9 There's a lot of really good operators in
10 this state, and I'm looking at two of them, and I know
11 you're either family-owned or very sincere about your
12 business. But we're also concerned about companies that
13 come in and consolidate and buy up and use this money to
14 go on and do something else, and then they dump a burial
15 vault on a bunch of acres.

16 And that, number one, it doesn't look good
17 in the community. And, number two, I'd really like to
18 know is that a tree growing through my vault?

19 MR. SAXTON: Senator --

20 SENATOR TOMLINSON: So the constructive
21 delivery of this Bill is a very serious aspect of this
22 Bill.

23 MR. SAXTON: I share your concern with
24 that. The problem is that the way this Bill is worded,
25 it doesn't address that. But it really does address a

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1 lot of things that aren't problems.

2 I would sit down with you and carefully
3 craft something that doesn't make it against the law to
4 sell a mausoleum or sell a lawn crypt or sell a
5 ground-covered mausoleum or sell a monument with the name
6 of two people who are still alive or call all that into
7 question because it's not written properly or carefully,
8 and it does address something like warehousing vaults
9 above ground so that they can rot.

10 Because that's clearly --

11 SENATOR TOMLINSON: Or caskets that have
12 been warehoused for 20 years and what does that casket
13 look like after 20 years.

14 MR. SAXTON: Same issue, but that's not
15 what's really in this Act. What's in this Act is
16 ambiguous language that calls into question things that
17 we've done for a hundred years. You know, a private
18 mausoleum could be called into question. A mausoleum, a
19 lawn crypt.

20 I'm going to turn it over to Jack.

21 MR. SOMMER: Yes, just a few quick points
22 there. Number one, for those of us who do serve families
23 this way, the language here is so vague, and yet vaguely
24 sweeping. Because it says any prearranged merchandise.

25 I have families coming into my cemetery

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1 every day who want to erect, and proudly, their family
2 name on a granite monument. Senator, that's a
3 prearrangement. And they're doing that knowingly --

4 SENATOR TOMLINSON: Actually, the example
5 used, and we're going to end it there because the
6 Chairman is going to -- and we'll talk about this some
7 more. But the example of the monument is very well
8 taken. Most monuments can be delivered and people like
9 them. Some people are superstitious --

10 MR. SOMMER: This Bill outlaws
11 constructive delivery, sir.

12 SENATOR TOMLINSON: And I understand that.
13 And some people don't put them on the grave -- they don't
14 like them on the grave site and they want them warehoused
15 somewhere. And we understand there are companies that do
16 that very responsibly.

17 MR. SOMMER: Right.

18 SENATOR TOMLINSON: I understand what
19 you're saying. You made a great point. Your testimony
20 is excellent. The Chairman is going to cut us both off.

21 REPRESENTATIVE GODSHALL: I do want to say
22 that in my township in Montgomery County where my son
23 serves as the Chairman of the Board of Supervisors, he
24 might have something to say about that display, and I
25 think that's really in the local hands, you know, of the

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1 municipalities. I don't know where that was, but I would
2 say it's not the way it should be also.

3 But anyway --

4 MR. SOMMER: Mr. Chairman, could I be
5 permitted just a ten-second --

6 REPRESENTATIVE GODSHALL: Okay.

7 MR. SOMMER: -- comment, please.

8 Because having served on the Pennsylvania
9 Real Estate Commission and almost every licensing body we
10 have in Pennsylvania, there is always language about bad
11 faith, bad practice, whether it's a real estate agent or
12 whether it's a cemeterian.

13 So what I have seen, they're not
14 illegitimate points, they're not -- but they don't need
15 to be addressed by this Bill that ends up being a sickle
16 cutting through an entire industry when these could be
17 clearly dealt with and identified by licensing bodies
18 that the legislature has already created.

19 Thank you.

20 REPRESENTATIVE GODSHALL: Representative
21 Davis.

22 REPRESENTATIVE DAVIS: I have like five
23 questions, so be brief; okay?

24 How many operator, cemetery operators are
25 we talking about in Pennsylvania?

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1 MR. SOMMER: I believe that regulated by
2 the State Real Estate Commission is probably something in
3 the neighborhood of 350 to 400 cemeteries.

4 REPRESENTATIVE DAVIS: Okay. And how
5 many, well, I guess how many licensed cemetery agents?
6 Is that what you call them?

7 MR. SOMMER: I'm sorry?

8 REPRESENTATIVE DAVIS: Salespeople.

9 MR. SOMMER: I would say that the
10 majority, if not all of the number I just gave you would
11 be involved in some level by, again, by their business
12 choice of those kinds of practices.

13 I need to point out again to the
14 Committee, in Pennsylvania, religious and fraternal
15 cemeteries are exempt from these regulations. That's a
16 separation of church and state that was identified aeons
17 ago. So what we're talking about are more commercial
18 cemeteries who are involved in their various
19 municipalities serving families.

20 REPRESENTATIVE DAVIS: Okay. Is there --
21 so under the Real Estate Board, there's an ethics board
22 that would oversee these salespeople we talked about,
23 someone mentioned unscrupulous salespeople?

24 MR. SOMMER: Right.

25 REPRESENTATIVE DAVIS: So does that -- is

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1 that a complaint that they could go to the ethics board?

2 MR. SAXTON: Absolutely.

3 MR. SOMMER: Any complaint, as you know in
4 the Lyness decision, there was a separation on all the
5 licensing bodies between the commission that sits, in
6 essence, as judge, and the prosecution division.

7 So any Pennsylvania consumer could level a
8 complaint against a Pennsylvania cemetery, and it would
9 have to be investigated if they -- if they were licensed
10 and under the authority of the commission. And that can
11 be for any reason.

12 REPRESENTATIVE DAVIS: And my last, would
13 this unintentionally drive up the cost of the ground of a
14 plot as a consumer?

15 MR. SOMMER: Yes. If I have, in my case,
16 170 acres at one property and 90 at the other, I've got a
17 budget, I've got expenses to maintain that property.

18 If I'm denied income in one area, you
19 know, I don't think they've changed the rules, I can't
20 print 20's in the basement. So I would, in fact, need to
21 find another legitimate source of income, and that would
22 -- that would either be other services or most
23 appropriately a raise in price on those, on the services
24 I am still allowed to perform.

25 REPRESENTATIVE DAVIS: Okay. Thank you.

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1 MR. SAXTON: If I might answer that same
2 question, there's also an unintended consequence that
3 some cemetery operators may be tempted to raise prices on
4 graves and lower prices on merchandise.

5 So if I had, just to use round numbers to
6 make it easy, a grave that was a thousand and a casket
7 that was a thousand or a grave that was a thousand and a
8 vault that was a thousand, that's \$2,000. I might raise
9 the grave to \$1,500 and then sell the vault for 500.

10 I don't think there's anything in this
11 Bill that stops that. I don't know how you stop that
12 because I don't think the State regulates real estate
13 prices. If that happens, even under a hundred percent,
14 you're putting away \$500 for that vault.

15 Well, under the current situation, you put
16 \$700 away. So this Bill may have the unintended
17 consequence of leading to under trusting. And what
18 happens when these companies under trust, they go to
19 their trust company like Philadelphia Trust Company and
20 they get more aggressive with their -- with their
21 investments to try to make up the difference.

22 So it's an unintended consequence that
23 addresses your raising the prices.

24 REPRESENTATIVE DAVIS: Thank you.

25 MR. SAXTON: Thank you.

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1 REPRESENTATIVE GODSHALL: We've also been
2 joined by Representative Bradford from our home country
3 of Montgomery for a few of us.

4 Representative Micozzie, briefly.

5 REPRESENTATIVE MICOZZIE: What do you
6 mean, briefly?

7 REPRESENTATIVE GODSHALL: We're running
8 out of time.

9 REPRESENTATIVE MICOZZIE: You know, it's
10 one thing to discuss the different parts of a Bill and
11 this group. There was a couple of inferences that were
12 made here, and I can't remember them, but when they hit
13 me, they hit me, it talks about my integrity and all
14 that, I don't put -- let me finish. Okay.

15 Let me tell you how -- I'll give you a
16 lesson in how legislation is created. And I've
17 experienced this and every legislator that's in
18 Harrisburg experiences the same way. My constituent
19 comes to me with a concern. My constituent comes to me
20 with their concerns about unfairness or whatever.

21 I don't know -- I don't know cemetery
22 procedures compared to a funeral director. But in
23 Delaware County, every one of them are my friends and
24 I've known them for many, many years. So they came to me
25 and said, We have a problem. Would you look at -- would

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1 you look at this piece of legislation. And they
2 enumerated what the legislation was about. So I decide
3 to put the Bill in.

4 Now, isn't it wonderful that we sit here
5 and discuss and learn exactly what the problems are on
6 both sides of the issue? Now, if, if the Chairman passes
7 this at a Committee, it's a long, long way, if you've
8 been involved, evidently I think you have, a long, long
9 way until it becomes law.

10 But in that process -- in that process, we
11 all learn, in this case we all learn the procedures and
12 the problems of the both issues. I didn't know nothing
13 -- I didn't even know how to spell StoneMor, StoneMar
14 (phonetic), whatever you want to call it. So when you're
15 testifying, you know, be careful how you present that.

16 MR. SAXTON: I'm sorry if I -- if I threw
17 any barbs, they were really at the PFDA and the funeral
18 directors. I mean, just fair -- not you, Tommy, either.

19 SENATOR TOMLINSON: You were in good shape
20 there for a while.

21 MR. SAXTON: Not you personally. I was
22 not -- and I'm obviously better at, you know, digging a
23 grave than I am testifying in front of Representatives.
24 This is my first time. I'm trying to figure it out. I'm
25 sorry.

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1 REPRESENTATIVE MICOZZIE: I'm very
2 sensitive about my good name --

3 MR. SAXTON: No, no, I didn't --

4 REPRESENTATIVE MICOZZIE: -- and by the
5 way, I'm Italian, I take everything personally.

6 SENATOR TOMLINSON: Mr. Chairman, I want
7 to thank Representative Micozzie.

8 And the problem is, we can't get you at
9 the table anyway. Every time we've tried to do this and
10 get people around, nobody responds until somebody puts in
11 a Bill that all of a sudden wakes everybody up and then
12 maybe we can start working on it. And it's like herding
13 cats, you know, you go here, you go there. You put
14 something out, you get some discussion on it.

15 Your discussion has been very good. Not
16 everybody operates the same way. Not funeral directors,
17 not cemeteries, publicly held companies are a little bit
18 different than privately held companies. Different
19 funeral homes operate different ways.

20 But I want to thank, not only the Chairman
21 for having this hearing because we're learning and, two,
22 I want to really thank Representative Micozzie for
23 listening to his constituents saying there's a problem
24 here, what can we do about it. You've had your fair say
25 and you've made some excellent points, by the way.

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1 Thank you.

2 MR. SAXTON: Thank you.

3 MR. SOMMER: Thank you.

4 REPRESENTATIVE GODSHALL: I just want to
5 say that I probably didn't know any more about what we
6 were discussing here today two weeks ago. Then I -- I
7 just had no idea, you know, on this situation. This was
8 put in my Committee, and the hearing was here to learn
9 just sort of what's going on and what isn't going on.

10 And I did not know about StoneMor before I
11 came down here, but I sure heard enough about StoneMor
12 today. And, apparently, it's a StoneMor problem.

13 But, you know, we do try in the House of
14 Representatives. I've served with Representative
15 Micozzie for a long time and we have constituents that
16 come forward and ask us to do things, and we do them.
17 And we're not experts on a lot of things and I sure as
18 hell am not an expert on this deal. And I probably will
19 be some day, but -- shortly, maybe.

20 But I, you know, I just want to say, you
21 know, we're giving everybody, you know, a hearing. I've
22 got in my Committee the Uber thing and, you know, that
23 deal is also coming up next week, so I've got my hands
24 full.

25 But it's a learning experience for a lot

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1 of us. And we appreciate your courtesy, and I do know
2 what StoneMor is at this point, and I do know what Sommer
3 is.

4 So anyway, we thank you. Is there
5 anything else we want to say before -- we have the last
6 body coming up. Is there anything?

7 MR. SOMMER: Appreciate the opportunity,
8 gentlemen.

9 MR. SAXTON: Thank you.

10 REPRESENTATIVE GODSHALL: Thank you.

11 Our final presenter is John Givnish,
12 president, Givnish Family Life Celebration Homes, and
13 Larry Kenney, owner of Bradbury Vault Company.

14 Gentlemen.

15 MR. GIVNISH: Good afternoon. Thank you.
16 My name is John Givnish, I'm president of Givnish Family
17 Funeral Home. What I'm going to do is just summarize my
18 testimony. My comments have already been entered into
19 the record. And what I'd like to do is just to take a
20 common sense approach and some of the practical things
21 that my family business has done.

22 Since 1980, we have prearranged over
23 20,000 funeral contracts in the Commonwealth of
24 Pennsylvania. Guy currently said when he was up here, he
25 said, you know, we're kind of competing in the middle

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1 ground and we would like to have a level playing field.

2 I agree.

3 I think what our Bill is saying is a
4 hundred percent would make it a level playing field.
5 They're at 70 percent. And what I heard in the testimony
6 is that, well, that puts them at a disadvantage of
7 selling.

8 My family's business, we currently sell
9 about \$150,000 a week in prearranged funerals, and we
10 trust a hundred percent. So I'm not so sure that that
11 characterizes that it would put them out of business or
12 harm the consumer. Our business has been robust along
13 those lines.

14 If StoneMor gets a pass, they're the
15 number -- why are we talking about them, they're the
16 number one cemetery operation in the state of
17 Pennsylvania. So if we can't take a shot at the number
18 one cemetery organization that, in our opinion, is going
19 to harm for generations this industry, whether you're on
20 the cemetery side or the funeral side.

21 We have on our books contracts, just under
22 a thousand contracts that are in excess of 25 years old.
23 That means 25 years ago, these people were smart enough
24 to sit down and make their plans in advance. Those funds
25 are a hundred percent intact, plus the interest.

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1 has to be done. This is a disaster coming right at us.
2 And just like we're painting with a fine brush, maybe
3 there is common ground. But if something doesn't happen,
4 we're all gone.

5 You have burial vaults that are being
6 warehoused by the thousands and they're taking all the
7 money now. That's a gimmick. That doesn't help us, it
8 doesn't help you, and it certainly doesn't help the
9 consumer. That is a problem. It is now at our feet. We
10 need to do something about it.

11 If it's a hundred percent, then it's a
12 hundred percent. That's a level playing field. Does it
13 take you out of the selling game? Doesn't take my
14 family's business out of the selling game. There are
15 other financial instruments that you can use to
16 accommodate the same thing.

17 Is it a little more expensive? I'll pay a
18 little more if I know my funds are there and I can rest
19 assured and I don't have to worry about a burial vault
20 that's been in the ground for 25 years or a casket that's
21 been in a warehouse for 25 years.

22 Last year, we had over 50 contracts of
23 families that had canceled. They got all their money
24 back. They didn't cancel because they didn't like us.
25 They canceled because they moved to Florida or Texas or

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1 some other state and they're not coming back here. Are
2 they going to take a 25-year-old casket with them? Are
3 they going to dig up a cemetery and take the vault with
4 them?

5 So I think what we're talking about here
6 is how in God's name do we protect the consumer? The
7 consumer's got to win. Forget my family's business,
8 forget the cemetery business. The consumer has got to
9 win. And with these rules of engagement, it's a disaster
10 waiting to happen.

11 They brag on their website that they take
12 the money up front. They're not giving it to the
13 consumer, they're giving it to the stockholders. It's a
14 disaster waiting to happen. If we don't wake up as an
15 industry, that's our fault.

16 That's all the testimony I have.

17 SENATOR TOMLINSON: Mr. Chairman, before
18 you get to the next man, John, I've got ten of those
19 contracts.

20 No, I think it's important to know in the
21 -- Mr. Givnish is a competitor of mine, he's right down
22 the street in one end, he's up the street in the other
23 end.

24 I mean, I think the thing that, and I know
25 Mr. Cavanagh has competitors here, there's competitors

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1 all across the -- I've never seen anything like this,
2 Mr. Chairman, but this industry, some people have been
3 leaders in pre-need, some people didn't want to be
4 pre-need, didn't want to get involved in it.

5 And I've never seen an industry so
6 concerned, and I think Mr. Givnish really hit the point
7 here, and that is this, if someone is storing all these
8 caskets and someone is storing all these vaults and
9 they've considered them delivered and the money is gone,
10 who's going to pay -- and if they decide to go bankrupt
11 or they decide to restructure, they decide to do
12 something else, who's going to deliver that vault and
13 who's going to deliver that casket and who's going to
14 clean up that casket to make it presentable?

15 I mean, I think we have a time bomb here,
16 and I'm really, really concerned about it. I've never
17 seen an industry, Mr. Givnish and I are very good
18 friends, but we also are competitors, and you got a
19 couple of my contracts, John --

20 MR. GIVNISH: I got more than a couple,
21 Tom. I'm kidding. Kidding, Tom.

22 REPRESENTATIVE GODSHALL: Mr. Kenney.

23 MR. KENNEY: Good afternoon, gentlemen.
24 Can you hear me okay?

25 REPRESENTATIVE GODSHALL: Yes.

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1 MR. KENNEY: All right. I'm Larry Kenney.
2 I own the Bradbury Vault Company. We've installed close
3 to 300,000 vaults since about 1963 in the area of
4 cemeteries, about half of them have gone into the
5 Archdiocese cemeteries.

6 I'm here speaking strictly about burial
7 vaults. I'll try to be brief.

8 REPRESENTATIVE GODSHALL: Would you speak
9 into the microphone, please.

10 MR. KENNEY: Is that any better?

11 REPRESENTATIVE GODSHALL: Yes.

12 MR. KENNEY: Of the 300,000 vaults we've
13 put in since '63, and my company sells directly to
14 funeral directors, we've never once had a funeral
15 director request us to bury a vault ahead of time.
16 Obviously, a day or two before a funeral, but nothing,
17 for example, say a year or two or three ahead of time.

18 From our point of view, it serves no
19 purpose. There are certain things that can happen to a
20 vault if it's interred well, well ahead of time. When a
21 family purchases that vault from anyone, they're usually
22 taking a look at either a sample or a picture of that
23 vault. Usually, even the least expensive vaults will be
24 clean, dry, some of them are painted. Some vaults on the
25 higher end have interior plastic lining.

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1 assuming it's going to look pretty nice for the family
2 and whoever is coming to the funeral. Will that vault
3 get repainted? Again, will the vault be cleaned out?

4 One other problem with plastic-lined
5 vaults if they're pre-interred, since they're
6 pre-interred empty, those vaults are not sealed. That
7 means those vaults could fill up with water. I've seen
8 grave sites six feet deep where the water is so full in
9 the grave, it comes right up to the side of the grass.
10 Effectively, you could have six feet of water in a
11 six-foot grave.

12 So if that vault is interred, say, in
13 November of the year, it's a wet season, that vault can
14 fill to the brim with water. Come January, the whole
15 thing can freeze underground. That results not only in
16 cracking the vault, but also cracking the plastic lining.

17 If that vault had a casket in it, the
18 amount of water accumulating between the casket and the
19 wall of the vault would be, say, three or four inches,
20 not enough to crack the vault. But if the vault is empty
21 and you've got two feet wide, three feet deep of
22 basically of a large ice cube in there, that's enough to
23 crack everything.

24 That's why we've never seen the purpose of
25 putting a vault in the ground ahead of time, especially

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1 that far ahead of time.

2 Storing the vaults in the fields for a
3 long period of time generally isn't much of a problem,
4 but we've never stored them more than three or four or
5 five years. I don't know what it would be like to have
6 vaults sitting out in a field for 15, 20 years.

7 Generally, concrete does get stronger the
8 longer it cures, but it's also subject to additional
9 handling if the vaults are stored in a yard and there's
10 10,000 vaults sitting there, forklifts running back and
11 forth have a tendency to chip and bang corners and dings.
12 So there's more probability of damage to a vault that
13 way.

14 That's about all I have on the wonderful
15 world of vaults.

16 REPRESENTATIVE GODSHALL: Representative
17 Micozzie.

18 REPRESENTATIVE MICOZZIE: Yes. It's not a
19 question, it's just a comment. I'm retiring after -- in
20 November 30th, after 36 years. Hopefully out of this
21 meeting this comes some level of truth. You know, you
22 shake the bottle, the cream always comes to the top.

23 At the suggestion of Senator Tomlinson,
24 the things that he talked about, the two industries can
25 get together and the concerns that you laid out, I think

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1 the two organizations or two cemeteries and the funeral
2 directors ought to get together and try to come up with
3 something that's good for the consumer.

4 Thank you.

5 MR. KENNEY: Thank you.

6 SENATOR TOMLINSON: Thank you,
7 Mr. Chairman. I appreciate you giving me the courtesy of
8 joining your hearing and thank you very much for airing
9 this subject.

10 It certainly has become a little
11 controversial around here, and I honestly believe that
12 most of the people in this room are here for the benefit
13 of the consumer, trying to keep this industry on a level
14 playing field, but trying to ultimately think about the
15 consumer and make sure that everybody's able to stay in
16 business and be on a competitive level.

17 Thank you.

18 REPRESENTATIVE GODSHALL: I'd like to
19 extend my thanks today to the presenters and note that
20 the written comments for inclusion in the record have
21 been provided from John Price, funeral director at Price
22 Funeral Home. And I believe at this point, a couple of
23 others have come in also.

24 I just want to say it's -- this is totally
25 a new subject for me that I've never been involved with.

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1 I know there's a lot of learning to do and we will be
2 open, and I'm sure, Senator Tomlinson shares the same
3 Committee I do in the House, he's in the Senate Consumer
4 Affairs Committee, and if there's anything further that
5 anybody would like to put into the record, I would be
6 happy to do that, and after hearing the testimony that
7 you heard today.

8 But as I said, it's totally new to me and
9 it's something that I didn't really worry about, but I
10 guess at my age, I maybe should have, you know.

11 But anyway, I just want to say thank you,
12 and if there are no further questions, the meeting is
13 adjourned.

14 Thank you very much.

15 (The proceedings adjourned at 2:45 p.m.)

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CERTIFICATION

I, DIANNA R. PUGLIESE, a Registered Merit Reporter, Certified Realtime Reporter and Commissioner of Deeds, hereby certify that the foregoing is a true and accurate transcript of the proceedings of said witness on the date and place herein before set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this proceeding was taken; and further that I am not a relative or employee of any person in this action, nor am I financially interested in this case.



DIANNA R. PUGLIESE
Registered Merit Reporter, Certified Realtime Reporter
and Commissioner of Deeds