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Alone in the End: Greed in Jefferson County, West Virginia (Part 1)

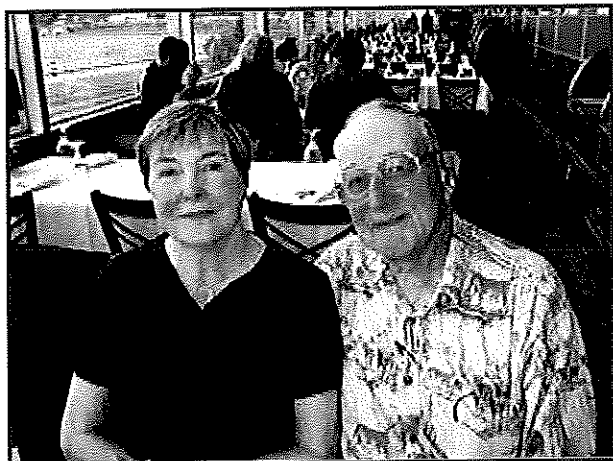
3 August 2009 4 Comments



By Thomas Harding

Over the past few months, quietly, and without much hoopla, two Jefferson County families have agreed to multi-million dollar settlements involving local accountants and insurance agents.

At the center of this brewing scandal is a regular guy who plays baseball and raises funds for the March of Dimes. He is a round-faced fellow who jiggles when he talks, squints as he gets excited, and carries a perma-smile even now, as he faces a crisis that may lead to the end of his professional career. His name is Luther James Nichols, or "Jim," and his long-time clients—many of whom he considers close friends, many of whom would do anything he suggested with their money—are being forced to reevaluate the person they so deeply trusted.



Nichols says he has always been a good person, a religious person, a person who doesn't drink, smoke or curse. He insists he has done nothing wrong.

Meet the Lloyds

Glendwell and Jo Ann Lloyd are elderly farmers. Glendwell was born in the old farmhouse on his parents' land near Charles Town, West Virginia. They have never made much money, until the real estate boom, that is. In 2004 they sold part of their farm on Route 9 for over six million dollars. Today, instead of the Lloyd's barns, tractors, and fields of soybeans, there now stands a Chic-fil-A, McDonald's, and Bob Evans.

The Lloyds were not sure what to do with the first installment of their proceeds, which was \$3.7 million, so they consulted with their long-time accountant, Jim Nichols, of Nichols Dehaven. "I trusted him," says 72-year-old Glendwell, leaning against a trailer on his farm, "as a friend, as well as my accountant."

Lloyd alleges that Nichols suggested they set up a retirement program called a 412i plan, named for the IRS section that describes it, which commits the investor to contribute large amounts of money for five years. Then, in return, through a convoluted tax formula, they are able to vastly reduce their tax payments. Due to the huge monthly premiums these plans require, they have been, up until now, the realm of celebrities, sports stars, doctors, and lawyers.

In February 2004, Lloyd drove over to Nichols's office in Charles Town. Along with Nichols's associate and fellow Jefferson County resident George Fisher, he drove in a battered silver Volvo to Bethesda, Md. There they met Hugh Lawrence ("Larry") Logan, president of West Pension Solutions, to discuss the Lloyds' retirement plans. Lloyd says that at no time did Nichols disclose to him that he was an insurance agent, or that he and his associates would be gaining significant commissions from the transaction—to the tune of hundreds of thousands of dollars.

The Lloyds agreed to the plan proposed by their trusted accountant. According to court documents, they wrote out their first check, and contributed over \$30,000 a month to the retirement plan.

The first problem, the court documents claim, was that Jim Nichols and his associates did not set up the plan properly. The 412i plans require earned income—like money generated from their farm operations—not funds generated from the sale of capital like real estate. In addition, the Lloyds allege, their 412i plan was established under the company W.O. Lloyd Farms, LLC, which was not even the company that owned or sold real estate. That company was Bane Farm, LLC.

Lloyd says that it was not until 2007 that he and Jo Ann realized there were problems with the plan, and that it might not qualify as a 412i plan. Worse still, they learned that 412i plans in general had been identified by the IRS as high risk, and that such risks should have been disclosed by Nichols, Fisher, and Logan, but weren't. To their horror, they learned that non-qualifying plans were subject to \$100,000 fines per violation per year for the individual and \$200,000 fines for each company involved.

In order to cover his tracks on the potentially non-qualifying income, the Lloyds allege, Jim Nichols approached Martinsburg attorney Chris Luttrell, and asked him for an opinion letter confirming that the accountant could reclassify the capital gains from the sale of the real estate as earned income two years after the fact. According to the court documents, this was done in an effort to make it look like Mr. Lloyd earned a commission from the sale of property even though he is not licensed as a real estate agent, and even though a real estate broker was actually involved in the sale of the land and had already been compensated.

The Lloyds contend that Nichols then altered their tax return without their full knowledge and consent. Worse still, they say, certain application forms submitted by Nichols and his fellow insurance producers contained the Lloyds' signatures which had been forged.

When asked about these charges, Jim Nichols said that he never forged any signatures, that he never did anything wrong, and that he was looking forward to proving this if and when the case went to court.

In 2009, the Lloyds sued the three agents involved in the plan—Logan, Nichols, and Fisher—and the three companies, West Pension Solutions, West Financial Group and Mass Mutual. According to Nichols, Mass Mutual has settled the case, but he and the rest of the defendants are still fighting the allegations. The case continues.

"It was very hard for us to accept that Nichols did this," says the Lloyds' son Alan, sitting on an upturned bucket in one of the family's barns. "But our eyes were opened by the facts we discovered during litigation. This was a scam, for him to make money on false pretenses and without proper disclosure. Jim sold us out for a buck."

Eating in the Panera Bread restaurant built on the land once farmed by the Lloyd family, Jim Nichols talked about the case. "I don't do pension plans. There is a pension center that does that, and there is one guy who oversees it. I didn't realize that, because I'm associated with him . . . I don't get paid by the pension side. I just give them information to process the stuff. This is not my area of expertise. It is guilt by association."

Yet Jim Nichols was an insurance agent licensed in West Virginia, specializing in financial advice. He marketed himself as such on his website, undertook mandatory training with Mass Mutual specifically on 412i plans, and, according to court documents, received hundreds of thousands of dollars of commissions as a result of working on the Lloyd's 412i plan.

The Lloyds are represented by the West Virginia law firm Hammer, Ferretti & Schiavoni and the Virginia law firm Charapp & Weiss, LLP. Brad Weiss of Charapp & Weiss issued the following statement: "Like so many small family owned businesses, the Lloyds trusted their accountants for protection of assets the family built through many years of farming and hard work. The Lloyds expected straightforward and honest advice. However, they charge, they fell victim to a scheme where their accountants and those they worked with earned hundreds of thousands of dollars in commissions by selling a complex financial plan which was never appropriate for the family."

The Kables

The Kables are another local family who became involved with 412i plans. Known for their excavating business as well as their real estate endeavors, Carol and Marty Kable are well known in Jefferson County for their hard work and entrepreneurial spirit.

Like the Lloyds, the Kables went to Nichols Dehaven as their trusted advisor for suggestions on how to invest more than \$3 million worth of real estate proceeds from land-development sales. Nichols put them in touch with Larry Logan, and they set up a 412i retirement plan. According to court documents, the Kables were obliged to pay Mass Mutual monthly payments of more than \$9,000.

According to court documents, setting up the 412i plan went horribly wrong from the start, going far beyond any alleged malpractice or bad advice. The correct 5500 forms—a form that must be filed annually by individuals with 401k and other pension and retirement plans—had not been submitted to the IRS in 2005. Worse still, court documents say, the insurance agents hadn't told their clients that they knew of this problem.

Indeed, even Nichols's daughter Kelly Parsons, who works for the firm, expressed doubts about the plan. In an February, 26 2007 email, she wrote:

"I'm still not comfortable with the Kable Family 412i. The plan was formed for the Kable Family Trust. I'm not sure [what] the Kable Family Trust is and haven't gotten any answers when I asked."

According to court documents, Nichols and his associates worked out a solution: they would take the federal employment identification number, or "FEIN," from an old Kable family company (Elmwood Joint Venture) which had nothing to do with the money earned for the 412i plan, and assign this FEIN number to a company—the Kable Family Trust—which the West Virginia Secretary of State's office says does not exist. Then they would amend the original tax returns, and, as a result, keep the commission and fees they received.

On October, 9 2007, Jim Nichols wrote an email outlining the solution:

"After researching my Kable files for about 2 hours, I am going to give you one of their approximately 10 fein's for their various businesses. The plan sponsor is a sole proprietorship but I am giving you the fein for Carol Kable's real estate business which is 55-0660xxx." (The last three digits of the FEIN numbers have been redacted for privacy.)

Then two hours later Nichols wrote another email:

"I have been searching for this ever since I talked you, and finally found the fein for the kables joint venture, here is it (sic): Elmwood Joint Venture fein 55-0771xxx."

According to the IRS, the Kables did submit a 5500 form in 2006. It had the FEIN number for Elmwood Joint Venture, and the name on the form was the Kable Family Trust.

When asked about the FEIN numbers, Jim Nichols says the mistake was a clerical error. "It really is not a big deal. It looks funny when you read the emails, but it really isn't anything," he said, adding, "It really didn't have anything to do with me. It was the people who filed the 5500 forms."

When told that Jim Nichols said the mistake over the FEINs was not his fault, George Fisher laughed, saying, "Is that what he said?" When asked for his side of the story, he declined to comment, citing the continuing litigation.

The Kables also alleged, according to court documents, that Nichols and his associates continued to access their finances as their former accountants and financial advisors well after being terminated. According to these documents, Carol Kable met with Jim Nichols at 9am on August 23, 2007, and terminated ties to his firm and his associates. Yet emails that appear in these same documents show that Nichols, Logan, Fisher, and others were still working on the Kable's finances as late as October 10, 2007, despite seeming to have no authority to do so. On this, Nichols said, "I wasn't really doing anything with the clients. I was working with the pension people. I wasn't doing anything for anybody, except trying to get something filed; that's all."

Documents filed with the Financial Industry Regulatory Authority show that the Kables and Lloyds made claims against Nichols and his associates for \$4,000,000.

In March 2009, the Kables settled their lawsuits. In May 2009, the Lloyds settled their lawsuit with Mass Mutual only. Mass Mutual and Carol Kable declined to comment on the story.

Jim Nichols confirmed that the final settlement with the Kables and partial settlement with the Lloyds was in the millions. The financial details of the deal are not available for public review under a protective order entered by Judge Gina Groh.

"I'm not a criminal," said Nichols. "A lot of people trust me, and that's how come you are a CPA; you want people to trust you. That's all you really have is your trust and reputation. You don't really have anything else in the world if you think about it. One thing is for sure, I'm not going to do financial services anymore."

More families

According to public records, there are at least ten other families in Jefferson County who have filed IRS Form 5500s with 412i plans in the last few years. Some of these families are considering commencing legal action against their advisors in the near future.

On May 27, 2009, Nichols received a phone call from Alexandria West of West Financial Group, instructing him that his and George Fisher's career contracts with Mass Mutual had been terminated. She told him that she was sure it had to do with compliance issues. Larry Logan was terminated a few weeks earlier. Logan and West did not return phone calls on this story.

The Lloyds have made a formal complaint against Jim Nichols and his associates to the West Virginia Insurance Commission. In a conversation with The Observer, Nichols said that the insurance commissioner had "dismissed the case without merit."

However, Jane Cline, insurance commissioner for West Virginia, said that this is not true. "This case has not been dismissed without merit," she said. "And we have the power to investigate cases even if they have been settled in court. It is our policy to investigate unsuitable behavior, and to do all we can to protect West Virginia consumers." She added that they had an investigations department specifically for situations involving multiple complaints around the same firm.


Through a Freedom of Information Act request, The Observer has obtained a copy of the complaint file. The Lloyds summed up their concern as follows: "We sincerely hope that the commission will learn from the Security and Exchange Commission which received complaints about Bernard Madhoff for ten years and yet did nothing . . . The commission should learn from this mistake instead of repeating it, for the sake of the citizens, many of them elderly."

In July 2009, the West Virginia Society of Certified Public Accountants honored Jim Nichols by giving him the Public Service Award for 2009. According to Jo Ann Walker, executive director of the society, Nichols's nomination will be placed in contention for the 2009 American Institute of CPAs National Public Service Award.

Until recently, Jim Nichols and Nichols Dehaven provided accountancy services to Thomas Harding as well as The Observer.

Attached Files:

- [glendwell and jo ann lloyd copy](#)
- [field](#)

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4 Comments »



Rob said:

Excellent work

4 August 2009 at 2:00 am



Miguel Palma said:

Although there are a lot of abuses with these plans National Life of Vermont has been doing these plans correctly for over 40 years. As always, it always pays to do your homework before entering into such a large financial contract.

4 August 2009 at 7:38 am



Pete Smith said:

Congratulations – you have now qualified as a real "newspaper." The story appears to me to have been carefully and professionally reported and edited. I'm sure you will follow up should Nichols et al decide to give their side of the story, or should there be further developments.

The Observer has now moved onto my must-read list.

4 August 2009 at 11:12 am



Nick Kercheval said:

As a farmer and business man in Jefferson county for 35 years, i know the Lloyds and the Kables well. I also know several of the other families involved. All have been hard working and honest people. All have been financially successful for various reasons. All apparently trusted their long time accountant Jim Nichols.

I also recall Jim Nichols as an accounting student at Shepherd in the early 70's when I was a student there. We used to call him and another student he studied with "Debit and Credit" because they were always studying and were at the top of their class. I assumed through the years that the success of Nichols practice was due to his intelligence, hard work and integrity. Well, he has worked hard but as for the other two attributes, guess I was wrong.

4 August 2009 at 2:04 pm

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Yes (100%, 1 Votes)

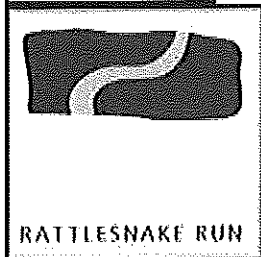
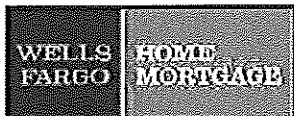


No (0%, 0 Votes)




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