

THE Observer

Serving the eastern panhandle...

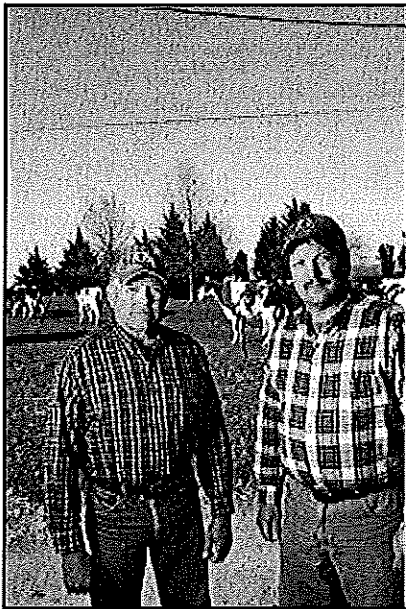
- [Home](#)
- [Contact Us](#)
- [Advertise](#)
- [About Us](#)
- [Observer v Maghan](#)
- [Arts & Culture Calendar](#)
- ["Gag Case"](#)
- ["Photograph Case"](#)

Search the archive...

[Home](#) » [Staff Blogs, Thomas Harding](#)

Families Fight Back: Greed In Jefferson County, West Virginia (Part 2)

30 March 2010 One Comment



by Thomas Harding

This is the second article focusing on the alleged sale of unqualified retirement plans to Jefferson County families. The first article concentrated on the impact on two families, the Kables and the Lloyds. This second article looks at how the scheme impacted five other local families, and provides an update on how the cases are progressing.

Quietly and without much fuss, the largest case in Jefferson County legal history is making its way through the local court system. It involves a small local firm, perhaps as many as 15 local families, and one of the world's largest insurance companies. Almost every day a servicing agent walks through the tall white-paneled doors of 199 North George Street in Charles Town, waits to be checked at the metal detector by a blue-uniformed bailiff, turns left at the end of the corridor, right into a small hallway, and, at a windowed counter, hands over the latest in a series of complaints, briefs, counter-briefs, and orders. Welcome to multi-case litigation, Jefferson County style.

In 2008, local real estate entrepreneurs Marty and Carol Kable filed a complaint against their financial advisors Jim Nichols, Larry Logan, and George Fisher as well as the insurance company MassMutual. They settled almost a year later for an undisclosed sum. The same year, Charles Town farmers Glendwell and Jo Ann Lloyd filed suit against Nichols and his associates. MassMutual quickly settled with the Lloyds for an undisclosed sum, while the rest of the parties remain in litigation. Documents filed with the Financial Industry Regulatory Authority show that the Kables and Lloyds made claims against Jim Nichols and his associates for \$4 million.

Since these first two suits were settled, five other Jefferson County families have filed complaints against Jim Nichols, his associates, and MassMutual. They include Todd and Eddie Hough, owners of a 1,300-acre dairy farm in Charles Town; John and Linda Kilroy, owners of ERA Liberty in Charles Town; Dr. Ray Vanderhook, who runs a well-known orthodontic practice in Charles Town; Philip McDonald, who for 27 years has owned and managed Rock and Tile, the stone and masonry store in Charles Town; and Irwin and Carol Asam, who run the popular Bavarian Inn on the banks of the Potomac River in Shepherdstown. The plaintiff attorneys representing all these families are West Virginia firm Hammer, Ferretti & Schiavoni and Virginia firm Charapp & Weiss.

These seven Jefferson County families make very similar allegations: that they were encouraged to purchase insurance products to fund a 412i retirement plan by their trusted accountant Jim Nichols and his associates, that the plans he set up did not qualify according to the IRS rules, that Nichols and his associates never told them he and the others were making commissions on the sale of the insurance products, and that they were not told that the 412i plans came with serious penalties if abused.

When asked about Jim Nichols, Irwin Asam said, "We worked with Jim Nichols for 29 years, and after so much time you hope to establish a very good relationship and trust. Somewhere along the way we were failed and misled. We are very disappointed."

John Kilroy, who filed his suit in October 2009, says that he is not persuaded by Nichols' defense that he didn't know any better, and that he was relying on others for their expertise, particularly Bethesda-based Larry Logan. "We trusted Nichols. He was the expert. He recommended these products to us. We had no idea we didn't qualify."

Eddie Hough, who filed suit in March 2010, agreed with John Kilroy. "I would like to think that Nichols was hooked liked the rest of us. But he is too smart for that. He should have known something was fishy. He should have dug into it and protected his clients." Hough added that he had done business with Nichols for over 30 years, but that now, "I would not trust him as far as I could throw him."

It is likely that more families will file suit. During testimony in court on May 19, 2009, Nichols said that he had sold insurance products for 412i plans to 15 local individuals or families, and that these were all clients of his accounting firm Nichols Dehaven.

The Smoking Gun(s)

On October 1, 2009, Nancy Major, a pension administrator for West Pensions Solutions, was deposed by attorneys representing the 412i families. Major said her company realized that there were problems with the Jefferson County plans as early as 2006. She gave the example of the Asam family's plan, which was run through the "Asam Family Trust," an entity which she claimed did not, in fact, exist. Such "issues" caused such concern that a letter was drafted informing the Jefferson County clients of the problems. However, she said that, after objections from Larry Logan and George Fisher, this letter was never sent out.

The next smoking gun came in the form of a memo. In early 2008, Nichols' lawyer John McCuskey wrote to Steven Robey, an accountant with the Charleston firm Arnett & Foster, asking for his opinion on the 412i cases. McCuskey wanted to see how bad the damage could be. It turned out to be very bad.

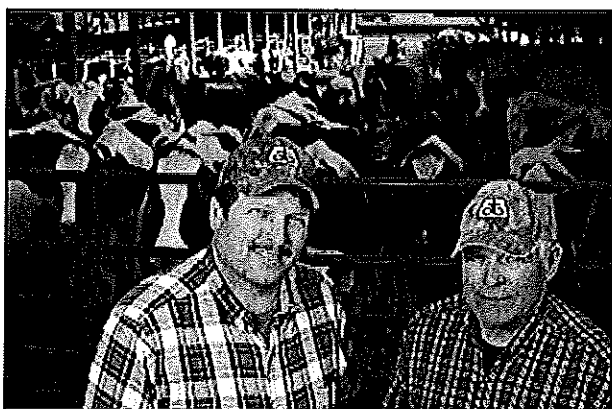
Robey wrote back on March 20, 2008, and included many of the findings that were later reiterated by the Kables, Lloyds, and the other families. Robey said the families may "lack suitability" for 412i plans, and that characterizing the sale of land as earned income was "problematic."

More damning, Robey questioned the ethical behavior of Nichols and his associates:

"The Lloyds filed an amended return in 2005 in which, among other changes, \$210,000 was re-characterized from capital gains to earned income . . . The capital gain resulting from the installment sale was originally assumed to constitute earned income for purposes of funding 412i plan contributions. Under IRC 412c2c, earned income would appear to exclude the gain resulting from the installment sale of the farm.

It is our understanding that the accounting firm did not disclose the receipt of remuneration derived from the placement of the 412i plan. This is likely to be a violation of accountancy ethics provisions."

The Robey memo was withheld by McCuskey for many months on the grounds that it was confidential client/ accountant correspondence. But McCuskey made a mistake. When the memo was shared with another of the defendant's witnesses, tax expert Robert Teal, it lost its protection. At the start of Teal's deposition in February 2010, McCuskey finally handed over the Robey memo to the plaintiff families' lawyer. At last the families had the smoking guns they had been looking for.



The Scale of the Problem

In 2004 the IRS found that 412i plans were being misused across the county by financial planners to provide their clients with illegal tax shelters. They announced a ruling that the plans would be

characterized as “listed transactions.” As such, their risks must be disclosed to each client. One consequence of the 2004 ruling was that individuals and companies participating in 412i plans had to report their involvement each year on a Form 8886. The fines for not submitting these forms, called a “6707A Penalty,” were staggering: \$200,000 per company per year and \$100,000 per individual per year. Worse still, even individuals who had no knowledge that they were taking part in a listed transaction were still liable for the 6707A penalties—even if they were misled by their financial advisor. There were to be no exceptions or appeals.

A major problem facing the Jefferson County 412i families is that it appears that their accountant failed to report 8886 forms at all. If true, this would expose the families to the mandatory penalties.

According to John Truban, a Winchester-based accountant working with many of the 412i families, the IRS penalties could quickly add up to enormous sums. In a letter dated February 23, 2010, Truban told the Lloyds that their estimated total losses—including the income tax, estate tax, and penalties due because of the 412i plan—could be more than \$4 million. Using similar assumptions this could mean million-dollar-plus losses for each of the families.

Luckily, the IRS has recognized what has become a nationwide problem of abuse by financial advisors. In December 2009, the IRS imposed a moratorium on the 6707A penalties. This moratorium has recently been extended until the end of June 2010. According to Floyd Williams, director of the IRS Office of Legislative Affairs, Congress will soon change the law so that “the penalties for families that have been duped by accountants [selling 412i plans] will be dramatically lessened.” He said that he expected the new rules to become law sometime later this year. The impact of these IRS rule changes on the Jefferson County families is uncertain.

The Net Widens

The first suits were targeted at Jim Nichols, Larry Logan, George Fisher, and MassMutual. Recent suits have included staff at Nichols DeHaven including Julie Dehaven and Kelly Parsons, individual employees of MassMutual, and agents and officers who work for West Financial Group.

West Financial Group (WFG), based in Bethesda Maryland, was managed by Alexandria West. It was through WFG that Nichols, Logan, and Fisher sold insurance products to the Jefferson County 412i families. Yet according to the West Virginia Insurance Commission, WFG is not licensed to sell insurance products in West Virginia. And, according to the Secretary of State’s office, it is not registered as a business, and therefore paid no taxes. The complaints filed by the 412i families also allege that Alexandria West owed over \$1 million dollars to the IRS for tax liens and other civil judgments, which “compromised her duty to place her client’s interests above her own.” Yet she continued to sell insurance products for MassMutual until mid-2009.

If Jim Nichols was the guy who made the introductions to A-list clients in Jefferson County, Logan was the person who could make the pitch. Lawrence Hugh Logan became licensed in 2003 to sell insurance in West Virginia. He was working as a general agent for WFG, and sold insurance products under MassMutual. In its response to complaints brought by the families, MassMutual has admitted that it was aware there had been many consumer complaints made against Logan, and that the company had placed him under special supervision in June 2007. Yet until Logan’s termination by MassMutual in April 2009, it was Logan that Alexandria West trusted to sell the 412i plans to the unsuspecting families in Jefferson County.

MassMutual is a huge company, more than capable of defending itself against farmers, store-owners, and realtors from West Virginia. In September 2009, MassMutual laid out its defense to the West Virginia Insurance Commission: 412i plans are created, designed, and administered by a third party administrator (TPA), and MassMutual is not a TPA. But a jury might find this attempt at distancing hard to stomach. MassMutual's marketing materials show it promoting "business alliances" with TPAs through an "integrated service model." In addition, in a March 2009 press release, MassMutual claims, "The TPA market is a key element of MassMutual's growth strategy and we are fortunate to be in a strong financial position that enables us to continue to invest in helping TPAs and intermediaries."

In an email to *The Observer*, Mark Cybulski, a MassMutual spokesman, said, "With respect to the lawsuits filed regarding alleged retirement plans established under Internal Revenue Code Section 412(i), it is important to emphasize that there are no allegations that MassMutual has failed to honor the terms of existing insurance policies or annuity contracts. We believe that the allegations against MassMutual are without merit and we intend to vigorously defend ourselves."

As the case develops, and the stakes grow higher for all concerned, inconsistencies are starting to emerge between the defendants. While MassMutual states categorically that Nichols and Logan were not their statutory employees, Logan and Nichols have contended in their suits that they were. Similarly, MassMutual states that Marie Ann Chio at WFG was the supervising officer in charge of Logan, but Chio says that she was not the supervising officer. She was, she says, merely "assisting" in the supervision of Logan.

It is not clear what, if any, penalty will be meted out to MassMutual as the families bring their lawsuits to a close. But if judgments are made against MassMutual, there is plenty of money in the piggy bank. According to their 2008 report to the West Virginia Insurance Commission, MassMutual made over \$8 billion in profit and held assets of over \$114 billion.

West Virginia Commissions

Four Jefferson County families have sent complaints regarding Nichols and his associates to the West Virginia Insurance Commission. Two of these complaints were made over a year ago. At the close of March 2010, the commission has not sanctioned any of the parties involved in the alleged 412i scam. When asked if they are conducting an investigation into this matter, Victor Mullins, associate counsel for the West Virginia Insurance Commission, said that as a matter of policy they do not disclose whether they are investigating any complaints, and that the lack of a decision either way should not be read as an indication of the final result.

This softly, softly approach may come as a surprise considering a statement by Jane Cline, president of the National Association of Insurance Commissioners and West Virginia Insurance Commissioner. At a meeting of state insurance regulators earlier this year, she said, "Providers who engage in fraud, waste, and abuse should be decertified, and insurers must adopt antifraud plans under the guidance of state regulators."

Meanwhile, the West Virginia Board of Accountancy, whose members are appointed by the governor, is actively looking into the allegations. Jo Ann Walker, the board's executive director, said that at least four Jefferson County families have filed complaints regarding the sale of 412i plans by Nichols and his associates. She confirmed that the board has now opened an investigation into the matter, and will deal with each of the cases as a group if it is found that the matters are related. When asked how long the investigation would take, Walker said, "I really don't know. These cases are different from any we have ever seen before in terms of magnitude and number of complaints. It is therefore hard for us to say how

long it will take to complete the investigation.”

On April 22, 2009, Logan was terminated by MassMutual. In May 2009 Fisher and Nichols were terminated by MassMutual. In the summer of 2009, Alexandria West’s license to sell MassMutual insurance products was terminated. Larry Logan (#426429), Luther Jim Nichols (#200067), Alexandria West (#426750), and George Fisher (#95789) are still licensed to sell annuities and insurance in West Virginia.

According to one of the assistants working in the Jefferson County Circuit Court’s office, there are already over 55 green legal folders piled up in the court’s vault on George Street in Charles Town. “Every day it seems an attorney brings another file in to us,” she said. “When taken together, this is the largest case we have ever seen.”

Seven families have now filed; others may well file soon. For the moment, at least, more servicing agents carrying briefs and complaints related to the 412i cases are likely to walk through the doors at 119 North George Street. The work of the county clerk’s office doesn’t appear to be coming to an end any time soon.

Editors note: Until 2009, Jim Nichols and Nichols Dehaven provided accounting services to The Shepherdstown Observer, Inc., and to the author of this article. Despite repeated requests, with the exception of MassMutual, none of the defendants nor their lawyers provided statements for this article.

To read the first part of this article go to [Alone-in-the-end](#)

Key

412i – A tax-qualified, defined benefit pension plan for business owners and their employees that must be funded with a combination of life insurance and annuities, or annuities alone.

8886 Form – An IRS form that families involved with 412i plans must report each year

6707A Penalty – Substantial penalties imposed on people who don’t file 8886 form when they should

Jim Nichols – CPA and insurance agent in Charles Town, West Virginia

Nichols Dehaven – Charles Town accountancy firm run by Jim Nichols and Julie Dehaven

Larry Logan – Former President, West Pension Solutions, and agent for West Financial Group, Bethesda, MD

George Fisher – Jefferson county insurance agent who worked with Jim Nichols

Alexandria West – General Manager, West Financial Group

West Financial Group – A Bethesda based company through which insurance products were sold.


West Pensions Solutions – set up by Larry Logan, sold to Alex West in 2006, acted as a Third Party Administrator and managed the 412i plans.

MassMutual – Giant insurance company who sold insurance products through West Financial Group in WVa

Hammer, Ferretti & Schiavoni – West Virginia attorneys who represent 412i families

Charapp & Weiss, LLP. – Virginia attorneys that represent 412i families

Photos by Seth Freeman

(Visited 46 times, 24 visits today)  [Print This Post](#)



One Comment »



Nancy McBride said:

This is terrible. I know these folks and they are very hard working people that do not deserve this. My heart goes out to them. May God give them the strength to go on. This really surprises me that Jim Nichols is a part of this. He has always seemed so trustworthy. My Prayers are with them.

22 April 2010 at 6:40 pm

The Who?

Welcome to wvObserver.com, The Observer's official website. The Observer is a monthly publication based in Shepherdstown, West Virginia. We bring news, events, and articles to the eastern panhandle.

The Observer on Twitter

- New blog post: Grape Debate Valentines Day <http://www.wvobserver.com/2011/02/grape-debate-valentines-day/>
- New blog post: Charlie In Memoriam <http://www.wvobserver.com/2011/02/charlie-in-memoriam/>
- New blog post: Your Jefferson county <http://www.wvobserver.com/2011/02/your-jefferson-county/>
- New blog post: Where you will find him <http://www.wvobserver.com/2011/02/where-you-will-find-him/>
- New blog post: Save the earth <http://www.wvobserver.com/2011/02/save-the-earth/>

Categories

- [Environment](#)
- [Events](#)
- [Featured](#)
- [From The Paper](#)
 - [About This Place](#)
 - [Arts](#)
 - [Blue Ridge Press](#)

- [Business Briefs](#)
- [Community News](#)
- [E polyphony](#)
- [First Bite](#)
- [From The Editors](#)
- [Getting Acquainted](#)
- [Grape Debate](#)
- [Guest Commentary](#)
- [Letters to the Editor](#)
- [Life Outside](#)
- [Other Articles](#)
- [Real Estate](#)
- [Small Planet](#)
- [Headline](#)
- [News](#)
- [Staff Blogs](#)
 - [David Lillard](#)
 - [Dominic Valentine](#)
 - [Thomas Harding](#)

Archives

Select Month

Poll

Do you think the Governor of WV should also be able to hold post of President of the Senate?

Yes (100%, 1 Votes)

No (0%, 0 Votes)



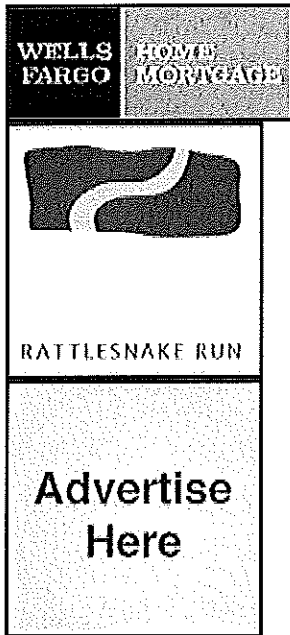
Total Voters: 1

Sponsors



304 878 6400
 info@GregDidden.com
 www.gregdidden.com

GREG DIDDEN ASSOCIATES 



Topics

[412i](#) [Art](#) [Arts](#) [CATF](#) [Charles Town](#) [clerk](#) [climate change](#) [coal](#) [Community](#) [crafts](#) [Dance](#) [distracted driving](#) [Entertainment](#) [festival](#) [FOIA](#) [Food](#) [Foreclosure](#) [Gas](#) [green](#) [Jefferson](#) [Jefferson County](#) [Jim Nichols](#) [Kids and Nature](#) [Lehman](#) [maghan](#) [Manchin](#) [MassMutual](#) [mountaintop removal](#) [music](#) [old standard](#) [Petition](#) [planning](#) [Real Estate](#) [referendum](#) [Supreme Court](#) [Table Games](#) [Tax](#) [texting](#) [texting-while-driving](#) [Theater](#) [West Virginia](#) [Wine](#) [workshops](#) [WV](#) [Zoning](#)

Recent Posts

- [Observer Photo Contest](#)
- [Grape Debate Valentines Day](#)
- [Charlie In Memoriam](#)
- [Your Jefferson county](#)
- [Healthy Living: Four Herbs, A thousand benefits](#)

Most Commented

- [Table Games Forum](#)
- [Referendum Shenanigans](#)
- [Who is John Raese?](#)
- [Events](#)
- [Letters to the Editor](#)

Recent Comments

- [shehnaz fairness cream](#) on [Healthy Living: Four Herbs, A thousand benefits](#)
- [Neil](#) on [Healthy Living: Four Herbs, A thousand benefits](#)

- [Weekly Reader 2.7.11 on Earthquakes and Family Togetherness](#)
- [Austen on Pub Music Rocks](#)
- [Anne Marie Kohlhepp on Jane Turner and the Animal Welfare Society](#)

[Log in](#) | [Entries \(RSS\)](#) | [Comments \(RSS\)](#)