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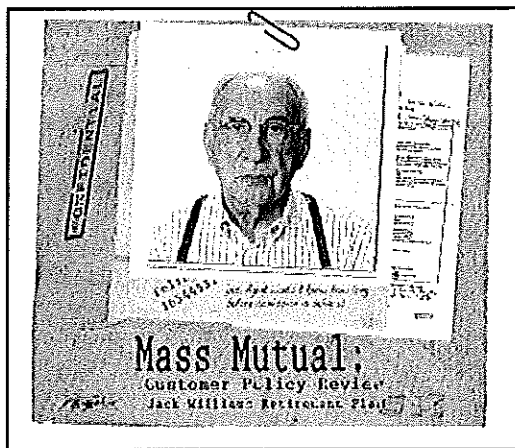
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Price of Silence: Greed in Jefferson County (Part 3)

1 February 2011 No Comment



By Thomas Harding

This is the third and final article about the selling of Massachusetts Mutual Life Insurance's "412i" insurance plans to Jefferson County families by local businessman Jim Nichols and his associates. The [first article](#) explored the details of the alleged scams and their consequences. The [second article](#) looked at how the families were fighting back. This third article covers the final settlement and details of the alleged fraud that were exposed at the very end of the case.

"Hey Jim, I guess there's just no easy way to tell you this, but I received a phone call this morning from our compliance area. And they've asked that yours and George's career contracts be terminated. And I'm sure that it has to do with our compliance issues with the cases."

So went the message left on accountant Jim Nichol's voicemail on May 27, 2009, by his boss Alexandria West. The "George" mentioned in the message was George Fisher, who along with Jim Nichols and Larry Logan, sold allegedly faulty Mass Mutual "412i" insurance products to at least eight families in Jefferson County over five years.

Six months after she left the voicemail message, Alexandra West was herself terminated as general agent with Mass Mutual, and a year later, on December 22, 2010, she pled guilty in the U.S. Attorney's Office in Maryland to using her employee's 401k funds for personal expenses.

On 18 January 2011, six cases were dismissed following a massive settlement deal between Mass Mutual, Nichols, Fisher, Logan and West, and the Jefferson County families. Along with two prior settlements that also involved 412i plans, the total amount paid out to Jefferson County families is now in the millions of dollars.

Despite the massive pay out, little of what lay behind these cases is likely to change.

According to Jim Nichols' lawyer, Paul Krepps, the defendants will "now take the time to consider their mistakes and to make sure they don't make them again," but Jim Nichols will "certainly continue to be an accountant, and may continue to sell insurance."

Mass Mutual has not admitted it made any mistakes, and because of its enormous size it will not have to disclose the scope of the litigation to its shareholders because the size of the settlements will not "materially" affect its bottom line.

Yet documents recorded at the courthouse reveal a different story. According to the plaintiff's lawyers, the problems experienced by the 412i families go way beyond local agents, and can be traced to the very highest levels of Mass Mutual.

And by stopping the litigation before the plaintiffs had a chance to depose its senior executives, Mass Mutual has been able to insulate its head office from media attention allowing them to spin a story that if any errors had been made, which they deny, that these were the fault of a few "bad apples" working in West Virginia and Maryland.

So, while Mass Mutual appears to have lost the battle waged in the courtroom, paying out millions of dollars in damages and legal fees, it has won the public relations war by limiting the knowledge of what took place to a few insurance agents, local businessmen and women, corporate executives and trial lawyers—all of whom are bound by an out-of-court settlement that forbids anyone from talking about the terms of the agreement, ever.

Settling Matters

On October 28, 2010 a high-stakes settlement conference took place on the third floor of Steptoe and Johnson's graying office block in Martinsburg, West Virginia. On the one side were six prominent Jefferson County families and their lawyers, who claimed that the plaintiffs were victims of a massive insurance scam involving "412i" life insurance products. On the other side was Mass Mutual, its agents and lawyers, who said they had done nothing wrong.

For both sides, the conference was the endgame, the final battle after a bruising five-year war that had involved hundreds of hours of depositions, a U-Haul load of briefs, and thousands of hours of unpaid time that the plaintiff lawyers were hoping to be paid for if, as they so hoped, they secured victory.

Leading the settlement conference was Oscar M. Bean, a 59-year-old lawyer based in Moorefield, W.Va. An executive of Summit Bank, Bean had been asked by the judge to work with both sides to come to an arrangement.

The six Jefferson County "412i families" included Todd and Eddie Hough, owners of a dairy farm in Charles Town; John and Linda Kilroy, owners of ERA Liberty in Charles Town; Dr. Ray Vanderhook, who runs an orthodontic practice in Charles Town; Philip McDonald, who owns Rock and Tile in Charles Town; Jack and Charlotte Williams, a Shepherdstown appraiser and his wife; Erwin and Carol Asam, who own the Bavarian Inn in Shepherdstown. Two other families, Glendwell and Jo Ann Lloyd, who are local farmers, and Carol and Marty Kable, owners of real estate companies, had already settled with Mass Mutual the year before. The plaintiff's lawyers representing all these families were the West Virginia firm Hammer, Ferretti & Schiavoni and the Virginia firm Charapp & Weiss.

The defendants included Mass Mutual, Luther "Jim" Nichols, a local accountant; Hugh "Larry" Logan, an insurance agent from Bethesda, Md.; George Fisher, an insurance agent from Jefferson County; and Alexandra West, who owned the Maryland company West Financial Group through which the insurance products were sold. Representing the defendants were 14 law firms and scores of lawyers, clerks, assistants and paralegals, including such local notables as Thomas Sweeney of MacCorkle, Lavender & Sweeney; Lucien Lewin of Steptoe & Johnson; and John McCuskey of Shuman, McCuskey and Slicer.

On Nov 3, 2010, mediator Bean wrote to Judge David Sanders of the Jefferson County Circuit Court. He had good news and bad news. The defendants had agreed to settle with three of the Jefferson County families: Williams, Vanderhook and McDonald. As to the other three families, Bean wrote, "The parties worked hard, but there still are large differences between the parties at the end of the day. Liability damages are disputed."

The mediator was confident that settlement for the last three families could be achieved. But for now, both sides kept their poker faces. It was not clear who would blink first.

Up the Pyramid

By autumn 2010, the plaintiffs' lawyers believed they could convince any jury that their clients had been sold faulty insurance products by Mass Mutual and their agents. In briefs, they repeatedly used the same arguments: that forms had been filled out without their client's permission and that fake companies had been established with phony federal EIN numbers; that Mass Mutual's general agent was operating an unlicensed and illegal agency in West Virginia; that the IRS might fine their clients hundreds of thousands of dollars because their plans were unqualified; and that even staff members working for Mass Mutual's general agent believed that the plans were "unqualified" and "abusive."

But the lawyers thought they could go further. They had started filing briefs that reached far beyond the individual agents and general agent who sold the plans. Their briefs included correspondence allegedly showing that Mass Mutual was not only aware that their agent's were selling faulty products, but that these agents were not suitable to sell the products in the first place. They pointed to internal emails suggesting that Mass Mutual's compliance department was aware of alleged problems surrounding Larry Logan four years before he started selling insurance products to the 412i families in Jefferson County:

From: Rannikko, Lisa
Sent: Monday, January 08, 2001
To: Koziara, Steve
Subject: H. Lawrence Logan (Id3055113#)

Hi Steve

Is it possible to run a report on E&O claims? Specifically, for the rep named above. We received a few complaints down here and Ted thinks you may gotten some other E&O claims up there for him. I think we are beginning to see a pattern of misconduct here we may need to have investigated.

Lisa Rannikko

Assistant Compliance Consultant

LRannikko@massmutual.com

The plaintiffs' lawyers argued that despite Mass Mutual's awareness of Larry Logan's problems, including putting him on special supervision, he was repeatedly rehired and, in January 2005, was even given responsibility to "train agents and brokers on advanced sales strategies and qualified plans."

According to a brief filed by the plaintiffs' lawyers on behalf of the Bavarian Inn on November 15, 2010, "These 412i cases reveal a corporate culture which from the top down allowed a 'statutory employee and career agent' to thrive as a 'Blue Chip' producer for twenty years despite over 30 complaints and counting, any of which involved fraud, forgery, misrepresentation and other bad conduct."

Plaintiff lawyers wrote that Mass Mutual was also long aware that general agent Alexandra West, the general agent through whom Logan, Fisher, and Nichols sold their insurance products, had her own problems. They said that West owed the IRS hundreds of thousands of dollars; she owed money to a company that had been hired to clean up her 412i cases; and perhaps worst of all, West owed at least \$70,000 to her employees' 401K pension fund.

When asked by phone if she felt like she had been thrown under the bus by Mass Mutual, Alex West said, "That's about right."

Cover Up

Mass Mutual not only knew about the problems with their agents, say the plaintiffs' lawyers, they were also not keen on letting federal authorities know about such problems. As part of their federal obligations, Mass Mutual sent a U5 Form to the Financial Industry Regulatory Authority (FINRA), informing them that it had terminated Alex West on November 24, 2009. They said she was "discharged" for "management performance."

However, according to the plaintiffs' lawyers, "Within the U5 filings, [Mass Mutual] makes certain disclosures that are, without doubt, false statements," such as answering "no" when asked if West was under internal review for fraud or

wrongful taking of property.

The plaintiff lawyers summed up Mass Mutual's relationship to West as follows: "[Mass Mutual] ratified, condoned, and subsidized the embezzlement of employer contributions to a pension fund by its General Agent while at the same time allowing her to sell, market, and 'administer' pension plans for, among others, these 412i plaintiffs."

The plaintiffs' lawyers also accused Mass Mutual of not cooperating with the W.Va. Insurance Commission, which had been investigating the Jefferson County 412i cases. For example, say plaintiffs' lawyers, at the very time that Mass Mutual was telling the commission its plans were 'suitable,' they had internal review files that said the opposite, and which were not sent to the Insurance Commission, including:

** Dr Vanderhook "no notes/ documentation could be found to support suitability of 412i for this company. Why?"*

** Asam Family "Info/ Documents to the IRS, relating to clients EIN# (???) do not seem to pertain to this 412i plan???"*

** Todd Hough Retirement Plan "File is substantially incomplete. No application. Assume part of 412i sale—if so no proposals etc."*

Over the past year, the West Virginia Insurance Commission has sent investigators to the Eastern Panhandle to interview the 412i families and their lawyers. Andrew Pauley, who heads the investigation team at the commission, said his research does not necessarily end simply because the parties have settled. However, he added, such settlements often result in gag orders which "can hamper our investigations as the victims are no longer able to cooperate as witnesses." Pauley added that while civil settlements can often provide satisfaction to the parties involved, they can be detrimental to public interest. "What we want to prevent is a settlement taking place, and then those involved go back into the market place and do the same thing over and over again to other victims."

The 412i lawyers summed up their complaints as follows: "For [Mass Mutual] to misinform the investigators for the West Virginia Insurance Commission that [its] plans and products were 'suitable and appropriate' while in the possession of documents contrary to its position rises to the level of cover-up."

In one of the last briefs filed, lawyers representing the 412i families argued that "highest ranking executives at least up to vice presidential levels were aware of overt criminality and did nothing." They argued that given the large number of complaints, the involvement of management at the vice presidential level, the investigation by the U.S. Attorney's office and the Insurance Commission, and the "deceptive reports" submitted to FINRA, the claim that the top executives like former CEO Stuart Reese, current CEO Roger Crandall, and head of compliance Bradley Lucido had "no involvement in the subject matter" is an astounding position."

The plaintiff lawyers argued that both Reese and Crandall were involved, or should have been involved, in the cases because both served on Mass Mutual's corporate governance committee which, among other things, had oversight for litigation, compliance, and regulations.

Finally, the plaintiffs' lawyers say they had a smoking gun to prove that Stuart Reese of Mass Mutual knew of the 412i cases. They presented a number of different checks signed by Reese in 2009, made out to Erwin Asam owner of the Bavarian Inn, and argued that this act alone showed that the executive knew at least of one of the 412i families.

The defendants countered that Mass Mutual's senior executives should not be subject to deposition under the "apex rule" that protects senior executives from frivolous lawsuits and the possible wasted time and public relations harm that can result. These executives did not have "unique or superior knowledge of discoverable information," they argued in their brief.

In fact, the plaintiff lawyers never had an opportunity to interview top ranking officers of Mass Mutual. The cases went to mediation before they had a chance to ask difficult questions and potentially embarrass the executives.

Circle Without Virtue

According to insurance experts, over the past few decades the IRS and large insurance companies have played a merry dance of cat and mouse.

The experts say that insurance companies design plans that help high-earning individuals to avoid paying taxes. The plans are then sold by agents, large commissions are pulled in, and end-of-year balance sheets look golden. Along the way, some

people get hurt because their plans are ill designed. The IRS starts investigating some of the cases, finds a wide-scale attempt to avoid paying taxes, and declares the scheme illegal. And, by the time it is over, the insurance companies have made more than enough money to cover any litigation they may have triggered along the way, and are busy designing their next prototypes to roll out to the "affluent market."

"The mission used to be all about taking care of the customers. Now it is all about making money," said Michael Holman of Pension Labs, Washington State. Holman has sold scores of 412i plans over the past few years, and has provided expert testimony in many of 412i cases around the country. He said that when he first saw The Hartford and Pacific Life designing 412i plans he told them that they were ill-constructed. He said that only Pacific changed their policies.

Chris Hellman is an Alabama lawyer who has also worked on many of the 412i cases around the country. His clients are currently taking part in a class action suit involving Indianapolis Life, Pacific Life and The Hartford. According to Hellman, so much has gone wrong with these 412i plans that it would be "shocking to me if a lot of people aren't put in jail."

According to Kathy Barrow, a Houston Texas lawyer who has been an expert witness in a number of 412i cases, this is not the first time insurance companies have been targeted by the IRS. "Every time the IRS finds out about one of these schemes, the insurance companies move onto another plan. Their goal is to sell as many policies as they can in a five to seven year period before the IRS starts charging fines, and to make enough money during those years so that it is worth paying the fines!" The problem, Barrow points out, that under current rules only insurance agents, not the parent companies, can be fined by the IRS for selling these plans. "Nothing will change until not only the agents but the insurance company are penalized by the IRS."

The Final Chapter

On December 3, 2010, court-appointed mediator Oscar M. Bean once again wrote to Judge Sanders. He had more good news. Sometime in the early hours of December 1, the final three families had agreed to a settlement.

On January 18, 2011, defendant and plaintiff lawyers wrote to the court saying they had reached settlement and asked that all six cases be dismissed. The only outstanding issue remained between Jim Nichols and his insurance company Camico over who would pay the bills. This brought the total number of Jefferson County families who have settled with Mass Mutual and its agents in recent years to eight.

It is hard to know exactly how much money will change hands, because the settlement is sealed, as are the participating parties' lips. But the amount is likely to be in the range of \$25 to \$60 million, shared between the eight families: Kable, Lloyd, Kilroy, Asam, Vanderhook, Williams, Hough and McDonald. This would make it by far the largest settlement in Jefferson County history.

Though it appears that they paid a hefty price, Mass Mutual and the other defendants seem close to achieving their end goal: cleaning house, continuing business as usual, and securing the sound of silence

Despite repeated requests, Mass Mutual would not comment on this story. They supplied this written statement only: "MassMutual has honored and continues to honor the terms of all insurance policies or annuities sold to West Virginia residents. MassMutual has no comment on this litigation, and it is our policy not to comment on contractual matters involving our former general agents."

Lawyers representing Alexandra West, George Fisher, MarieAnne Chio and Larry Logan also declined to comment for this article.

To read the two earlier articles for this story click here for [Part 1](#) and here for [Part 2](#)

To see a PDF of the feature as it was printed in the paper click here: [0211 feature price of silence](#)

The cover story photo of John "Jack" Williams, local appraiser, was obtained via FOIA from the WV Appraisal Board.

Attached Files:

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