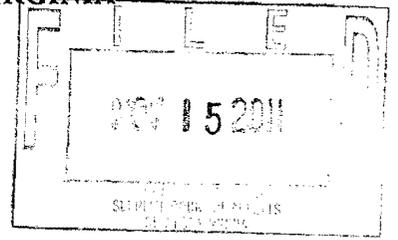


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL.
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

Petitioner,



Case No. 11-1514
(Civil Action No. 11-C-131)
(Civil Action No. 11-C-68)

v.

THE HONORABLE DAVID H. SANDERS,
HOWARD G. DEMORY and
CHARLOTTE P. DEMORY; 3rd TIME TRUCKING, LLC,
and ERIC W. CUSTER,

Respondants.

RESPONSE OF HOWARD AND CHARLOTTE DEMORY;
3RD TIME TRUCKING, LLC; and ERIC W. CUSTER
TO MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY'S PETITION FOR WRIT OF PROHIBITION

Robert J. Schiavoni (WVSB No. 4365)
David M. Hammer (WVSB No. 5047)
Brad D. Weiss (WVSB No. 11577)
F. Samuel Bryer (WVSB No. 571)
Peter A. Pentony (WVSB No. 7769)
Kimberly S. MacCumbee (*pro hac vice*)
Counsel for Respondants

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv-v
I. QUESTION PRESENTED	1
II. STATEMENT OF THE CASE	1
A. PROCEDURAL HISTORY.....	2
B. FACTUAL BACKGROUND.....	5
1. A 412(i) Primer.....	5
2. The “Demory Farm” 412i Retirement Plan.....	6
3. MassMutual’s Knowledge of Defendant Logan’s Serial Misconduct.....	7
4. MassMutual’s Knowledge of Defendant West’s Misconduct.....	9
III. ARGUMENT	11
A. ROGER CRANDALL HAS KNOWLEDGE OF THE 412i SCANDAL.....	16
B. BACKGROUND TO THE 412i “SIGNIFICANT COMPLIANCE MATTER” REFERENCED IN THE MASSMUTUAL COMPLIANCE PROGRAM REPORT.....	18
C. MASSMUTUAL STATES A COMMITMENT TO INVESTIGATING AND REPORTING MISCONDUCT AND FRAUD.....	20
D. MASSMUTUAL DENIES ANY INVESTIGATION OF ANY OF THE DEFECTIVE 412i PLANS.....	23
E. EVIDENCE SUGGESTS LIKELY INVESTIGATIONS OF THE 412i CASES.....	25
F. ROGER CRANDALL HAS UNIQUE KNOWLEDGE OF “INTERNAL CONTROLS” AND OTHER REPORTING OBLIGATIONS MAKING HIS DEPOSITION RELEVANT AND NECESSARY.....	27

G. THE DEMORY ANNUITY CONTRACT SIGNED BY ROGER
CRANDALL AFTER THE INITIATION OF THIS LAWSUIT.....28

F. LONG BEFORE MR. CRANDALL ISSUED AN ANNUITY
SCHEDULE, MASSMUTUAL HAD KNOWLEDGE OF THE
DEMORY ANNUITY AND INVESTMENT PROBLEMS, AND
THE CUSTER 412i PLAN.....32

CONCLUSION33

TABLE OF AUTHORITIES

CASES:

Paige v Canady, 197, W. Va. 154, 161 (1996)..... 14

Community Fed. Sav. & Loan Ass'n v Federal Home Loan Bank Bd.,
96 F.R.D. 619, 621 (D.D.C. 1983).....14

Arnold Agency v. West Virginia Lottery Commission, 206 W. Va. 583 (1999).....14

Six West Retail Acquisition v. Sony Theatre Management Corp., 203 F.R.D. 98
(S.D. N.Y. 2001).....15

General Star Indem. Co. v. Platinum Indem., Ltd., 210 F.R.D. 80,84
(S.D.N.Y. 2002).....15

Bridgestone/Firestone, Inc., 205 F.R.D. 535 (S.D. Ind. 2002).....15

Crown Central Petroleum Corporation v. Garcia, 904 S.W.2d 125 (Tex. 1995)....15

United States v. Yusuf, 536 F.3d 178 (3rd Cir. 2009).....19

Stonewall Jackson Mem. Hosp., 206 W.Va. 458 (1999); *accord Unum Life Ins.
Co. of America*, 2009 U.S. Dist. LEXIS 100976 (N.D. W.Va. 2009).....27, 31

Barefield v. DPIC Companies, 215 W.Va. 544 (2004).....33

FEDERAL CASE :

29 USC 1111.....11

STATE STATUTES and REGULATIONS:

W. Va. Code § 33-41-5(a).....22

W. Va. Code § 33-41-6.....22

W. Va. CSR § 114-71-3.....22

W. Va. CSR § 114-14-6.....27, 31

W. Va. CSR §114-11B-7.....29

W. Va. CSR § 114-11B-5.....31

STATE RULES:

Rule 26(c).....15

TABLE OF CONTENTS
SUPPLEMENTAL APPENDIX RECORD

1. Massachusetts Mutual Insurance Company Marketing Materials	Bates No. 000355-000358
2. Kenneth Rickson Deposition Transcript 10/27/2011	Bates No. 000359-000364
3. Email Chains re Problems with various 412(i) Plans	Bates No. 000365-000376
4. Email Chain Between A. West, J. Broesamle, and J. Hazelwood	Bates No. 000377-000381
5. Fayette Cardiology, et al. v. Massachusetts Mutual Life Insurance Company, et al. Civil Action No. 2010-01448, Court of Common Pleas of Fayette County, Pennsylvania	Bates No. 000382-000408
6. State Branch Office Notification Form	Bates No. 000409
7. Massachusetts Mutual Life Insurance Company 412(i) Marketing Materials	Bates No. 000410-000423
8. Demory Annuity Contract dated 5/12/2011	Bates No. 000424-000464
9. Timeline	Bates No. 000465-000466
10. Email from Krin Mathieu re Jenny Schrom dated 1/30/1998 re Logan Misrep	Bates No. 000467
11. Email from Lisa Rannikko to Steve Koziara dated 1/8/2001 re Logan Pattern of Misconduct	Bates No. 000468
12. Letter of Delegation & Compensation Agreement for H. Lawrence Logan	Bates No.000469
13. Myriam Met Complaint	Bates No. 000470-000499
14. Beverly Payton Complaint	Bates No. 000500-000503
15. Maryland Insurance Administration License Information for West Financial Group entities	Bates No. 000504
16. MassMutual's US to FINRA dated 11/24/2009	Bates No. 000505-000509

17. United States v. Alexandria West Plea Agreement dated 11/15/2010 Bates No. 000510-000520
18. Consulting Agreement KSPH-Alexandria West Bates No. 000521-000527
19. Excerpt from MassMutual Compliance Manual dated 2/1/2005 Bates No. 000528-000544
20. Compliance Program Report February 2011 Bates No. 000545-000561
21. IRS Webpage "Don't Fall Prey to the 2011 Dirty Dozen Tax Scams" Bates No. 000562-000564
22. June 1, 2005 "Report of Investigation" from the Office of the Attorney General of the State of Connecticut" Bates No. 000565-000722
23. Mass Mutual 1.02 Company Philosophy Bates No. 000723
24. MassMutual Code of Conduct dated 1/11/2011 Bates No. 000724-000740
25. MassMutual Special Investigation Unit (SIU) Bates No. 000741
26. MassMutual Code of Business Conduct & Ethics for Directors Bates No. 000742-000743
27. MassMutual CEO/CFO Quarterly Internal Control Certification 4th Quarter 2009 Bates No. 000744-000747
28. Form ADV Uniform Application for Investment Adviser Registration Bates No. 000748-000751
29. Kable, et al., v MassMutual, et al., 12/15/2008 Hearing Transcript excerpt Bates No. 000752-000755
30. Kenneth Rickson Deposition Transcript 10/27/2011 Bates No. 000756-000760
31. Kenneth Rickson Deposition Transcript 10/27/2011 Bates No. 000761-000765
32. Bavarian Inn, Inc., et al, v. MassMutual, et al., Defendant Massachusetts Mutual Life Insurance Company's Supplemental Answers & Objections to Plaintiffs' First Set of Interrogatories Bates No. 000766-000772
33. Demory, et al, v. MassMutual, et al., Bates No. 000773-000780

Defendant Massachusetts Mutual Life Insurance
Company's Supplemental Answers & Objections to
Plaintiffs' First Set of Interrogatories

- | | |
|--|-------------------------|
| 34. MassMutual Document with Account Listings | Bates No. 000781 |
| 35. MassMutual Call Center Phone Log 3/8/2010 | Bates No. 000782 |
| 36. Kenneth Rickson Deposition Transcript 10/27/2011 | Bates No. 000783-000796 |
| 37. MassMutual Privilege Log for 3 rd Time Trucking | Bates No. 000797-000810 |
| 38. Contract Hot List documents for Howard Demory | Bates No. 000811-000817 |
| 39. Demory Farm Retirement Plan Contract No.
ODP4800097 | Bates No. 000818-000822 |
| 40. MassMutual Contract/Certificate Change Form for
Demory Farm Retirement Plan | Bates No. 000823-000826 |
| 41. MassMutual Privilege Log for Demory | Bates No. 000827-000834 |
| 42. MassMutual Contact History-Account Activity
for Howard Demory | Bates No. 000835-000837 |
| 43. MassMutual 2004 FINRA Report | Bates No. 000838-000841 |

I. QUESTION PRESENTED

Whether a senior corporate official should be shielded from testifying about his knowledge and participation in the creation or continuance of the marketing mechanisms for fraudulent and illegal acts severely damaging West Virginia citizens and the subsequent cover-up of those acts merely because of his position as chief executive officer of the corporation?

II. STATEMENT OF THE CASE

Petitioner's recitation of facts is deficient in informing the Court of the record of conduct leading to the notice of Roger Crandall's deposition as a fact witness to a scandal. The Petition filed on behalf of Roger Crandall ignores a substantial record transcending several related cases filed and litigated over almost the past four years which demonstrate, and which will be presented to a jury on January 14, 2012, a systemic compliance breakdown at the executive levels of MassMutual in the recruiting of agents and financial advisors, marketing of scam pension plans to, among others, senior citizens, investigating consumer complaints and agent misconduct involving serial fraud, including forgery and tax fraud, and failing to report known misconduct to regulatory agencies including, among others, the West Virginia Insurance Commission.

MassMutual established the mechanism at the executive policy level by which this scandal flourished in West Virginia, and perhaps elsewhere. MassMutual specifically and intentionally recruited Certified Public Accountants and lawyers to exploit the trust which people ordinarily repose with these professionals in order to sell tax sensitive insurance and financial products, and retirement services, to unsuspecting clients. [Supp App, Ex. 1]. The potential for abuse was instituted within this marketing scheme and was known to be an inescapable conflict

of interests at the time it was implemented. [Supp. App., Ex 2]. This potential became reality in the 412i cases previously litigated and to be tried in Jefferson County on January 14, 2012.

This case is as much about how these toxic plans came to be sold to several families, farms and businesses in West Virginia alone, as it is about the sale of a scam “pension plan” funded by twenty year fixed annuities to a couple who, in 2005 at 81 years of age, sold their farm in order to safely provide for themselves in their waning years with declining health, and their family, and their church. In multiple public and regulatory pronouncements, Mr. Crandall has claimed that he is responsible for the integrity of the company he heads to assure consumers that MassMutual is to be trusted. Yet, the internal controls which were to have prevented this scandal, which should have proactively protected consumers, and which require, indeed obligate, MassMutual to self report fraud and abuse, are either non-existent, or unto themselves a sham.

Co-defendants below have identified Roger Crandall as a witness. While that alone should justify his deposition, Respondents will show in the remainder of the brief a record supporting their need to depose Mr. Crandall as a fact witness to a scandal. This is not a case where the Chief Executive should be permitted to hide his knowledge and participation in executing these policies because he is too busy and too important to tell the Demorys, and indeed West Virginia jurors, what happened in Jefferson County, West Virginia.

A. Procedural History

The above-captioned case, and the related case of 3rd Time Trucking, LLC, et al. v. MassMutual, et al., Case No. 11-C-68, also pending before this Court,¹ are two 412i cases in a

¹ Petitioner mistakenly states that the 3rd Time Trucking Plaintiffs did not respond to its Motion for Protective Order in that case. Plaintiffs did file their response. It would be fair to say that the issues herein remain the same for 3rd Time Trucking. In 3rd Time Trucking, Plaintiffs paid \$300,000.00 into a 412i MassMutual prototype pension plan which does not exist, for which his MassMutual financial advisor and CPA, took deductions and for which Plaintiff

long-line of 412i cases – all filed in Jefferson County, West Virginia and against the same main defendants: MassMutual, its general agency West Financial Group, LLC, its general agent Alexandria West, its insurance agents Jim Nichols, Larry Logan, George Fisher², its approved third party administrator West Pension Solutions, LLC, and against the MassMutual branch office known as Nichols, DeHaven and Associates, CPAs, PLLC (“NDA”). Litigation over these abusive scams is in its fourth year and all but two cases, this case being one of the two, have settled. The claims and practices remain similar throughout these nine³ other cases. What happened to the Plaintiffs has happened to other families in West Virginia, as well as families and businesses in other locations. [Supp. App, Ex. 3]. In actuality, the problem is far more widespread with at least 24 plans appearing to have problems about which MassMutual Home Office has knowledge with this one agency alone, [Supp. App., Ex. 4]⁴, and with other MassMutual agencies as more litigation surfaces in other jurisdictions. [Supp. App., Ex. 5].

Many of those victimized by MassMutual’s marketing practices were senior citizens having been sold these products through their trusted advisor and Certified Public Accountant, Defendant Luther Nichols, himself an agent and statutory employee of MassMutual and an

now faces tax penalties and collateral liabilities for funding a fake benefit plan. Petitioner’s remark, in its brief at footnote 6 regarding the Court’s ruling, is baseless.

² While a defendant in nine other 412i cases, Mr. Fisher is not a defendant in the above-captioned lawsuit.

³ W.O. Lloyd Farms, LLC, et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No. 08-C-173); Harry M. Kable, et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No.: 08-C-172); Rock & Tile, LLC, et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No.: 09-C-394); Liberty Realty of West Virginia, Inc., et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No.: 09-C-450); Ray P. Vanderhook DDS, PLLC, et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No.: 10-C-1); T. Todd Hough, et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No.: 10-C-50); Bavarian Inn, Inc., et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No.: 10-C-69); Williams Appraisals, LLC, et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No. 10-C-306); and 3rd Time Trucking, LLC, et al. v. Massachusetts Mutual Life Ins. Co., et al. (Case No. 11-C-68) (hereinafter categorically referenced as “412i Litigation”).

⁴ Apparently, at least one other 412i victim of the West Defendants and MassMutual has attempted to reach a settlement working through the Bankruptcy Court in Arlington, Virginia where West has filed for bankruptcy. In response, the Bankruptcy Court ordered the West Defendants to identify all putative claims.

investment adviser with MassMutual Investors Service, LLC, an affiliate of the MassMutual Financial Group entrusted to provide financial advice, services and products to people like the Demorys. Defendant Luther Nichols is a resident of Jefferson County, West Virginia, as is his accounting partner Julie DeHaven and their accounting practice, Nichols DeHaven and Associates, CPAs, PLLC. The accounting firm's office served as ground zero for the marketing and selling of scam insurance products and pension plans in West Virginia and was designated by MassMutual as one of its branch offices. [Supp. App., Ex. 6]. The common denominator for the Plaintiffs of these ten 412i cases, as alleged in their lawsuits, is that each had a scam 412i plan as intentionally marketed and sold through MassMutual's branch office NDA, a local and trusted accounting firm.

However, despite fourteen known defective 412i plans in the Eastern Panhandle alone, MassMutual has long claimed that it conducted no investigations of the insurance and annuity products or the 412i plans sold to these unsuspecting consumers. MassMutual claims to have conducted no investigation of any of the nine complaints made with the West Virginia Insurance Commission. It conducted no investigation into complaints made by the individual plaintiffs directly to MassMutual attempting on their own to understand what they were sold. It conducted no investigation of the claims as stated in the lawsuits themselves. In short MassMutual claims to have abrogated completely its statutory requirements and compliance standards at an executive policy decision making level. Yet, discovery is suggesting that MassMutual has made these denials regarding investigations despite obvious indications otherwise. Thus, in order to have continued deniability, MassMutual ignores the proverbial elephant in the room – that MassMutual conducted full investigations of these defective 412i plans, was aware of the problems, and failed to notify its policyholders of these problems. Otherwise, the only other

possible conclusion is that compliance and the internal controls at MassMutual are systemically broken or non-existent or themselves a sham, and MassMutual is incapable of performing the basic functions that it claims to perform in violation of State and federal laws. Thus, Mr. Crandall is a fact witness.

The Demorys filed suit in the Circuit Court of Jefferson County on April 26, 2011. With process, Plaintiffs served discovery and a Motion to Expedite Trial and Discovery, which motion was opposed by MassMutual. The Demorys are soon to be 87 years old and in poor health. A long and drawn out discovery and trial schedule were not, and are not, something that the Demorys could sustain. Regardless, Defendants below have repeatedly attempted to derail the trial through a series of discovery challenges such as stonewalling, producing witnesses whose only source of knowledge is what they were told or shown by in-house counsel or pro hoc counsel, bankruptcy filings, removal and now multiple writs.

B. Factual Background

1. A 412i Primer

A 412i plan references a tax code section (now 412(e)(3)) and in product marketing terms it is a defined benefit retirement pension plan exclusively for consistently high income earners typically in their 40s and 50s. The plan must be funded by wages or self employment earnings, and cannot be funded by capital gains, investments or other passive income. An employer must fund a plan until retirement and for at least five years at the same funding level. By law, the 412i plan must be funded with fixed annuities, though the law permits up to 49% funding with whole life insurance, and thus every and each of the 412i cases all share that common attribute of the same annuity asset together, of course, with the persons and company responsible for this

scandal. The marketing appeal advanced by MassMutual for the sale of its prototype plan and specially tailored annuities includes the tax deductions attributable to the contributions of earnings to fund the plan through the purchase of MassMutual annuities. That “tax savings” too is an explanation for MassMutual’s preferred use of CPAs to market and sell this product to the “clients” of the CPA, as was done in the Jefferson County cases. [Supp. App., Ex. 7].

2. The “Demory Farm” 412i Retirement Plan.

It is important to understand that the 412i plan must be established by an employer as the sponsor of the plan and that the plan itself is then established as a separate and distinct organic entity with its own Employer Identification Number (EIN) for IRS tax reporting purposes and United States Department of Labor compliance. In 2005, Mr. Demory, then 81 years old, sold his 30 acre farm after a lifetime of farming. Mr. Demory had never earned money to qualify for a 412i plan, and was not going to be able to fund this “plan” as an employer for the minimal five year funding requirement at a minimum of one hundred thousand dollars per year.⁵ Mr. Demory sold his farm in order to retire, not to fund a futuristic retirement plan. To establish a 412i “plan”, MassMutual through its agents fabricated an employer “Demory Farm” and employer sponsored retirement plan, “Demory Farm Retirement Plan.” The purported employer of “Demory Farm” never existed prior to, or after, the establishment of the Demory Farm Retirement Plan. The Demory Farm Retirement Plan purportedly purchased the annuity, not Mr. Demory. The Demory Farm Retirement Plan annuity was illegally funded with \$100,000.00

⁵ To address this funding issue, MassMutual set up a separate “investment” account with proceeds from the sale of the farm, which account was to be used as the plan funding source in the future. That is tax fraud. MassMutual placed the Demorys in investments which included oil and gas leases, GMAC bonds, Lehman Brothers Mortgage Backed Securities and purchased equities on “margin” accounts. Those assets were significantly wasted by MassMutual investor representatives, and the Demorys cannot access the \$100,000.00 principal locked in an unqualified IRA which will mature, or in part will be payable, upon their passing. The annuity had steep surrender charges lasting 8 years. MassMutual’s argument that the damages are insignificant because this product was a good investment is crass and deceitful, representing unto itself an additional layer of elder abuse.

from capital gains on the sale of the Demorys' farm and was to have been funded at that level for at least the next five years when the Demorys would be 86 years old. In fact, this continual funding requirement makes the sale of product by MassMutual to these plans all the more profitable because of the annual purchase renewal and the extreme difficulty in legally terminating a plan. In other words, once in, it becomes costly to extricate without serious consequences. Consistent with the other 412i plans sold in Jefferson County, the Demory Farm 412i plan was an illegal scam devised to sell MassMutual products. As to the annuity "purchased" by the Demory Farm Retirement Plan, MassMutual has not and apparently cannot produce the actual annuity contract for 2005, as discussed *supra*.

In January 2007, MassMutual, through its agents, caused the improper and illegal conveyance of the Demory Farm Retirement Plan "annuity" to an Individual Retirement Account ("IRA") which it had set up for Mr. Demory. In order to successfully make such a transfer of ownership interest to Mr. Demory as the annuitant in an IRA, MassMutual had to represent that the annuity was coming from a tax qualified plan, the Demory Farm Retirement Plan, into another tax qualified plan -- the IRA. In other words and for technical brevity, MassMutual committed a second level of fraud and tax fraud.

Again as to the transfer of the ownership of the Demory Farm Retirement Plan annuity to Mr. Demory, MassMutual has not and apparently cannot produce the actual annuity contract for 2007, as discussed *supra*, choosing instead to produce a *post hoc* version of an annuity schedule issued upon the legally significant signature of Roger Crandall with a contract schedule date, after the filing of this suit, of May, 12, 2011. [Supp. App., Ex. 8].

3. MassMutual's Knowledge of Defendant Logan's serial misconduct

MassMutual had full knowledge of the shortcomings of its Top Blue⁶ agent, Defendant Logan which is summarized by the attached timeline. [Supp. App., Ex. 9]. In 1998, MassMutual's legal department had determined that Logan had engaged in another "misrep". [Supp. App., Ex. 10]. In 2001, Lisa Rannikko, Assistant Compliance Consultant, states: "We received a few complaints down here and Ted thinks you may have gotten some other E&O claims up there from him. I think **we are beginning to see a pattern of misconduct here we may need to have investigated.**"⁷ [Supp. App., Ex. 11]. MassMutual was aware of over 20 complaints against Logan prior to its sponsorship of him, in December of 2003, to sell insurance in the State of West Virginia. W.Va. Code 33-12-6(a)(8). MassMutual promoted Logan, a producer with a complaint rap sheet spanning fifteen years, as a Sales Manager (Advanced Sales and Qualified Pension Specialist) in 2005 with responsibility over pension plan sales and marketing. [Supp. App., Ex. 12].

MassMutual was fully aware too that in 2006, its Top Blue agent had, as in these 412i cases, sold an unqualified 412i plan and product to Myriam Met.⁸ [Supp. App., Ex. 13]. Rather than inform Ms. Met, a widow, that her plan was not and never had been qualified, MassMutual chose to hide that fact from her to this day.

⁶ "Top Blue" refers to Logan's vaunted status as a top producer for MassMutual providing him with additional MassMutual resources including access to Chief Underwriter and VP Joshua Hazelwood, along with remuneration such as lavish trips and production bonuses.

⁷ These prior investigations of Logan have not been produced despite the Court's Order directing MassMutual to do so.

⁸ The Met plan was funded by royalties, not earned income, and Logan had sold the Mets Variable Annuities, not fixed annuities as required by law, to fund a 412i Plan. Mrs. Met complained to FINRA and MassMutual about Logan. MassMutual was monitoring the settlement and was fully aware that Logan had obtained a release from Mrs. Met on the matter of the surrender charges connected with a 1035 exchange, while not informing her that the plan was unqualified and funded with illegal products since its inception. Of course, given MassMutual's own conduct in this sordid affair, it did not fully disclose this treachery to FINRA.

Likewise, MassMutual chose not to accurately report the complaint by Beverly Peyton to FINRA or any state insurance commission. According to MassMutual records Peyton alleged that her signature had been forged by Logan. The pattern and practice of forged signatures, signatures of blank documents, and misappropriations of signatures appears almost epidemic at MassMutual. Peyton stated in writing that “I was shocked when I received copies of paperwork that I had never seen before and personally had never signed, yet contained my signature.” The real shock was that the Assistant Vice President of Investigations for MassMutual concluded that there was “no allegation of criminal activity.” [Supp. App., Ex. 14]. Thus, and consistent with MassMutual corporate culture, by simply recharacterizing the nature of Peyton’s written allegations, it did not report the forgery allegation to FINRA or to any regulatory or law enforcement or insurance authority. MassMutual chose to cover-up the allegation of forgery a practice which arises in the Jefferson County 412i cases.

4. MassMutual’s Knowledge of Defendant West’s Misconduct

None of the West entities ever obtained licensure with the West Virginia Insurance Commission as either insurance agencies or TPAs, putting aside the issue of that for most of the time they were not operating as functioning legal entities having failed to even maintain standing to do business in Maryland. [Supp. App., Ex. 15]. West, by or through her West entities and their agents, transacted insurance within the State of West Virginia, as defined at W.Va. code 33-44-3(p), and was an “unauthorized insurer” as defined at W. Va. Code 33-44-3(q), and was an unauthorized TPA under W.Va Code 33-46-19. None of the West entities were ever registered with the Insurance Commission or with the West Virginia Secretary of State. None of the West entities are in good standing within the State of Maryland, which is their principal place of business. West and her entities are in bankruptcy proceedings in Arlington, Virginia to where

MassMutual sought to remove and transfer the Demorys' case arguing unsuccessfully in federal court that the Demorys could commute daily to their trial in Arlington. After the case was remanded back to the Circuit Court, defendants have sought stays and filed now two writs.

Since 2003, Defendant Alexandria West by and through her unlicensed MassMutual General Agency has been marketing, soliciting, selling and generally transacting life, annuity, and other insurance products in West Virginia, and administering pension plans in this State as an unlicensed MassMutual TPA. MassMutual did not terminate West as a General Agent until November 12, 2009, and according to MassMutual's required Form U5 filing to the Financial Industry Regulatory Authority ("FINRA") submitted on November 24, 2009, she was "discharged" for "management performance." [Supp. App., Ex. 16]. This was almost two years after MassMutual was first notified of problems with the first of the illegal 412i plans in West Virginia, and nearly four years after the complaint by Beverly Peyton. Within the U5 filing⁹, MassMutual makes certain disclosures that are, without a doubt, false statements.¹⁰ Under Internal Review Disclosure, FINRA asks "Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating *investment-related* statutes, regulations, rules or industry standards of conduct?" Impossibly, MML responded "no." Likewise, under Termination Disclosure, FINRA asks "Did the individual voluntarily *resign* from your *firm*, or was the individual discharged or permitted to *resign*, from your *firm*, after allegations were made that accused the individual of: 1. violating *investment-related* statutes, regulations, rules or industry standard of conduct? 2. fraud of the wrongful taking of property?"

⁹ MassMutual has reporting obligations to FINRA for fraud and misconduct of its agents and producers.

¹⁰ MassMutual is a recidivist having been severely sanctioned for this same failure to timely report conduct by FINRA. [Ex. 18].

3. failure to supervise in connection with *investment-related* statutes, regulations, rules or industry standards of conduct?” MassMutual, knowing that the employee pension fund money was “redirected” by its GA, deceitfully responded “no” to each inquiry. *Id.* MassMutual intentionally withheld its knowledge of actual events from FINRA regulators, much like it continues to do with State and federal officials regarding the 412i plans.

In December of 2010, West plead guilty to embezzling employee pension money, [Supp. App., Ex. 17], but, nonetheless, continued to work as a “consultant”, [Supp. App., Ex. 18], with another MassMutual TPA in violation of federal law, 29 USC 1111.

III. ARGUMENT

MassMutual asserts that Mr. Crandall, its Chairman, President and Chief Executive Officer, has had no “direct” involvement in the “subject matter” of this lawsuit,¹¹ or the other 412i cases in Jefferson County and, therefore, his deposition as sought by Plaintiffs is nothing more than a “litigation tactic.” MassMutual is incorrect as to the law and facts asserted in support of its argument to prevent the deposition of Mr. Crandall. MassMutual’s notion of the “subject matter of this lawsuit” is fundamentally flawed. While MassMutual asserts otherwise, no one can seriously argue that selling twenty year fixed annuities inside a MassMutual prototypical 412i pension plan to an 81 year old retired farmer and funded by a capital gain realized in the sale of the farm, and then transferring that unqualified “asset” to an IRA is not fraudulent *per se*. The subject matter of this and the predecessor litigation includes and has included and will be presented as such to a Jefferson County jury:

¹¹ MassMutual was able to make this argument while a motion to compel was pending. On November 11th pursuant to Court Order MassMutual produced some documents (many more still being withheld) which dispel this fiction as discussed *supra*.

- how MassMutual came to market and sell 412i plans employing CPAs and lawyers and other trusted advisors as MassMutual statutory employees to be used as marketing channels to opportunistically tap into lucrative professional client databases;
- how MassMutual, ignoring its own compliance manual and corporate standards, chose not to (or purports in the litigation to have done nothing) investigate complaints about these plans and accordingly adjust claims for rescission of these scam annuity and insurance contracts, or investigate the conduct of its producers and General Agent in the sale of these plans;
- how MassMutual came to recruit and promote as the head of pension sales for its agency an individual, Defendant Hugh (Larry) Logan, who MassMutual sponsored for licensure to sell insurance in this State, and who acquired a rap sheet of consumer complaints including consumer complaints involving allegations of forgery and fraud over a period of about twenty years;
- how MassMutual came to appoint a General Agent (GA) to oversee its marketing efforts, its professional CPA recruiting efforts, and the very administration of these plans as a MassMutual approved Third Party Administrator, and who, when recruited as a GA, had hundreds of thousands of dollars in tax and judgment liens and has since plead guilty to embezzling money from the Agency pension plan with full knowledge of this activity by MassMutual Home Office at the time she was doing it;¹²
- how MassMutual chose not to proactively advise and notify the scam victims once it was placed on notice of the problems;
- how MassMutual has failed to meet its statutory obligations to report even the suspicion of fraudulent misconduct, let alone the known forgeries and misrepresentations by its producers and statutory employees, to several state insurance commissions including the West Virginia Insurance Commission, and other federal authorities.

Petitioner's attempt at redefining the "subject matter of this litigation" to having knowledge of the actual sale at any moment in time to the Demorys would otherwise be a standard for limiting discovery to just those persons involved in the actual sale of the "pension

¹² When reporting defendant West's conduct to financial regulatory authorities, MassMutual stated that she was terminated for "management performance", in other words for her failure to bring in more revenue. MassMutual did not inform regulatory authorities about her Agency's known involvement in the 412i scam, her Agency's unlicensed insurance business in West Virginia, or her personal shortcomings in embezzling money from her employees' pension plan.

plan” rendering the West Virginia Unfair Trade Practices Act, and related claims, as meaningless. But, by understanding that this case implicates, and is indeed as alleged predicated upon, a pattern and practice of fraudulent misconduct and reckless disregard for consumers at the highest levels of MassMutual spanning over many years and involving many consumers, the notion of Roger Crandall having no “direct knowledge of the subject matter” of this litigation strains credulity. Indeed, if what Mr. Crandall’s counsel argues, without affidavit support, were true, that alone in the face of this mounting and cumulative record, would be properly the subject of a very short but relevant and important deposition.

Moreover, while arguing in essence that Mr. Crandall is “very busy”, it must be remembered that his company sold these scam pension plans to farmers, dentists, and business persons, many of them, while lacking the title of CEO and Chairman of the Board, have responsibilities in their own right as executives (and perhaps every other title including filing and cleaning), and are “very busy”. These are not citizens who, as with Mr. Crandall, seek the limelight when convenient as a public celebrity speaker.¹³ They did not seek these plans; these farmers and business people sought the assurance of sensible retirement planning, or estate insurance to protect their farms and businesses. It is an odd claim that Mr. Crandall is “too busy” to account to these various businesses why this happened and why he did nothing, despite his personal commitment otherwise, *supra*. The Demorys in their twilight years did not ask to be embroiled in litigation in order to achieve a just outcome so that they could extract themselves from a tax and estate nightmare imposed on them by MassMutual’s career agents and statutory

¹³ Mr. Crandall is allegedly identified as a “business speaker” “booking appearances” through www.athletepromotions.com/celebrity/Roger-Crandall-appearance-booking-agent.php. Based on what is found through this promotional website, it appears that Mr. Crandall is, other than for purposes of this litigation, very much available for public appearances.

employees. They deserve accountability from MassMutual and from Mr. Crandall, not evasion, and thereby, a *de facto* countenance by Mr. Crandall of the conduct and activities of his producers, managers, General Agent, and fellow executives, and of the failure of his company's "internal controls" which are suppose to identify and report fraud and misconduct.

In attempting to graft what is frequently referenced as the "apex" deposition rule as a part of West Virginia case law, MassMutual cites to cases which are inapplicable under the facts of these 412i cases. West Virginia has provided guidance when seeking the depositions of West Virginia government executives, not corporate executives, expressing a primary concern that depositions of highly placed government executives be limited because "public policy requires that the time and energies of public officials be conserved for the public's business to as great an extent as may be consistent with the ends of justice in particular cases." *Paige v Canady*, 197 W.Va. 154, 161 (1996), citing *Community Fed. Sav. & Loan Ass'n v. Federal Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C. 1983); see also *Arnold Agency v. West Virginia Lottery Commission*, 206 W.Va. 583 (1999) (applying the *Paige* public policy concerns to a former governor). True public policy as expressed in our insurance laws, *supra*, is best served by Mr. Crandall's testimony.

Respondents assert a very simple argument consistent with a public policy embodied in the West Virginia Rules of Civil Procedure: discovery is a process to learn the truth based on facts and evidence which are to be revealed, not based on facts which are concealed. The "apex" deposition rule is not intended to provide immunity from discovery for corporate executives, or to give a corporate defendant a shield by which it could hide relevant facts. See *Six West Retail Acquisition v. Sony Theatre Management Corp.*, 203 F.R.D. 98 (S.D. N.Y. 2001) (allowing deposition of a CEO relating to corporate policies). Based on the facts in the instant case, Mr.

Crandall even under a heightened apex standard, has unique personal knowledge and is not protected by the “apex” deposition rule and, therefore, his deposition should be permitted.

Moreover, Respondents respectfully argue that under the facts of these 412i cases, no Court would prohibit the deposition of MassMutual’s highest-level executive, Mr. Crandall. In *General Star Indem. Co. v. Platinum Indem., Ltd.*, 210 F.R.D. 80, 84 (S.D.N.Y. 2002) the Court allowed the deposition of corporate executives of an insurance company concerning the corporate policy governing the management of its general agents. *See also In re Bridgestone/Firestone, Inc.*, 205 F.R.D. 535 (S.D. Ind. 2002) (ordering the deposition of William Clay Ford, Chairman of the Board of Ford Motor Company stating, *inter alia*, that this was not a case of a single injury rollover accident and that “conduct and knowledge at Ford’s highest corporate levels may well be relevant to the issue presented in this litigation.”).

Petitioner argues in favor of imposing additional requirements to Rule 26(c) for Mr. Crandall’s benefit. These additional requirements are unnecessary and undeserved in the factual context of this scandal. Petitioner relies chiefly on *Crown Central Petroleum Corporation v. Garcia*, 904 S.W.2d 125 (Tex. 1995) calling the “Crown Central Standard” a “common sense approach.” Yet in doing so, Petitioner omits the key predicate requirement as stated in *Crown Central*: “When a party seeks to depose a corporate official and that official (or the corporation) files a motion for protective order to prohibit the deposition **accompanied by the official’s affidavit denying any knowledge of relevant facts**, the trial court should first determine whether the party seeking the deposition has arguably shown that the official has any unique or superior knowledge of discoverable information....” *Id* at 128 [emphasis added]. Of course, based upon such an affidavit, *Crown* then presupposes that an executive would not have knowledge about the underlying conduct. Such is not the case here as discussed *supra*. *Crown*

and the other decisions cited by Petitioner relying on *Crown* allow for a burden shifting on the need for the deposition in response to an “affidavit denying any knowledge.” Mr. Crandall did not, and could not, provide an affidavit “denying any knowledge of relevant facts”, for to have done so would have subjected him to jeopardy. Thus, and not so uniquely, the only inquiry is whether the deposition of Mr. Crandall “appears reasonably calculated to lead to the discovery of admissible evidence.” The lower court, having presided over a multitude of 412i cases, correctly found that it would.

A. Roger Crandall has knowledge of the 412i scandal

On the evening of November 11th, MassMutual produced pursuant to Court Order a few, but still not complete and still not completely responsive, “Compliance Program Reports” for a couple of months in 2011. The Compliance Program Reports, heavily redacted (as with most of the troubling MassMutual documents), are prepared by Bradley Lucido, the MassMutual Chief Compliance Officer, who in turn is required to regularly report all “pertinent” compliance issues” to the Chairman of the Board of Directors, President, and Agency Field Force Supervisor. [Supp. App., Ex. 19, at #000529]. Specifically, Mr. Lucido is required to “discuss and review” “significant compliance problems” with Mr. Crandall. *Id.* While MassMutual apparently has not produced the Compliance Program Reports for the periods of time when MassMutual knew of the misconduct by Logan, West and Nichols, the production of the February, 2011 Compliance Program Report alone shows that Mr. Crandall does have direct, unique, and critical knowledge concerning the 412i scandal. [Supp. App., Ex. 20, at #000559].

The “sales practices concerning Section 412(i) plans” is indicated as a “Significant Compliance Matter” within the Report which has been submitted to Mr. Crandall and presumably to his Board. *Id.* Until now, MassMutual has maintained, and has represented to the

lower court in prior litigation, that no investigation, analysis, or determinations have been made by anyone at MassMutual at any time over many years as to any of the multiple complaints and litigation involving 412i plans. While such a position, maintained over the nearly past several years of litigation seems at odds with statutory reporting requirements and internal compliance standards, this is the first “Compliance Program Report” of any kind produced in any of the cases. Incredibly, the Report appears to have been drafted by Mr. Lucido three years after the initial filings of the Lloyd and Kable cases in Jefferson County, and four years after multiple other complaints reported to MassMutual Compliance regarding plans sold by MassMutual agent, Defendant Logan, to Doctor Donald and Myriam Met in other jurisdictions, two years after Logan was terminated for, among other things, his conduct in selling 412i plans and money laundering, and over a year after its General Agent, Alexandria West, was terminated for embezzling her employee pension contributions.

The Report has a heading for “Findings” and “Corrective Action Taken.” As to “Findings” the Report states that “analysis is underway to address sales practices.” *Id.* Such a representation would be at odds with MassMutual’s assertion that no investigation, analysis, review or determination was done as to any of the plans; an assertion repeated just two weeks ago by MassMutual Investor Services Board of Directors Member, and Chief Risk Officer, Kenneth Rickson under oath.

As to “Corrective Action Taken”, that description discloses a “team” of unknown persons identifying the “lessons learned from the settlement of the Section 412(i) cases.” *Id.* However, the most important note entry states that the “team” is to **“ensure adequate compliance controls in the offer/sale of Section 412(i) plans.”** Yet, Mr. Crandall has made repeated public and regulatory assurances over the past two calendar years regarding MassMutual’s “internal

controls”, as well as assurances to his own Board pursuant to MassMutual’s Code of Business Conduct and Ethics for Directors, claiming that internal controls were sound. Those representations are squarely at odds with the Compliance Program Report, thus, making Mr. Crandall a fact witness.

B. Background to the 412i “Significant Compliance Matter” referenced in the MassMutual Compliance Program Report.

Discovery is ongoing which is of course why writs, and this writ in particular, appealing discovery issues should be viewed with great skepticism. MassMutual internal documents reveal a strategy for using small CPA firms as channel marketing of tax sensitive products, such as those sold to the Demorys and the others in Jefferson County, because according to MassMutual documents clients trust CPAs. [Supp. App., Ex. 1]. Kenneth Rickson, Chief Field Risk Officer for MassMutual and a member of the Board of Directors for MassMutual Investment Services¹⁴, testified on October 23, 2011 about the product distribution strategy using professionals, and importantly CPAs,¹⁵ revealing that he and MassMutual were well aware of the conflicts at the time of implementing this strategy caused by using trusted accountants, such as Luther Nichols CPA, to sell tax sensitive products like 412i plans to people such as the Demorys. [Supp. App., Ex. 2].

MassMutual’s marketing template for what has lead to this pension scandal emanates literally from the corporate boardroom where Mr. Rickson is a member overseeing even the

¹⁴ MassMutual Investment Services is part of the MassMutual marketing brand name. It is entrusted with billions of investment dollars including billions in pension plans through MassMutual Retirement Services. In light of Rickson’s position as a member of the Board of Directors, his testimony on a number of issues as well as his verifications to interrogatory answers in this and the other 412i cases is stunning, and is discussed in part supra.

¹⁵ Though circumstantial it appears that the idea of compromising the independence of CPAs to sell tax sensitive pension products may have been Mr. Rickson’s brain child. Mr. Rickson is a CPA.

President of MassMutual Investor Services.¹⁶ As further backdrop to the magnitude and scope of this pension marketing scam and the foreseeable fallout when, as a corporate marketing policy, accountants and lawyers are compromised, the Internal Revenue Service (IRS) publishes on line the “Dirty Dozen Tax Scams.” [Supp. App., Ex. 21]. Of those “Dirty Dozen” at least five appear throughout some and sometimes all the 412i cases as will be shown at trial including “identity theft”, “return prepare fraud”, “filing false or misleading forms”, “abusive retirement plans”, and “disguised corporate ownership.”¹⁷ See *United States v. Yusuf*, 536 F.3d 178 (3rd Cir. 2009) (knowing that gross receipts generated from tax savings resulting from falsified tax returns constitute proceeds to support money laundering conviction.) MassMutual apparently, and at best, chose to ignore the red flag of potential money laundering by its agents to use client “tax savings” to procure significant commissions for themselves and profits for MassMutual through the sale of fraudulent 412i plans and the falsified tax returns associated with the plans.

On June 1, 2005, a “Report of Investigation” was issued and is obtainable on file with the Office of the Attorney General of the State of Connecticut which reveals a corporate culture underlying, and contemporaneous with, the peak sales of the scam 412i plans in at least Jefferson County in 2004 through 2006. [Supp. App., Ex. 22]. That Report reveals the inner workings of the former MassMutual President and others, with at least some board members’ knowledge, as they improperly gamed the system with among other activities, insider trading. Also, during 2004, MassMutual was fined by the FINRA for its massive and systemic failure to accurately

¹⁶ MassMutual Financial Group is the trade name for MassMutual companies. MassMutual and MassMutual Investors share integrated marketing and compliance systems and strategies. For example, the Demorys IRA is with MassMutual Investor Services.

¹⁷ On November 4, 2011, the lower court ruled that the documents relating to the prior cases were relevant to the Demorys and were to be produced. Quantity was produced on Friday evening, November 11th, but not many of the documents known to exist showing the schematics of the fraud were present. While some documents remain in the public record, MassMutual is obligated now to produce the documents upon which these claims and practices will be proven at trial.

and/or timely, and/or not, report misconduct by its producers and investment advisors. [Supp. App., Ex. 43]. In that culture, Defendants like Nichols, Logan and West, not only were recruited to sell the 412i plans, but flourished, leading to this litigation. While Mr. Crandall purports publicly to have instituted changes addressing this corrupt corporate culture, the record in this case thus far, and if allowed further to proceed, will show to a jury that nothing internally has changed which addressed the marketing and sale of scam pension plans to families, businesses, and to vulnerable seniors citizens like the Demorys.

C. MassMutual States a Commitment to Investigating and Reporting Misconduct and Fraud

MassMutual's corporate philosophy is one based in ethics, integrity and compliance with all applicable rules and regulations.

Customers do business when they trust their agent and the company with which he or she is associated. They trust you when they believe you understand and respect their needs when making recommendations. **Your interests are best served by placing the customer's interest first.** Questionable practices cast a negative shadow on us all, and will be addressed appropriately. **Illegal, unethical or inadequate standards of conduct are unacceptable at all times.**

[Supp. App., Ex. 23]. In line with this philosophy, MassMutual has very specific rules in place regarding reporting and investigating fraud, and how to handle customer complaints. MassMutual defines fraud broadly to include, *inter alia*, "misrepresentations in an application for insurance," "other misconduct by an applicant, insured, broker, General Agent, employee or third party in an attempt to steal from the Company or its policyholders" and "intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right." [Supp. App., Ex. 24, at #000733 and 736]. And if a customer complains of any such fraud or misconduct, which include oral and written complaints from customers and even

lawsuits, MassMutual commits its USIG Compliance to handling such customer complaints “expeditiously following a careful investigation of all relevant facts and giving appropriate consideration to applicable legal and equitable requirements.”

However, MassMutual does not just devote its USIG Compliance for investigations – it also devotes its Department of Customer Relations and a Special Investigation Unit (“SIU”). The SIU is “vigilant, proactive and public it our commitment to fighting fraud... Our SIU brings together professionals from a number of departments who collectively possess the expertise and professional skills needed to fight fraud.” [Supp. App., Ex. 25]. MassMutual’s SIU “actively educates, detects, investigates, prevents and reports suspected insurance fraud” and cooperates with law enforcement agencies investigating and prosecuting such civil and criminal fraud. As a part of this investigation, MassMutual may require its agents to provide written statements concerning the allegations and include all related documents. In fact, MassMutual requires of its agents a duty to cooperate with all investigations and this duty survives any termination of the agent. MassMutual employs a number of “reporting channels” to report unethical and/or illegal conduct: managers, human relations, employee relations, Chief Compliance Officer, business compliance officers and the law division.

MassMutual’s policies are not just required of its agents and employees, but also required of its highest-level executive, Mr. Crandall. Pursuant to MassMutual’s Code of Business Conduct and Ethics for Directors, Mr. Crandall “is obligated to promptly notify the Chief Compliance Officer of any actual or suspected illegal or fraudulent activities, or violations of this Code” and he “must cooperate in any Company investigation of violations, suspected violations and compliance reviews.” But even more so, MassMutual and Mr. Crandall make the following commitment:

One thing is constant: wherever the Company does business, we are committed to conducting business ethically and in full compliance with applicable laws and regulations. We will not directly or indirectly act in a manner that is inconsistent with these standards. **Unethical or illegal behavior is not justified in any circumstances and will be dealt with promptly and decisively.** (emphasis added).

[Supp. App., Ex. 26]. Under any standard, dealing with illegal or unethical behavior years after the fact, as is now purported in the February, 2011 Compliance Program Report, is neither prompt nor decisive.

MassMutual, its Directors and Mr. Crandall are governed by West Virginia public policy, as found and expressed in statutory law, requires full disclosure of evidence by MassMutual to the West Virginia Insurance Commission concerning its knowledge of bad conduct including even the suspicion of fraud. The West Virginia Insurance Fraud Prevention Act requires “a person [in the 412i cases, MassMutual] engaged in the business of insurance having knowledge or a reasonable belief that fraud or another crime related to the business of insurance is being, will be or has been committed **shall** provide to the commissioner the information required....” W.Va Code § 33-41-5(a); W.Va. CSR § 114-71-3. The Compliance Program Reports of February, 2011, [Supp. App., Ex. 20], indicates for the first time an internal acknowledgement of wrongdoing, yet, MassMutual filed no report with the West Virginia Insurance Commission. West Virginia provides immunity from civil liability for prompt reporting of wrongdoing. W.Va Code § 33-41-6

In addition to publicly proclaiming that MassMutual is an ethical mutual company with integrity that requires reporting and investigation of any suspected fraud and wrongdoing, Mr. Crandall commits MassMutual and himself under the spirit and obligations of the Sarbanes-Oxley Act (“SOX”) by signing Internal Control Certifications. [Supp. App., Ex. 27]. While

MassMutual is not a public company, it did seek to further promote its high ethics, integrity and commitment to reporting and investigating any suspected fraud or wrongdoing, MassMutual and Mr. Crandall have voluntarily “chosen to implement certain financial reporting control procedures similar to those required by Section 302 of the Sarbanes-Oxley Act of 2002. In doing so, Mr. Crandall signed the SOX certifications, most recently as of February 21, 2011 (the same month he received the Compliance Program Report identifying the sale of 412i plans as a “significant” compliance matter), representing and certifying that based on a “recent evaluation,” “no fraud, **whether or not material**, has been detected involving management or other employees who have a significant role in the Companies’ internal controls over financial reporting.”

At first glance it would appear that Mr. Crandall is making certifications regarding the financial reporting by MassMutual. However, a careful read of this particular certification goes much further than certifications of financial reporting. Rather, with this particular certification, Mr. Crandall is representing that absolutely no fraud has been detected involving a certain group of people at MassMutual – management and employees at MassMutual involved in its internal controls, including himself. Mr. Crandall is not just the President, Chief Executive Officer and Chairperson of MassMutual. He is also specifically identified as a “control person” in MassMutual’s SEC registration and thereby certifies his own conduct regarding the detection of fraud. [Supp. App., Ex. 28].

D. MassMutual Denies Any Investigation of any of the Defective 412i Plans.

Despite its very public position on ethics, integrity and investigating suspected wrongdoing and fraud and every customer complaint, curiously, MassMutual has taken the very contrasted position that it conducted no investigations of the customer complaints of the 412i

cases and that it is not concealing any investigations. In one of the first 412i cases filed against MassMutual in Jefferson County, *Kable v. MassMutual*, MassMutual began taking positions regarding investigations of customer complaints far different than its very public proclamations. At a hearing before the lower court in the Kable 412i case, MassMutual's *pro hoc* counsel, defending its sparse privilege log and its position on confidentiality protections made this argument:

They [Kable Plaintiffs] keep talking about privilege. I don't understand this idea of privilege. We're not holding documents back based on privilege. We're asking for appropriate confidentiality protection of the information and they're going to have it. So it's not like we're trying to keep the information from them. We're anxious to give it to them. I have been asking them over and over to agree to the confidentiality protections so we can give it to them.

[Supp. App., Ex.29]. Yet, at the corporate designate deposition of MassMutual, when the Kable Plaintiffs sought information about investigations of customer complaints and the preparation of investigative reports, MassMutual's counsel, the same one that did not seem to understand the "idea of privilege" and represented to the Court no such documents were being held back based on privilege, instructed the designate not to answer and objected asserting the attorney-client privilege. [May 12, 2009 Dep. Tr. of MassMutual by Kenneth Rickson, Ex. 30; and see October 27, 2011 Rickson Dep. Tr., Ex 31] .

Likewise, in *Bavarian Inn, Inc. v. MassMutual*, MassMutual took the position that no investigations, reviews, or determinations were conducted on any of the insurance and annuity products or 412i plans sold to those in Jefferson County, and elsewhere, including that of the Demory and Mr. Custer. [Supp. App., Ex. 32]. At the time MassMutual took this position eight

lawsuits had been filed against it and the same agents relating to defective and unqualified 412i plans.

In the *Demory* case, MassMutual has simply objected to producing documents relating to investigations, reviews, or determinations conducted on any of the insurance and annuity products or 412i plans sold to those in Jefferson County, and elsewhere, including that of the Demorys, while just two weeks ago the Chief Risk Officer and Director, Kenneth Rickson, verified interrogatories claiming that no investigation, review, or determination was conducted of any of the 412i plans. [Supp. App., Ex.33, at #000775, compare Supp. App., Ex. 20, at #000559].

E. Evidence Suggests Likely Investigations of the 412i Cases.

Despite MassMutual's denials and objections in discovery as to any investigations, review and/or determinations, all of the Jefferson County 412i customers were on someone's radar at MassMutual. This much is clear from a single, untitled and undated document produced by MassMutual, [Supp. App., Ex. 34], which just happens to list the 14 Jefferson County 412i customers on one single document. Of added clarity, the Compliance Program Reports produced, and those other Reports yet to be produced or have been withheld, strongly suggest that Mr. Rickson's multiple attestations and sworn testimony are compromised.

MassMutual's blanket denial of any investigation, review or determination, including that of Eric Custer's annuity and 412i plan, becomes even more ridiculous when considering the privilege log produced by MassMutual in *3rd Time Trucking, LLC v. MassMutual*. On March 8, 2010, Mr. Custer called MassMutual to let them know that he thought his 412i plan may be defective. He indicated that he learned his plan may have problems through another policyholder filing a lawsuit over their 412i plan. Mr. Custer sought assistance from

MassMutual and was told that someone would look into his request and get back to him in 24-48 hours. [MassMutual Call Center Phone Log, Supp. App., Ex. 35]. No return phone call to Mr. Custer was ever made by anyone at MassMutual. Instead, what followed were a flurry of internal emails between investigators, senior management, control persons and executives and officers at MassMutual and a separate entity, MML Investor Services, Inc. – all over one “small” annuity contract. In all, over 60 executives, managers, and investigators received emails regarding certain hold instructions relating to Mr. Custer and 3rd Time Trucking, LLC. Rickson testified that ordinarily such ‘hold’ would have been issued in all 412i cases but no log was produced in any other case indicating this practice. [Supp. App., Ex. 36]. Of course, MassMutual has designated those email communications, and the documents they may contain,¹⁸ as privileged, but the privilege log tells the story. [Supp. App., Ex. 37].

In the *Demory* case, the entire electronic file for Mr. Demory’s annuity, which previously was in the name of The Demory Farm Retirement Plan and later transferred into an IRA account and subsequently transferred into the name of Mr. Demory, individually, is flagged for security and designated as being on a “contract hot list.” [Supp. App., Ex. 38].¹⁹ How does a policyholder’s annuity contract end up on the “contract hot list” without some review, investigation or determination? How does Mr. Crandall sign an annuity contract in 2011 after the Demory file has already been flagged as being on MassMutual’s “contract hot list”?

¹⁸ Pro hoc counsel directs MassMutual witnesses not to answer which documents they reviewed as given to them by counsel. MassMutual has directed witnesses not to answer questions regarding decisions to fire West or Logan on the basis that in-house counsel and in-house investigators were the source of the documents and communications to terminate their agents. Effectively, MassMutual has abused the use of the privilege to a level of obstruction which has precluded effective inquiry into any significant topic.

¹⁹ In the electronic production of documents by MassMutual, the reference to the “contract hot list” appears in red in the original so that it stands out for the benefit of the call center employee who is directed to handle claim questions as only directed by in-house counsel. Then pro hoc counsel asserts privilege as to the directions given for claims handling. Thus, nothing is disclosed. This is stonewalling through the abuse of a cherished privilege..

F. Roger Crandall Has Unique Knowledge of “Internal Controls” and other Reporting Obligations Making his Deposition Relevant and Necessary.

MassMutual policies regarding investigation and its Code of Business Conduct and Ethics for Directors, require Mr. Crandall to refer complaints, including lawsuits, for further investigation. *See also* 114 CSR 14-6 [every insurer must promptly investigate claims without delay]; *see also Stonewall Jackson Mem. Hosp.*, 206 W.Va. 458 (1999); *accord Unum Life Ins. Co. of America*, 2009 U.S. Dist. LEXIS 100976 (N.D. W.Va. 2009). Mr. Crandall utilized at least three means to provide assurances that he has processes in place to assure the financial soundness of the company:

1. Business necessity. People will not entrust their money to a company that does not have sound financial control processes. To provide those reassurances, Mr. Crandall has personally put his name to Policies designed to assure the public that those processes are in place, notably a state of the art investigative capability and process.

2. Federal certification. To further provide assurances, Roger Crandall on behalf of MassMutual voluntarily certifies its internal controls per SOX. The purpose of SOX is to ensure reports to the Board, certified by the CEO and CFO that internal control processes are in place to protect the company and its policyholders. It is the obligation of those certifying to investigate and make representations under oath so that the function of the Board to oversee the soundness of the company can be undertaken by the Board, as was the Congressional purpose of SOX.

3. State requirements. There are further obligations under state licensing laws, supplemented by the state annuity requirements that are in place to protect the citizens of West Virginia and further assure them of the soundness of those to whom they entrust their money and of their financial products.

Mr. Crandall, as a "Control Person", obtained the benefits of a SOX certification with the impact of a clean report reassuring the policyholders and public. Even more importantly a clean report had the effect of assuaging the Board who removed a prior President, CEO and Chairman of the Board to protect the company. Mr. Crandall had an obligation to fully investigate and candidly report any systemic breakdown potentially affecting the soundness of financial reporting. Mr. Crandall nevertheless reported no problem, material or non-material. Clearly, there was a failure to undertake, a refusal to undertake, or an undertaking without revealing, investigations mandated by company policy and the law.

The jury has the right to know whether the cover-up was directed by Mr. Crandall or whether Mr. Crandall oversaw materially deficient processes to facilitate willful blindness to the wrongdoing and cover-up -- this despite the reassurances of Mr. Crandall that reliable processes were in place including certifications of efficacious internal controls to his own Board and to regulators. Thus, MassMutual wants to take the position that Mr. Crandall is a high-level executive with no "first-hand knowledge regarding the facts at issue in this case" while Mr. Crandall issues statutory and public assurances that MassMutual's internal compliance processes reveal no fraud of either a material or immaterial nature. It is exactly that inconsistency as expressed by MassMutual which should allow Respondents to depose Mr. Crandall.

G. The Demory Annuity Contract Signed by Roger Crandall after the Initiation of this Lawsuit.

On May 12, 2011, Roger Crandall executed an "annuity contract" on behalf of MassMutual for Mr. Demory. While Mr. Crandall's facsimile signature may appear on all MassMutual annuity contracts as a matter of ordinary business, the issuance of this contract by Mr. Crandall in the context of this case, and importantly in the context of his responsibilities for

corporate oversight and regulatory compliance is evidence of fraud for which he is a fact witness.

The sequence of events leading to the issuance of the annuity contract signed by Roger Crandall follows:

- By letters dated April 22, 2011 to MassMutual containing the Demorys' authorizations, The Demorys sought the entirety of their files and other documents, including those which constitute the 2005 annuity contract for "Demory Farm Retirement Plan".
- MassMutual produced some but not all documents by letter dated May 10, 2011. MassMutual neither produced the "Demory Farm Retirement Plan" Annuity contract from 2005, nor the Mr. Demory's annuity from 2007.
- Again, by email dated May 17, 2011, the Demorys requested the "Demory Farm Retirement Plan" Annuity contract, which was the original MassMutual annuity contract used to fund the 412i plan.
- On or about May 19, 2011, MassMutual produced a document which in part purported to be the annuity contract used to fund the 412i plan. (Annuity Contract Number is stated as ODP48000997). [Supp. App., Ex. 8].
- MassMutual has not produced a true, authentic and complete copy of the 2005 Demory Farm Annuity Contract or the 2007 Demory IRA Annuity Contract which, according to MassMutual and State law, must include the Contract Schedule and the application. Rather, MassMutual produced an annuity Contract Schedule signed by Roger Crandall on May 12, 2011. In other words, MassMutual created an annuity document after the filing of this lawsuit in violation of West Virginia law. 114 CSR 11B-7 [records must be kept for ten years in a manner which accurately reproduces the actual document].
- In lieu of the original contract as issued to 2005 "Demory Farm Retirement Plan" or the 2007 Demory IRA annuity, Defendants produced a contract with an "issue date" of 10/20/2005 issued to Contract Owner Howard Demory and signed by Roger W. Crandall who is the President and Chief Executive Officer, and Chairman of the Board of Directors, of the Massachusetts Mutual Life Insurance Company. The Annuity Contract Number is stated as ODP48000997 (hereinafter referred to as the "Howard Demory Annuity"). The "Contract Schedule Date" is 5/12/2011 indicating that this document was generated, *post hoc*, despite requests which included the production of the Demory Farm annuity contract by letter dated April 22, 2011. [Supp. App., Ex. 8, at #000424 and 427].
- Mr. Crandall was not the President of Massachusetts Mutual Life Insurance Company in 2005. In 2005 and 2007 Mr. Crandall was not signing or using his signature facsimile for

the formation of annuity contracts. Rather, the President of MassMutual at the time was Robert J. O'Connell who was removed by the Board for misconduct.

- Mr. Demory was not the contract owner of the purported annuity issued by MassMutual on October 20, 2005, nor was he issued such an annuity on October 20, 2005. Rather, the applicant for the original annuity application funding the 412i plan, Contract number ODP48000997, was "Demory Farm Retirement Plan". [Supp. App., Ex. 39, at #000818]. MassMutual has not produced an annuity contract or "Contract Schedule" for "Demory Farm Retirement Plan" again in violation of State law.
- Only after the annuity contract for "Demory Farm Retirement Plan" was transferred into an IRA did MassMutual and its agents change the annuitant to "Howard G. Demory." [Supp. App., Ex. 40].
- Mr. Crandall, in his current capacity as President and Chief Executive Officer, and Chairman of the Board of Directors, of Massachusetts Mutual Life Insurance Company, signed, or authorized the use of his signature facsimile on the Howard Demory Annuity.
- Neither Mr. Crandall nor MassMutual issued an annuity contract on October 20, 2005 to Mr. Demory as the Contract Owner, despite what is purported in the Howard Demory Annuity. Neither Mr. Crandall nor MassMutual issued an annuity contract in January, 2007 to Mr. Demory as the Contract Owner. State law requires both an application and "Contract Schedule" for an annuity contract. Through the signature of Mr. Crandall, MassMutual has attempted to fabricate an annuity contract *post hoc*.
- Included with the May 12, 2011 "Contract Schedule" are various riders which Mr. Crandall, in his current capacity as President and Chief Executive Officer, and Chairman of the Board of Directors, of Massachusetts Mutual Life Insurance Company, signed, or authorized the use of his signature facsimile, including the Individual Retirement Annuity (IRA) Rider.
- According to the IRA Rider, it modifies the Contract to which it is attached so that it may qualify as an Individual Retirement Annuity under Section 408(b) of the Internal Revenue Code and the Regulations under that Section.
- Mr. Crandall was aware, or should have been aware by virtue of a MassMutual investigation that the Contract Schedule attached in the Howard Demory annuity, which he, in his current capacity as President and Chief Executive Officer, and Chairman of the Board of Directors, of Massachusetts Mutual Life Insurance Company, signed, or authorized the use of his signature facsimile, including the Individual Retirement Annuity (IRA) Rider, did not involve a "rollover contribution" from a qualified pension plan. Signing an annuity contract *post hoc*, in lieu of conducting an investigation is a violation

of state law. *see* 114 CSR 14-6 [every insurer must promptly investigate claims without delay]; *see also* *Stonewall Jackson Mem. Hosp. v. American United Life Ins. Co.*, 206 W.Va. 458 (1999) (claims settlement practices apply to issues regarding annuity contracts); *accord* *Unum Life Ins. Co. of America v. Wilson*, 2009 U.S. Dist. LEXIS 100976 (N.D. W.Va. 2009).

- The Contract Schedule in the Howard Demory annuity, which Mr. Crandall, in his current capacity as President and Chief Executive Officer, and Chairman of the Board of Directors, of Massachusetts Mutual Life Insurance Company, signed, or authorized the use of his signature facsimile, attempts to conceal and thereby deceive the annuitant of the various features of the annuity, such as the MassMutual rollover of the annuity from an unqualified 412i plan to an IRA and the tax penalties associated with that illicit rollover, the benefits associated with the rollover of an annuity from an unqualified 412i plan to an IRA, the suitability, or lack thereof, of the annuity.
- The Contract Schedule in the Howard Demory Annuity was signed in 2011 without full and complete disclosure effecting the terms for which coverage would otherwise remain in force and for which benefits would be paid.
- The Contract Schedule in the Howard Demory Annuity was signed to ratify the fraudulent sale of the annuity to the annuitant, Demory Farm Retirement Plan, in order to fund an unqualified and illicit 412i plan and the subsequent transfer of the annuity to the Demory IRA.
- In lieu of any investigation of claims the Demorys' claims, MassMutual concealed and/or knowingly failed to disclose the actual "benefits" associated with the Howard Demory Annuity and the problems and tax consequences associated with the annuity, and any of the actual findings made within MassMutual prior to the issuance of the annuity in violation of state law. *See* 114 CSR 11B-5 [in an annuity transaction, MassMutual had a duty to obtain information to determine suitability of the May 10, 2011 transaction and had a duty to implement a system of compliance].
- Mr. Crandall, in his current capacity as President and Chief Executive Officer, and Chairman of the Board of Directors, of Massachusetts Mutual Life Insurance Company, allowed or caused the backdating of an annuity contract which otherwise was never issued to Howard Demory on October 20, 2005.
- Mr. Crandall, in his capacity as President and Chief Executive Officer, and Chairman of the Board of Directors, of Massachusetts Mutual Life Insurance Company, caused or directed the alteration of an annuity contract in order to conceal the true state of the Demory "annuity" account, and to further conceal the acts and conduct of MassMutual in

selling annuities and life insurance to fund illicit 412i plans in West Virginia and elsewhere. In so doing, Mr. Crandall, in his capacity as President and Chief Executive Officer, and Chairman of the Board of Directors, of Massachusetts Mutual Life Insurance Company, assisted in covering up the fraud perpetrated on Mr. Demory.

- Mr. Crandall, at the time of affixing, or causing to be affixed, his signature on the Howard Demory Annuity was aware that MassMutual producers had engaged in an ongoing pattern and practice of falsifying applications and contract documents through forgeries, fabricated financial data and EINs and other means, and has further ratified the entry of false information on tax returns and other documents by its agents, for the purchase of whole life and annuity products used to fund illicit 412i plans.
- MassMutual, at the time Mr. Crandall affixed, or causing to be affixed, his signature on the Howard Demory Annuity, was aware that MassMutual producers had engaged in an ongoing pattern and practice of falsifying applications and contract documents through forgeries, fabricated financial data and EINs and other means, and has further ratified the entry of false information on tax returns and other documents by its agents, for the purchase of whole life and annuity products used to fund illicit 412i plans.

F. Long before Mr. Crandall issued an annuity schedule, MassMutual had Knowledge of the Demory Annuity and Investment Problems, and the Custer 412i plan.

Finally as to the factual context of Mr. Crandall's signature as it recently appeared on the Demory annuity "contract", long before Mr. Demory retained counsel and filed a lawsuit, MassMutual had already evaluated the Demory annuities. According to the MassMutual privilege log, on August 9, 2010, MassMutual entered on the Demory's electronic file "Note re treatment of Demory customer information." [Supp. App., Ex. 41, at #000834].²⁰ The Demorys directly, and with assistance, made phone calls seeking information about their annuities. [Supp. App., Ex. 42]. In the *3rd Time Trucking, LLC* case, the MassMutual privilege log indicates the same knowledge of problems shared among over 60 MassMutual senior management, control

²⁰ Again, in-house counsel directs customer communication, or non-communication, regarding claims, and then claims privilege as to what was said to the call center. This is abusive and stonewalling litigation tactic in violation of the West Virginia UTPA.

persons, executives, investigators and employees. It strains credulity in the context of the facts surrounding these “plans” and the other 412i plans that Mr. Crandall’s testimony is protected while at the same time MassMutual obstructs access to the actual contract documents, redacts its own findings regarding the “treatment” of the Demory and Custer customer information, claims to know nothing about the illicit sale of annuity products to Mr. Demory and others, and then signs an annuity contract after the filing of a lawsuit which states “THIS IS A LEGAL CONTRACT BETWEEN THE CONTRACT OWNER AND THE COMPANY.” [Supp. App., Ex. 8, at #000424]. (Caps in original). See *Barefield v. DPIC Companies*, 215 W.Va. 544 (2004) (the W.Va. UTPA continues to apply to an insurer’s conduct even after litigation had been initiated against the insurer).

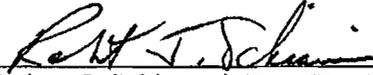
CONCLUSION

Respondents wish to depose Mr. Crandall not as a litigation tactic but rather to depose Mr. Crandall on his knowledge of the annuity contract he issued to Mr. Demory in May of 2011 and as to the knowledge upon which he based his verifications about MassMutual’s commitment to ethics, integrity, and the duty to investigate and report wrongdoing and fraud, against a backdrop of what could only be described either, at best, a systemic and massive compliance breakdown, or, at worse, a corporate culture which encouraged and incentivized the deceptive sales practices by MassMutual and its agents while taking money, in the form of premium payments, from unsuspecting policyholders in Jefferson County, West Virginia. Mr. Crandall, protestations aside, is a fact witness to a scandal.

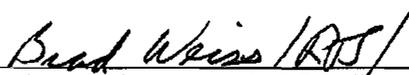
WHEREFORE, Respondents and Plaintiffs Howard and Charlotte Demory and Plaintiffs Eric Custer and 3rd Time Trucking, LLC, respectfully request that this Honorable Court deny the Petition and sustain the order requiring Defendant Massachusetts Mutual Life Insurance

Company to make Mr. Crandall available for deposition, and thus allowing the Demorys to continue in their efforts to keep the January 14, 2012 trial date.

Respectfully submitted,

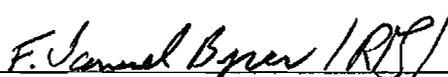


Robert J. Schiavoni, Esq. (Bar No. 4365)
David M. Hammer, Esq. (Bar No. 5047)
HAMMER, FERRETTI & SCHIAVONI
408 West King Street
Martinsburg, West Virginia 25401
(304) 264-8505 (office)
(304) 264-8506 (facsimile)



Brad D. Weiss, Esq. (WV Bar #11577)
Kimberly S. MacCumbee, Esq. (*pro hac vice*)
Rachelle E. Hill, Esq. (*pro hac vice*)
Charapp & Weiss, LLP
8300 Greensboro Drive, Suite 200
McLean, Virginia 22102
(703) 564-0220 (office)
(703) 564-0221 (facsimile)

*Counsel for Plaintiffs Howard & Charlotte Demory and
Plaintiffs Eric Custer and 3rd Time Trucking, LLC*



F. Samuel Byrer, Esq. (WV Bar #571)
Peter A. Pentony, Esq. (WV Bar #7769)
LAW OFFICE OF F. SAMUEL BYRER, PLLC
202 West Liberty Street
P.O. Box 597
Charles Town, West Virginia 25414
(304) 724-7228 (office)
(304) 724-7278 (facsimile)

Counsel for Plaintiffs Howard & Charlotte Demory

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL.
H. LAWRENCE LOGAN, CLU, CHFC,

Petitioner,

Case No. 11-1420
(Civil Action No. 11-C-131)
(Civil Action No. 11-C-68)

v.

THE HONORABLE DAVID H. SANDERS,
HOWARD G. DEMORY and
CHARLOTTE P. DEMORY; 3rd TIME TRUCKING, LLC,
and ERIC W. CUSTER,

Respondants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and accurate copies of "Response of Howard and Charlotte Demory; 3rd Time Trucking, LLC, and Eric W. Custer to Massachusetts Mutual Life Insurance Company's Petition for Writ of Prohibition' were served this 14th day of November 2011, via email, to the following individuals:

William P. Thornton, Jr., Esq.
Julie E. Ravis, Esq.
Christopher N. Kelly, Esq.
Jeffrey D. Bukowski, Esq.
Stevens & Lee, P.C.
111 North Sixth Street
P.O. Box 679
Reading, Pennsylvania 19603
Counsel for Defendant Massachusetts Mutual Life Ins. Co.

Lucien G. Lewin, Esq.
Steptoe & Johnson PLLC
1250 Edwin Miller Blvd., Suite 300
P.O. Box 2629
Martinsburg, WV 25402-2629
Counsel for Defendant Massachusetts Mutual Life Ins. Co.

William E. Galeota, Esq.
Steptoe & Johnson, PLLC

United Center
1085 Van Voorhis Road, Suite 400
Morgantown, West Virginia 26507
Counsel for Defendant Massachusetts Mutual Life Ins. Co.

Robert J. D'Anniballe, Jr., Esq.
Pietragallo Gordon Alfano Bosick & Raspanti, LLP
333 Penco Rd.
Weirton, West Virginia 26062
*Counsel for Defendants Alexandria P. West, West Financial Group, LLP and
West Financial Group Pension Solutions, LLP*

Robert C. James, Esq.
Flaherty Sensabaugh Bonasso, PLLC
1225 Market Street
P.O. Box 6465
Wheeling, West Virginia 26003
*Counsel for Defendants L. James Nichols and Kelly M. Parsons
(in their capacities as former insurance agents)*

Paul D. Kreps, Esq.
James A. McGovern, Esq.
Marshall, Dennehey, Warner, Coleman & Goggin
U.S. Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, Pennsylvania 15219
*Counsel for Defendants L. James Nichols and Kelly M. Parsons
(in their capacities as former insurance agents)*

Joseph W. Selep, Esq.
Zimmer Kunz, PLLC
600 Grant St. Suite 3300
Pittsburgh, PA 15219
*Counsel for Defendants L. James Nichols, Julie DeHaven, Kelly M. Parsons & Nichols,
DeHaven & Associates, CPAs, PLLC*

Thomas Sweeney, Esq.
Lisa L. Lilly, Esq.
MacCorkle, Lavender & Sweeney, PLLC
P.O. Box 3283
Charleston, West Virginia 25332
Counsel for Defendant H. Lawrence Logan, CLU, ChFC

Kevin A. Nelson, Esq.
J. Todd Bergstrom, Esq.
Huddleston Bolen, LLP

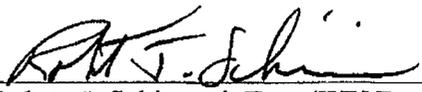
707 Virginia Street East, Suite 1300
P.O. Box 3786
Charleston, West Virginia 25337-3786
Counsel for Defendant Marie Ann Chio

Shadonna E. Hale, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
500 East Pratt Street, Suite 600
Baltimore, Maryland 21202
Counsel for Defendant George F. Fisher

Audrey K. Bentz, Esq.
Janik L.L.P.
9200 South Hills Boulevard
Suite 300
Cleveland, Ohio 44147
Counsel for Defendant Steven W. Dorman, CLU, ChFC

Ancil G. Ramey, Esq.
1000 Fifth Avenue, Suite 250
P.O. Box 2195
Huntington, WV 25722-2195
Counsel for Defendant Massachusetts Mutual Life Ins. Co.

The Honorable David H. Sanders
Jefferson County Courthouse
100 East Washington Street
Charles Town, WV 25414


Robert J. Schiavoni, Esq. (WV Bar # 4365)
David M. Hammer, Esq. (WV Bar #5047)
Brad D. Weiss, Esq. (WV Bar #11577)
F. Samuel Bryer, Esq. (WV Bar #571)
Peter A. Pentony, Esq. (WV Bar #7769)
Kimberly S. MacCumbee, Esq.(pro hac vice)