ROBERT S. MUELLER, III (CSBN 59775)
United States Attorney

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ALBERT J. BERGONZI and JAY P. GILBERTSON, Defendants.	No. CR 00-0505 MJJ VIOLATIONS: 18 U.S.C. §§ 371–Conspiracy to Commit Securities Fraud; 2–Aiding and Abetting; 1341, 1343, 1346--Mail and Wire Fraud; 15 U.S.C. §§ 77q(a), 77x, 78j(b), 78ff, 78m and 17 C.F.R. 240.10b-5, 240.13b2-2, 240.13b2-1--Securities Fraud SAN FRANCISCO VENUE

S U P E R S E D I N G   I N D I C T M E N T

The Grand Jury charges:

I. BACKGROUND

A. The Companies

1. Prior to January 12, 1999, McKesson Corp. ("McKesson") was a corporation headquartered in San Francisco, California. McKesson was the largest wholesale distributor of pharmaceutical drugs in the United States.

2. Prior to January 12, 1999, HBO & Company ("HBOC") was a corporation headquartered in Alpharetta, Georgia, an Atlanta suburb. HBOC was in the business of manufacturing and selling information technology products, primarily software, to customers in the health care

industry. HBOC was the largest health care information technology company in the United States.

3. On January 12, 1999, McKesson acquired HBOC, and the merged company became known as McKessonHBOC. McKessonHBOC's headquarters were in San Francisco, California. The portion of the company formerly known as HBOC continued to have its base of operations in Alpharetta, Georgia.

4. Following the merger, shareholders of McKesson and HBOC became shareholders of McKessonHBOC.

5. HBOC and McKessonHBOC were publicly traded companies. HBOC's stock was traded on the national market of the National Association of Securities Dealers' Automated Quotation System ("NASDAQ"), an electronic trading system. The stock of McKessonHBOC was listed on the New York Stock Exchange ("NYSE"). Both companies had shareholders located throughout the United States, including in the Northern District of California.

6. As public companies, HBOC and McKessonHBOC were required to comply with regulations of the United States Securities and Exchange Commission ("SEC"). Those regulations are designed to protect members of the investing public by, among other things, ensuring that a company's financial information is accurately recorded and disclosed to the public.

7. Under those regulations, HBOC and McKessonHBOC and their officers had a duty to: (a) make and keep books, records and accounts that fairly and accurately reflected the company's business transactions; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP"); and (c) file with the SEC quarterly reports (on Form 10-Q) and annual reports (on Form 10-K) which included reliable financial statements. The Forms 10-Q included unaudited financial statements, and the Forms 10-K included audited financial statements.

8. At all times relevant here, HBOC's outside auditor was Arthur Andersen LLP ("Arthur Andersen"). McKessonHBOC's outside auditor was Deloitte & Touche LLP ("Deloitte").

B. The Defendants

9. The defendant ALBERT J. BERGONZI held several executive officer positions at HBOC and McKessonHBOC. From December 1997 until November 1998, BERGONZI was HBOC's co-President and co-Chief Operating Officer ("COO"). He became HBOC's sole President and COO in November 1998. Following the merger, BERGONZI was named Executive Vice President of McKessonHBOC and President and CEO of the former HBOC operation. BERGONZI was dismissed by McKessonHBOC in June 1999.

10. The defendant JAY P. GILBERTSON was a Certified Public Accountant ("CPA"). GILBERTSON was the Chief Financial Officer ("CFO") of HBOC from 1993 through November 12, 1998, when he left the company. From December 1997 until leaving the company, GILBERTSON also was co-President and co-COO with BERGONZI. In December 1998, GILBERTSON became the President and COO of WebMD, then a private internet start-up company in Atlanta, Georgia.

II. THE SCHEME TO DEFRAUD

11. Between at least December 1997 and April 27, 1999, the defendants ALBERT J. BERGONZI and JAY P. GILBERTSON, and others, devised and intended to devise a scheme to defraud shareholders of HBOC, McKesson, and McKessonHBOC, the investing public, and the SEC, and to deprive HBOC and McKessonHBOC of their right to honest services.

12. Among the goals of the scheme were:

(a) to ensure that HBOC and McKessonHBOC consistently reported that it had met or exceeded projected quarterly results for, among other things, software sales revenue, net income, and earnings;

(b) to artificially increase and maintain the share price of company stock;

(c) to maintain and increase the defendants' positions in the company, and to enrich them and others through bonuses, salaries, and stock options.

13. The means by which the defendants and others achieved and attempted to achieve the goals of the scheme included:

(a) Falsely inflating quarterly software sales revenues by: (i) recording revenue on contracts that were conditioned on "side letters" that permitted customers to cancel, and which were concealed from outside auditors; (ii) backdating contracts to record revenue in prior quarterly periods; (iii) falsifying shipping records to make it appear as if software was shipped in a prior quarter; (iv) recording revenue on end of quarter "sales" that were actually mere exchanges of cash and inventory; (v) recording revenue for sales on which HBOC had secretly guaranteed repayment to a finance company in the event of customer default; and (vi) recording revenue on sales of products that were not "generally available", that is, products that were still under development and were not yet functional;

(b) Making fraudulent entries to company books and records at quarter-end in order to reduce operating expenses and increase net income by whatever amount was necessary to meet quarterly net income and earnings goals;

(c) Making false statements to outside auditors;

(d) Filing materially false and misleading financial statements with the SEC;

(e) Making materially false and misleading public statements about the Company's financial performance; and

(f) Making materially false and misleading statements to McKesson and the SEC in connection with the merger.

14. It was part of the scheme to defraud that the defendants BERGONZI and GILBERTSON, and others, regularly met and spoke in person, and corresponded by email and voicemail during quarterly reporting periods to discuss, among other things, the status of software sales for the quarter and to compare the company's likely quarterly performance with targeted goals. If it appeared that the company would fall short of targets, BERGONZI and GILBERTSON, and others, agreed to and did engage in fraudulent practices to ensure that quarterly targets were met.

Fraud During Quarter Ended March 31, 1998

______15. The defendants BERGONZI and GILBERTSON, and others, engaged in the following improper practices and made the following misrepresentations, among others, during the quarter ended March 31, 1998.

______16. On or about April 1, 1998, HBOC entered into a $1.106 million contract with Covenant Health of Knoxville, TN. BERGONZI approved a "side letter" to the contract, which gave Covenant Health the right to cancel. The side letter was separated from the sales contract, and only the contract was forwarded to HBOC's internal accounting department, which was responsible for recording sales revenue. HBOC recorded $1.106 million in revenue from the sale in the period ended March 31, 1998. Recording revenue on that transaction violated both Generally Accepted Accounting Principles and HBOC's own revenue recognition policy.

______17. In or about late March and early April 1998, GILBERTSON devised a scheme to reduce HBOC's quarterly expenses through fraudulent entries to company books and records. Company employees made those fraudulent entries in the first two weeks of April 1998. Those entries were in violation of Generally Accepted Accounting Principles, and had the effect of artificially reducing quarterly expenses and increasing quarterly net income and earnings per share.

______18. On April 14, 1998, HBOC issued a press release announcing preliminary results for the period ended March 31, 1998. The announcement was materially false in that, among other things, it included unaudited financial statements that included revenue from transactions that were subject to side letters, and reported inflated net income, and because GILBERTSON said that the company had "strong revenue and earnings growth" in the quarter.

19. On or about May 6, 1998, GILBERTSON and other members of HBOC management signed a "management representation letter" to Arthur Andersen in connection with its quarterly review of HBOC financial statements. The letter included the following materially false representations:

a. "We have made available to you all financial records and related data."

b. "There have been no [i]rregularities involving management or employees who have significant roles in the system of internal accounting control."

c. "There are no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the interim consolidated financial statements.... In all cases, management's actions have complied with the Company's ethical code of standards."

d. "The accounting records underlying the interim consolidated financial statements accurately and fairly reflect, in reasonable detail, the transactions of the Company and its subsidiaries."

e. "All agreements with customers have been fully documented, communicated within the company following established procedures and made available to you."

f. "The Company's revenue recognition related to its software sales comply with AICPA Statement of Position 97-2 and the latest exposure draft update to SOP 97-2."

20. On or about May 11, 1998, HBOC filed a report with the SEC on Form 10-Q, reporting its financial results for the quarter ended March 31, 1998. The reported results were materially false in that they included improperly recorded sales revenue, failed to accurately reflect quarterly expenses and net income, and failed to disclose that management was engaged in and directing others to engage in fraudulent accounting practices. GILBERTSON signed the Form 10-Q.

Fraud During Quarter Ended June 30, 1998

21. The defendants BERGONZI and GILBERTSON, and others, engaged in the following improper practices and made the following misrepresentations, among others, during the quarter ended June 30, 1998.

22. On or about June 30, 1998, BERGONZI caused HBOC to enter into a $6.99 million transaction with the University of Pittsburgh Medical Center, of Pittsburgh, PA ("UPMC"). The transaction was memorialized in a one-page "Contract Supplement" and was subject to a side letter, signed by BERGONZI, which gave the parties the right to cancel if they could not "flesh out the details of the contract" within 30 days. That period subsequently was extended by a series of additional side letters. The parties finally signed a contract on October 5, 1998. HBOC improperly recorded $6.99 million from the UPMC transaction as sales revenue for the quarter ended June 30, 1998.

23. On or about June 30, 1998, HBOC entered into a contract with Healthcare Imaging Services of Red Bank, NJ, which was subject to a side letter. The side letter, which BERGONZI approved, made the sale contingent on approval by the customer's board of directors. HBOC improperly recorded revenue from the sale in the amount of $1.9 million for the quarter ended June 30, 1998.

24. On or about June 30, 1998, BERGONZI approved a side letter to a contract with

Holy Cross Hospital of Ft. Lauderdale, FL, which made the sale contingent upon approval by the customer's board of directors. HBOC improperly recorded revenue from the sale in the amount of $977,034 for the quarter ended June 30, 1998.

25. On or about June 30, 1998, BERGONZI and GILBERTSON approved a side letter to a contract with Wellpath Community Health Plans of Chapel Hill, NC, which made the sale contingent on approval by the customer's board of directors. HBOC improperly recorded revenue from the sale in the amount of $870,000 for the quarter ended June 30, 1998.

26. On or about June 30, 1998, BERGONZI approved a side letter to a contract with Intra-Coastal Health Systems, Inc. of West Palm Beach, FL, which made the sale contingent on review by the buyer's counsel and approval by its board of directors. HBOC improperly recorded revenue from the sale in the amount of $602,000 for the quarter ended June 30, 1998.

27. On or about June 30, 1998, BERGONZI approved a side letter to a contract with West Georgia Health Systems of LaGrange, GA, which made the sale contingent on approval by the customer's board of directors. HBOC improperly recorded revenue from the sale in the amount of $446,000 for the quarter ended June 30, 1998.

28. On or about June 30, 1998, BERGONZI approved a side letter to a contract with St. Joseph Hospital of Augusta, GA, which made the sale contingent on an agreement by the parties to contract terms. HBOC improperly recorded revenue from the sale in the amount of $311,000 for the quarter ended June 30, 1998.

29. On or about July 6, 1998, GILBERTSON approved a backdated contract with Perot Systems of Dallas, TX. HBOC improperly recorded $2.88 million in revenue from the sale for the quarter ended June 30, 1998.

30. In or about late June or early July 1998, GILBERTSON directed that HBOC's quarterly expenses be reduced through fraudulent entries to company books and records. On or about July 4, 1998, employees of HBOC made fraudulent entries to company books and records. Those entries were in violation of Generally Accepted Accounting Principles and had the effect of artificially reducing quarterly operating expenses and increasing quarterly net income and earnings per share.

31. In June and early July 1998, HBOC first discussed a merger with McKesson. During those discussions, GILBERTSON and others made HBOC's financial statements for the first two quarters of 1998 available for McKesson's review. GILBERTSON and others did not make side letters available for review and failed to disclose that: (i) the use of side letters was a regular practice at HBOC; (ii) HBOC routinely recorded revenue on contracts that were subject to side letters; and (iii) the vast majority of side letters had been deliberately concealed from Arthur Andersen at the direction of GILBERTSON, BERGONZI, and others. GILBERTSON and others also failed to disclose that HBOC regularly entered into secret recourse agreements with General Electric Capital Corporation ("GECC"), which provided financing to many HBOC customers. Under those secret recourse agreements, HBOC guaranteed that it would pay GECC should its customer fail to do so. Further, GILBERTSON and others did not reveal that the recourse agreements had been deliberately concealed from company books and records, and from Arthur Andersen, at the direction of GILBERTSON.

32. On July 13, 1998, HBOC issued a press release announcing preliminary results for the period ended June 30, 1998. The announcement was materially false in that, among other things, it quoted GILBERTSON as saying that the company had "30% revenue growth" in the quarter.

33. On July 20, 1998, GILBERTSON and other members of HBOC management signed a "management representation letter" to Arthur Andersen in connection with its quarterly review of HBOC financial statements. The letter included the same materially false representations included in the May 6, 1998 representation letter.

34. On August 3, 1998, HBOC filed a report with the SEC on Form 10-Q. The reported results were materially false in that they included improperly recorded sales revenue, failed to accurately reflect quarterly expenses and net income, and failed to disclose that management was engaged in and directing others to engage in fraudulent accounting practices. GILBERTSON signed the Form 10-Q.

Fraud During Quarter Ended September 30, 1998

35. The defendants BERGONZI and GILBERTSON, and others, engaged in the

following improper practices and made the following misrepresentations, among others, during the quarter ended September 30, 1998.

36. On September 28, 1998, the defendants BERGONZI and GILBERTSON, and others, caused HBOC to enter into a reciprocal transaction with Computer Associates ("CA"), an Islandia, NY maker of business software. CA agreed to buy $30 million in HBOC software products for distribution, and HBOC agreed to buy $73.8 million in CA software, also for resale. Under Generally Accepted Accounting Principles, HBOC should not have recorded revenue until the inventory was resold. Instead, HBOC improperly recorded the $30 million as sales revenue for the period ended September 30, 1998.

37. BERGONZI and GILBERTSON knew that recognition of revenue on the CA transaction was improper and took steps to conceal its terms. Among other things, they split the transaction into separate contracts, neither of which made any reference to the other. In addition, they falsely reported that CA already had distributed the $30 million in HBOC software. In fact, as of the date of this Superseding Indictment, CA has neither made use of nor distributed any of the $30 million in HBOC software products.

38. On or about September 30, 1998, BERGONZI caused HBOC to enter into a $10,792,478 software transaction with Baptist Healthcare System, of Louisville, KY ("Baptist Louisville"). The transaction was memorialized in a one page "Purchase Requisition" ("PR"). The PR also was subject to a side letter that made Baptist Louisville's obligations contingent on the execution of "mutually agreeable documents". HBOC improperly recorded revenue for the sale in the amount of $10,792,478 for the quarter ended September 30, 1998.

39. Between September 30 and October 5, 1998, BERGONZI caused HBOC to enter into four transactions with Baptist Health, of Montgomery, AL ("Baptist Montgomery") totaling $3.696 million. The transactions were subject to a side letter that gave Baptist Montgomery the right to cancel prior to December 31, 1998. HBOC improperly recorded $3.696 million in revenue for the quarter ended September 30, 1998.

40. On October 1, 1998, BERGONZI and GILBERTSON caused HBOC to enter into a contract with Staff Builders, Inc., a home health care agency based in Lake Success, NY, which

was backdated to September 30, 1998. Under the terms of the deal, Staff Builders agreed to purchase $9 million in HBOC software, contingent on obtaining financing from GECC. When GECC declined to provide financing because of Staff Builders' poor credit rating, GILBERTSON agreed that HBOC would guarantee repayment to GECC through a "recourse agreement". GILBERTSON signed the recourse agreement on October 2, 1998.

41. Because GECC had not yet finalized its financing contract with Staff Builders, it advanced $6.9 million to HBOC (the "Bridge Loan"). HBOC had to pay interest to GECC on the Bridge Loan, and was required to return the full loan amount to GECC if Staff Builders did not complete financing arrangements within 60 days. Because Generally Accepted Accounting Principles did not permit immediate revenue recognition given the recourse agreement and Bridge Loan, GILBERTSON concealed those agreements from company books and records, and from Arthur Andersen. HBOC improperly recorded revenue in the amount of $9 million for the period ended September 30, 1998.

42. On or about September 30, 1998, BERGONZI approved a side letter in connection with a contract with Springhill Memorial Hospital of Mobile, AL, which made the sale contingent on "administrative review" and approval by the buyer's board of directors. HBOC improperly recorded revenue from the sale in the amount of $897,000 for the quarter ended September 30, 1998. On or about December 31, 1998, Springhill Memorial exercised its right to cancel the contract.

43. In or about early October 1998, BERGONZI approved a side letter in connection with a backdated contract with Sisters of Charity Health Care System of Houston, TX, which gave the buyer a right to cancel before December 14, 1998. HBOC improperly recorded revenue from the sale in the amount of $1.7 million for the quarter ended September 30, 1998.

44. On or about October 5, 1998, pursuant to the scheme previously devised by GILBERTSON, employees of HBOC made fraudulent entries to company books and records. Those entries violated Generally Accepted Accounting principles and had the effect of reducing quarterly operating expenses and increasing net income and earnings per share.

45. On October 13, 1998, HBOC issued a press release announcing preliminary results

for the period ended September 30, 1998. The announcement was materially false in that, among other things, it included improperly recorded revenue and overstated quarterly net income and earnings per share. In addition, it quoted BERGONZI as saying: "HBOC also had a fantastic sales quarter, including three contracts which represent the largest provider contract, largest homecare contract, and largest payor contract in the company's history." GILBERTSON said: "HBOC delivered another tremendous performance in the third quarter, with increases in sales, service and employee productivity."

46. On October 23, 1998, GILBERTSON and other members of HBOC management signed a "management representation letter" to Arthur Andersen in connection with its quarterly review of HBOC financial statements. The letter included the same materially false representations included in the May 6, 1998 and July 20, 1998 representation letters.

47. On October 28, 1998, HBOC filed a report with the SEC on Form 10-Q. The reported results were materially false in that they included improperly recorded sales revenue, failed to accurately reflect quarterly expenses and net income, and failed to disclose that management was engaged in and directing others to engage in fraudulent accounting practices. GILBERTSON signed the Form 10-Q.

Fraud During Quarter Ended December 31, 1998

______48. The defendants BERGONZI and GILBERTSON, and others, engaged in the following improper practices and made the following misrepresentations, among others, during the quarter ended December 31, 1998.

49. Between October 13 and November 13, 1998, HBOC and McKesson again conducted merger negotiations. On November 5, 1998, GILBERTSON signed a representation letter to Arthur Andersen, which was performing work preliminary to the filing of a registration statement on SEC Form S-4, which would be filed in connection with issuance of stock in connection with the merger. In that letter, GILBERTSON falsely represented that "there have been no events or transactions that have a material effect on the [1998 quarterly] financial statements [of HBOC] that should be disclosed in order to make those financial statements not misleading."

50. On November 13, 1998, McKesson filed the Form S-4 with the SEC. The S-4 incorporated the Merger Agreement between HBOC and McKesson, which included a section titled "Representations and Warranties of HBO". That section contained the following materially false statement, among others: HBOC's financial statements filed with the SEC since 1996 "comply as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, [and] have been prepared in accordance with GAAP...." GILBERTSON signed the Merger Agreement on behalf of HBOC.

51. GILBERTSON left HBOC on November 12, 1998 and in December 1998 joined WebMD as President and COO. In January 1999, BERGONZI and GILBERTSON negotiated a backdated transaction that enabled HBOC to record additional revenue for the December 31, 1998 quarter. WebMD agreed to buy $5 million in HBOC products, and HBOC assumed an obligation to purchase and resell at least $3.59 million in WebMD products. The contract, which was split into two documents, was signed on January 7, 1999. HBOC improperly recorded $5 million from the WebMD transaction as revenue for the quarter ended December 31, 1998.

52. On or about January 5, 1999, BERGONZI caused HBOC to enter into another transaction with UPMC. Under the terms of the deal, which was memorialized in a "Contract Supplement" backdated to December 31, 1998, UPMC had the option to purchase $2.4 million in HBOC software products. BERGONZI signed a side letter permitting UPMC to cancel the deal if it decided not to make a purchase by February 3, 1999. The right to cancel was extended by a series of additional side letters. HBOC improperly included $2.4 million from the UPMC deal as revenue for the period ended December 31, 1999. On April 28, 1999, UPMC exercised its right to cancel.

53. On or about December 31, 1998, BERGONZI caused HBOC to enter into a $1.59 million transaction with St. Barnabas Hospital of the Bronx, NY. The transaction was subject to a side letter, which made it contingent on "finishing legal review and implementation plan of the definitive agreement" within 90 days. HBOC improperly included the $1.59 million in revenue

for the period ended December 31, 1998. St. Barnabas exercised its right to cancel on June 18, 1999.

54. On January 25, 1999, McKessonHBOC management held a conference call with securities analysts, announcing HBOC and McKesson's combined results for the period ended December 31, 1998. BERGONZI made false statements during the conference call. He said "operating profit...of McKessonHBOC's information technology business, formerly HBOC, increased 36% for the three months ended December 31, 1998...", when in fact, as he knew, the financial statements included improperly recorded revenue. BERGONZI also remarked that the financial results for the quarter included a "huge contract" with WebMD.

<u>Fraud During Quarter Ended March 31, 1999</u>

______55. The defendant BERGONZI and others engaged in the following improper practices and made the following misrepresentations, among others, during the quarter ended March 31, 1999, which was the first following the merger.

______56. On or about March 28, 1999, BERGONZI and others proposed a reciprocal transaction to Oracle Corp., a Redwood Shores, CA manufacturer of database products. Under the proposed deal, Oracle would purchase and pay for $20 million in McKessonHBOC software by March 31, 1999, and McKessonHBOC would agree to buy $25 million in Oracle products in the future, and encourage customers to convert to Oracle's product lines.

57. To conceal the true nature of the transaction, BERGONZI and others proposed that the deal be reflected in two separate contracts. They further proposed that only the contract obligating Oracle to buy $20 million in software be executed by March 31, 1998, and that Oracle "trust" McKessonHBOC to execute the second contract in the next quarter.

58. On March 31, 1999, Oracle declined to enter into the proposed transaction, in part because it had no reason to purchase McKessonHBOC software. As a result, McKessonHBOC failed to meet its software sales revenue goals for the quarter ended March 31, 1999.

59. On April 1, 1999, BERGONZI directed a McKessonHBOC company employee to contact Data General, a Westborough, MA based hardware maker ("DG"), and determine whether it would be willing to enter into a transaction that would be backdated to March 31.

60. Subsequent negotiations resulted in the following agreement: DG would immediately purchase $20 million in McKessonHBOC software products, for resale to third parties, and McKessonHBOC would make $25 million in future purchases of DG hardware, also for resale. Because DG had no ability to resell McKessonHBOC products, McKessonHBOC assumed that obligation. If McKessonHBOC failed to resell half the software by July 22, 1999, it would pay DG $10 million, less the value of any resales. If it failed to resell the remaining half by September 24, 1999, it would pay DG another $10 million, again less the value of any resales, and DG could return all unsold software.

61. The documents memorializing the DG transaction were designed by BERGONZI and others to conceal various aspects of the deal. Although executed in its entirety on April 5, 1999, the DG contract was reflected in two separate documents with different dates. The first document, which was backdated to March 31, 1999, appeared to be a reseller agreement under which DG bought $20 million in software for resale. The second document, called an "Amendment", was dated April 5, 1999 (the "Side Letter Amendment"). The Side Letter Amendment contained McKessonHBOC's obligation to buy $25 million in DG hardware, its obligation to resell software for DG and repay DG if it failed to do so, and DG's right to return unsold software that it purported to buy pursuant to the agreement dated March 31, 1999.

62. BERGONZI and others concealed the Side Letter Amendment so that it would not be discovered by Deloitte. On April 20, 1999, BERGONZI learned that Deloitte had sent a written audit confirmation request to DG, asking it to confirm that the $20 million Software Contract represented the entire agreement between DG and McKessonHBOC. Thereafter, BERGONZI contacted DG in an effort to influence its response to the confirmation request.

63. On April 21, 1999, DG returned the confirmation request, attaching the Side Letter Amendment.

64. On April 22, 1999, McKessonHBOC issued a press release announcing its preliminary financial results for the period. The $20 million from DG was improperly included in the software revenue number.

The Defendants' Stock Sales

65. From December 1, 1997 through January 12, 1999, the date the merger with McKesson became final, HBOC's share price, adjusted for stock splits, rose from $22 17/32 to $30 3/4.

66. During that period, the defendant ALBERT J. BERGONZI sold approximately 108,400 shares of HBOC stock, earning gross proceeds of $4,678,531.

67. The defendant JAY P. GILBERTSON sold approximately 132,000 shares of HBOC stock, earning gross proceeds of $7,259,747.

McKessonHBOC's Restatement of Financial Statements

68. On April 28, 1999, McKessonHBOC issued a press release announcing that it was investigating accounting irregularities in HBOC-related software sales, and would restate its financial results. On the day of that announcement, the share price of McKessonHBOC stock fell more than 40% from the prior day, from $65.75 to $34.50. As a result, the value of stock held by McKessonHBOC shareholders fell by more than $9 billion.

69. McKessonHBOC issued its restated results on July 14, 1999. The restatement included the following adjustments to quarterly revenue and net income for the HBOC portion of the business during the period January 1, 1998 through March 31, 1999:

RESTATED HBOC RESULTS BY QUARTER

	REVENUE			NET INCOME		
Quarter Ending	Originally Reported	As Restated	% Overstated	Originally Reported	As Restated	% Overstated
3/98	$393.1	$376.8	4.3 %	$64.9	$45.6	42.3 %
6/98	$376.7	$308.1	22.3 %	$75.6	$23.5	221.7 %
9/98	$399.6	$330.5	20.9 %	$83.7	$16.5	407.3 %
12/98	$469.0	$381.0	23.9 %	$59.6	$8.5	601.2 %
3/99	$431.9	$402.6	7.3 %			

COUNT ONE: 18 U.S.C. §371 (Conspiracy to Commit Securities Fraud)

70. The allegations of paragraphs 1-69 are realleged as if fully set forth here.

71. From in or about at least December 1997 and April 27, 1999, both dates being approximate and inclusive, within the Northern District of California and elsewhere, the defendants

ALBERT J. BERGONZI and
JAY P. GILBERTSON,

and others, knowingly and wilfully conspired to commit offenses against the United States, namely, (a) fraud in connection with the offer and sale, and the purchase and sale, of HBOC and McKessonHBOC securities, in violation of Title 15, United States Code, Sections 78j(b), 78ff, 77q(a), and 77x and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) false and misleading statements of material fact in reports and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; (c) false and misleading statements of material fact in reports and documents required to be filed under the Securities Act of 1933, in violation of Title 15, United States Code, Sections 77q(a) and 77x; (d) falsified books, records, and accounts of HBOC and McKessonHBOC, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1; and (e) violation of HBOC and McKessonHBOC's internal accounting procedures and system of accounting controls, in violation of Title 15, United States Code, Sections 78m(b)(2)(B)(ii)(I) and 78ff, all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

72. In furtherance of the conspiracy and to effect the objects thereof, in the Northern District of California and elsewhere, the defendants and others committed the acts described in paragraphs 14 through 69 of this Indictment, which are hereby realleged as if fully set forth here.

73. The defendants and others also committed the following additional overt acts in furtherance of the conspiracy, in the Northern District of California and elsewhere:

a. In or about 1997,, GILBERTSON directed an employee of HBOC to conceal recourse agreements with GECC from company books and records, and also from Arthur Andersen;

b. In or about December 1997, GILBERTSON directed an employee of HBOC to destroy a document containing a list of contracts that were subject to side letter contingencies;

c. In or about January 1998, GILBERTSON directed an employee of HBOC to remove side letters from sales contracts before forwarding contracts to HBOC's accounting department;

d. In or about March 1998, GILBERTSON arranged a telephone call between Arthur Andersen and GECC;

e. On or about March 17, 1998, BERGONZI held an "Operations Meeting";

f. On or about March 17, 1998, BERGONZI directed an employee of HBOC to recategorize a product called "Surgical Manager" as "generally available";

g. In or about late March or early April 1998, GILBERTSON directed an employee of HBOC to record revenue from sales of "Surgical Manager";

h. In or about mid-June 1998, BERGONZI held a meeting to discuss the status of software sales for the quarter;

i. On or about September 26, 1998, GILBERTSON told an HBOC employee to offer a side letter in connection with a $20 million transaction with the Health Care Finance Administration ("HCFA"), a United States government agency located in Baltimore, MD;

j. On or about September 30, 1998, GILBERTSON signed an audit confirmation request that purported to describe all contractual arrangements between HBOC and GECC;

k. On or about October 17, 1998, GILBERTSON signed the Merger Agreement between HBOC and McKesson;

l. On or about October 26, 1998, HBOC issued a press release announcing that it had entered into a contract with Staff Builders;

m. On or about January 4, 1999, an HBOC employee sent a fax to GECC suggesting a response to an Arthur Andersen audit confirmation request;

n. On or about April 7, 1999, BERGONZI signed a $1 million contract with St. Barnabas Hospital of the Bronx, NY, which was backdated to March 31, 1999;

o. On or about April 22, 1999, McKessonHBOC issued a press release describing preliminary financial results for the fiscal year ended March 31, 1999;

p. On or about April 22, 1999, McKessonHBOC management held a conference call with securities analysts.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO: 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. §240.10b-5, 18 U.S.C. § 2 (Fraud in Connection with Purchase and Sale of Securities; Aiding and Abetting)

74. Paragraphs 11 through 69 are realleged as if fully set forth here.

75. On or about and between at least December 1997 and April 27, 1999, both dates being approximate and inclusive, within the Northern District of California and elsewhere, the defendants

ALBERT J. BERGONZI and
JAY P. GILBERTSON,

and others, knowingly and wilfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by HBOC and McKessonHBOC, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making and causing HBOC and McKessonHBOC to make untrue statements of material fact and omitting to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of HBOC and McKessonHBOC securities.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 18, United States Code, Section 2.

COUNT THREE: 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. §240.10b-5; 18 U.S.C. § 2 (False SEC Filing for Quarter Ended March 31, 1998)

76. Paragraphs 11 through 20 are realleged as if fully set forth here.

77. On or about May 11, 1998, within the Northern District of California and elsewhere, the defendants

ALBERT J. BERGONZI and
JAY P. GILBERTSON,

and others, in a Form 10-Q filed with the SEC for the period ended March 31, 1998, did knowingly and wilfully make and cause HBOC to (a) make untrue statements of material fact and (b) omit to state material facts necessary to make the statements made not misleading, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

78. Specifically, the Form 10-Q:

a. Falsely reported software sales revenue that was generated through the deliberate use of improper accounting practices;

b. Omitted to disclose that side letters to sales contracts and recourse agreements with GECC had been deliberately withheld from company books and records and from Arthur Andersen at the direction of top management, namely, BERGONZI, GILBERTSON and others;

c. Falsely reported operating expenses that had been reduced, and net income that had been inflated, as the result of fraudulent entries to company books and records; and

d. Omitted to disclose that those fraudulent entries were made at the direction of management, specifically GILBERTSON and others.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United State Code, Section 2.

<u>COUNT FOUR</u>: 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. §240.10b-5; 18 U.S.C. § 2 (False SEC Filing for Quarter Ended June 30, 1998)

79. Paragraphs 11 through 14 and 21 through 34 are realleged as if fully set forth here.

80. On or about August 3, 1998, within the Northern District of California and elsewhere, the defendants

ALBERT J. BERGONZI and
JAY P. GILBERTSON

and others, in a Form 10-Q filed with the SEC for the period ended June 30, 1998, did knowingly and wilfully make and cause HBOC to (a) make untrue statements of material fact and (b) omit to state material facts necessary to make the statements made not misleading, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

81. Specifically, the Form 10-Q:

a. Falsely reported software sales revenue that was generated through the deliberate use of improper accounting practices;

b. Omitted to disclose that side letters to sales contracts and recourse agreements with GECC had been deliberately withheld from company books and records and from Arthur Andersen at the direction of top management, namely, BERGONZI, GILBERTSON, and others;

c. Falsely reported operating expenses that had been reduced and net income that had been inflated as a result of fraudulent entries to company books and records; and

d. Omitted to disclose that those fraudulent entries were made at the direction of top management, namely, GILBERTSON and others.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

COUNT FIVE: 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. §240.10b-5; 18 U.S.C. § 2 (False SEC Filing for Quarter Ended September 30, 1998)

82. Paragraphs 11 through 14 and 35 through 47 are realleged as if fully set forth here.

83. On or about October 28, 1998, within the Northern District of California and elsewhere, the defendants

ALBERT J. BERGONZI and
JAY P. GILBERTSON

and others, in a Form 10-Q filed with the SEC for the period ended September 30, 1998, did knowingly and wilfully make and cause HBOC to (a) make untrue statements of material fact and (b) omit to state material facts necessary to make the statements made not misleading, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

84. Specifically, the Form 10-Q:

a. Falsely reported software sales revenue that was generated through the deliberate use of improper accounting practices;

b. Omitted to disclose that side letters to sales contracts and recourse agreements with GECC had been deliberately withheld from company books and records and from Arthur Andersen; at the direction of top management, namely, BERGONZI, GILBERTSON, and others;

c. Falsely reported operating expenses that had been reduced and net income that had been inflated as the result of fraudulent entries to company books and records; and

d. Omitted to disclose that those fraudulent entries were made at the direction of top management, namely, GILBERTSON and others.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

COUNT SIX: 15 U.S.C. §§ 78m(b)(2) and 78ff; 17 C.F.R. § 240.13b2-2; 18 U.S.C. § 2 (False Statement to Auditors)

85. Paragraphs 11 through 20 are realleged as if fully set forth here.

86. On or about May 6, 1998, within the Northern District of California and elsewhere, the defendant

JAY P. GILBERTSON

an officer of HBOC, and others, knowingly and wilfully made and caused to be made materially false and misleading statements to Arthur Andersen in connection with a review of HBOC's financial statements and the preparation of a quarterly report required to be filed with the SEC for the period ended March 31, 1998. GILBERTSON also omitted to state, and caused others to omit to state, material facts that were necessary in order to make the statements that were made, in light of the circumstances under which they were made, not misleading. Specifically, GILBERTSON signed a management representation letter to Arthur Andersen containing the following statements:

a. "We have made available to you all financial records and related data."

b. "There have been no [i]rregularities involving management or employees have significant roles in the system of internal accounting control."

c. "There are no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the interim consolidated financial statements.... In all cases, management's actions have complied with the Company's ethical code of standards."

d. "The accounting records underlying the interim consolidated financial statements accurately and fairly reflect, in reasonable detail, the transactions of the Company and its subsidiaries."

e. "All agreements with customers have been fully documented, communicated within the company following established procedures and made available to you."

f. "The Company's revenue recognition related to its software sales comply with AICPA Statement of Position 97-2 and the latest exposure draft update to SOP 97-2."

87. In fact, as GILBERTSON well knew:

a. HBOC had not made available to Arthur Andersen side letters and recourse agreements, and had provided false explanations to Arthur Andersen for fraudulent entries to HBOC books and records;

b. Management was actively engaged in violating HBOC's accounting procedures, circumventing its system of internal accounting controls, and was directing others to do so;

c. Management was violating applicable SEC rules and directing others to do so, and was in violation of HBOC's ethical code of standards;

d. Accounting records failed to reflect side letters and recourse agreements;

e. Side letters and recourse agreements were deliberately concealed from Arthur Andersen at the direction of management; and

f. At the direction of management, HBOC was recording revenue in violation of applicable accounting rules, specifically, Statement of Position 97-2.

All in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT SEVEN: 15 U.S.C. §§ 78m(b)(2) and 78ff; 17 C.F.R. § 240.13b2-2; 18 U.S.C. § 2 (False Statement to Auditors)

88. Paragraphs 11 through 14, 21 through 34 and 86 through 87 are realleged as if fully set forth here.

89. On or about July 20, 1998, within the Northern District of California and elsewhere, the defendant

JAY P. GILBERTSON,

an officer of HBOC, knowingly and wilfully made and caused to be made materially false and misleading statements to Arthur Andersen in connection with a review of HBOC's financial statements and the preparation of a quarterly report required to be filed with the SEC for the period ended June 30, 1998. GILBERTSON also omitted to state, and caused others to omit to state, material facts that were necessary in order to make the statements that were made, in light of the circumstances under which they were made, not misleading. Specifically, GILBERTSON signed a management representation letter to Arthur Andersen containing the same statements contained in the May 6, 1998 representation letter.

90. At the time, GILBERTSON was aware of the facts described in paragraph 87 of this Indictment.

All in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff; Title 17, Code of Federal regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT EIGHT: 15 U.S.C. §§ 78m(b)(2) and 78ff; 17 C.F.R. § 240.13b2-2; 18 U.S.C. § 2 (False Statement to Auditors)

91. Paragraphs 11 through 14, 35 through 47 and 86 through 87 are realleged as if fully set forth here.

92. On or about October 23, 1998, within the Northern District of California and elsewhere, the defendant

JAY P. GILBERTSON,

an officer of HBOC, knowingly and wilfully made and caused to be made materially false and misleading statements to Arthur Andersen in connection with a review of HBOC's financial statements and the preparation of a quarterly report required to be filed with the SEC for the period ended September 30, 1998. GILBERTSON also omitted to state, and caused others to omit to state, material facts that were necessary in order to make the statements that were made, in light of the circumstances under which they were made, not misleading. Specifically, GILBERTSON signed a management representation letter to Arthur Andersen containing the same statements contained in the May 6, and July 20, 1998 representation letters.

93. At the time, GILBERTSON was aware of the facts described in paragraph 87 of this Indictment.

All in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT NINE: 15 U.S.C. §§ 78m(b)(2) and 78ff; 17 C.F.R. § 240.13b2-2; 18 U.S.C. § 2 (False Statement to Auditors)

94. Paragraphs 11 through 67 are realleged as if fully set forth here.

95. On or about September 30, 1998, within the Northern District of California and elsewhere, the defendant

JAY P. GILBERTSON,

an officer of HBOC, knowingly and wilfully made and caused to be made materially false and misleading statements to Arthur Andersen in connection with the audit of HBOC's financial statements and an annual report required to be filed with the SEC for the period ended December 31, 1998. GILBERTSON also omitted to state, and caused others to omit to state, material facts that were necessary in order to make the statements that were made, in light of the circumstances under which they were made, not misleading.

96. Specifically, GILBERTSON signed an audit confirmation request to GECC which purported to include a "complete and total listing of all arrangements and agreements...between HBOC and GE Capital". GILBERTSON asked GECC to confirm the accuracy of the list by return mail to Arthur Andersen for use in its planned 1998 audit. The confirmation request omitted any reference to Recourse Agreements. In fact, as GILBERTSON knew, as of September 30, 1998, HBOC had entered into Recourse Agreements relating to more than $42 million in sales contracts.

All in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT TEN: 15 U.S.C. §§ 78m(b)(2); 17 C.F.R. §§ 240.13b2-2, 18 U.S.C. § 2 (False Statement to Auditors)

97. Paragraphs 11 through 67 are realleged as if fully set forth here.

98. On or about November 5, 1998, within the Northern District of California and elsewhere, the defendant

JAY P. GILBERTSON

knowingly and wilfully made and caused to be made materially false and misleading statements to Arthur Andersen in connection with the planned acquisition of HBOC by McKesson. Specifically, GILBERTSON signed a representation letter to Arthur Andersen, which was performing work preliminary to the filing of a registration statement on SEC Form S-4 containing the following statement: "there have been no events or transactions that have a material effect on the [1998 quarterly] financial statements [of HBOC] that should be disclosed in order to make those financial statements not misleading."

99. In fact, as GILBERTSON knew, the revenues, net income, and earnings per share reported in HBOC's 1998 quarterly financial statements all were intentionally inflated as a result of fraud by management and others.

All in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT ELEVEN: 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5) and 78ff, and 17 C.F.R. §240.13b2-1 (False Books and Records)

100. Paragraphs 11 through 67 are realleged as if fully set forth here.

101. From at least December 1997 through April 27, 1999, both dates being approximate and inclusive, within the Northern District of California and elsewhere, the defendants

ALBERT J. BERGONZI and
JAY P. GILBERTSON

and others, knowingly and wilfully, directly and indirectly, falsified and caused to be falsified books, records, and accounts of HBOC and McKessonHBOC.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1.

COUNT TWELVE: 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5) and 78ff, and 17, C.F.R. §240.13b2-1 (Circumventing Internal Accounting Controls)

______102. Paragraphs 11 through 67 are realleged as if fully set forth here.

103. In or about and between at least December 1997 and April 27, 1999, both dates being approximate and inclusive, within the Northern District of California and elsewhere, the defendants

ALBERT J. BERGONZI and
JAY P. GILBERTSON

and others, knowingly and wilfully circumvented and caused others to circumvent the system of accounting controls required to be devised and maintained to provide assurances that transactions of HBOC and McKessonHBOC were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(B), 78m(b)(5) and 78ff.

COUNT THIRTEEN: 15 U.S.C. § 77q(a)(a), 77x; 18 U.S.C. §2 (False Registration Statement; Aiding and Abetting)

104. Paragraphs 11 through 67 are realleged as if fully set forth here.

105. On or about November 13, 1998, within the Northern District of California and elsewhere, the defendant

JAY P. GILBERTSON

and others, unlawfully, wilfully, and knowingly, in a registration statement filed by McKesson Corp. under the Securities Act of 1933 with respect to stock to be issued in conjunction with a merger, did make untrue statements of material fact and omit to state material facts required to be stated therein and necessary to make the statements made not misleading.

All in violation of Title 15, United States Code, Sections 77q(a) and 77x; and Title 18, United States Code, Section 2.

COUNTS FOURTEEN–SEVENTEEN: 18 U.S.C. §§ 1341, 1343, 1346, and 2 (Mail and Wire Fraud, Aiding and Abetting)

106. The allegations of paragraphs 11 through 14 and 55 through 64 are realleged as if fully set forth here.

107. On or about the following dates, within the Northern District of California and elsewhere, for the purpose of executing the foregoing scheme to defraud, the defendant ALBERT J. BERGONZI did (i) place and cause to be placed in an authorized depositary mail for delivery by (a) the United States Postal Service and (b) private or commercial interstate carrier; and (ii) did transmit and cause the following to be transmitted by wire communication in interstate and foreign commerce:

Count	Date	Point of Origin	Recipient	Communication
14	3/28/99	Alpharetta, GA	Oracle Corp. Redwood Shores, CA	Telephone conference call
15	3/30/99	Alpharetta, GA	Oracle Corp. Redwood Shores, CA	Faxed “term sheet”
16	3/31/99	Alpharetta, GA	Oracle Corp. Redwood Shores, CA	Software sent via Interstate carrier
17	4/6/99	Oracle Corp. Redwood Shores, CA	McKessonHBOC Alpharetta, GA	Letter returning software

______All in violation of Title 18, United States Code, Sections 1341, 1343, 1346 and 2.

DATED:

A TRUE BILL.

____
FOREPERSON

ROBERT S. MUELLER, III
United States Attorney

____
DAVID W. SHAPIRO
Chief, Criminal Division

(Approved as to form: ______________________)
AUSA CALDWELL