

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-21158-CR-JORDAN-O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHEAL J. MCNERNEY,

Defendant.

FACTUAL BASIS IN SUPPORT OF GUILTY PLEA OF MICHAEL J. MCNERNEY

The United States Attorney's Office for the Southern District of Florida and MICHAEL J. MCNERNEY (hereinafter referred to as the "defendant" or "MCNERNEY"), hereby file this factual basis to support the guilty plea of defendant.

MBC

Mutual Benefits Corp. ("MBC") was a business with principal offices in Ft. Lauderdale, Florida, within the Southern District of Florida. MBC was a Florida corporation formed on or about October 18, 1994 by Joel Steinger, Les Steinger, Steven Steiner, and Peter Lombardi (collectively, "the MBC Principals").

MBC sold investments called viatical and life settlements to the general public. MBC purportedly sold investments that were represented to be safe, that had a high rate of return but had low risk, and had security. MBC provided promotional material to investors indicating that

investor's rights were protected and that their investment interest was irrevocable. The company said in promotional materials that it conducted business with "honesty" and "integrity."

A viatical or life settlement is an investment in which an elderly or terminally ill person sells his or her life insurance policy to an investor or group of investors for a lump-sum cash payment, which is a discounted percentage of the policy's face value or death benefit. The "face value" or "death benefit" is the amount of money paid by the insurance company when the insured dies. For example, a life insurance policy with a \$1 million face value might be purchased at auction as an investment for \$400,000, which is 40% of the policy's death benefit.

Once an insurance policy is sold by the insured, he or she is no longer responsible for paying its premiums. The viatical and life settlement company purchasing the policy thereafter assumes responsibility for arranging the payment of any premiums due. All premiums due prior to the death of the insured must be paid, in full and on a timely basis, to prevent additional cost or lapse. If an insurance policy lapses for any reason, such as failure to pay premiums, the policy's death benefit and any investment dependent on that benefit may be lost.

Viatical and life settlements are investments that pay upon the death of the insured individual. A policy is said to have "matured" when the insured individual dies and the insurance company is required to pay the death benefit to the designated parties, that is, "beneficiaries."

MBC, as a viatical and life settlement company, sold interests in insurance policies to investors. When an investor purchases an interest in an insurance policy, he is buying the right to receive a portion of the death benefit when the insured dies. MBC typically combined investors together on a single policy, such that each investor was assigned a percentage or fraction of the death benefit. This is known as "fractionalizing" a policy. The sale of fractional

interests allowed investors to invest smaller amounts of money, because each investor did not have to pay for the whole policy.

Investors who purchase viatical and life settlements only realize a profit if the total amount invested in the policy, including the purchase price and any additional premium costs, is less than the amount of the death benefit that the investor receives when the insured dies. A viatical or life settlement is not profitable if the expense of acquiring and maintaining the policy (including the amount of premiums that are paid) is more than the amount of the death benefit paid when the insured dies. Typically, the longer an insured lives the more expensive it is to maintain a viatical or life settlement.

The period of time that the insured is predicted to live is called the "life expectancy." In the purchase and sale of viatical and life settlements, the assessment of an insured's life expectancy is used to determine: (i) how much money needs to be set aside to pay future premiums; (ii) when the investor can expect to receive a payout on his or her investment; and (iii) the amount of profit the investor can expect to receive.

From in or around October 1994 through in or around early 2001, almost all of the policies MBC sold to investors were HIV/AIDS-related policies. According to MBC, the insureds on these policies had shortened life expectancies because they were afflicted with Acquired Immunodeficiency Deficiency Syndrome, commonly known as AIDS.

Around mid-2001, MBC attempted to change its viatical and life settlement program to focus on selling policies insuring elderly individuals and people suffering from illnesses other than HIV or AIDS, like cancer. Nonetheless, although MBC purportedly ceased purchasing AIDS-related policies in 2001, MBC continued to resell interests in a number of AIDS policies through 2004.

Payment of Premiums on MBC Policies

Pursuant to the investor contract, MBC set aside a portion of the money it received from investors to pay premiums on MBC insurance policies. This money was placed in an escrow account purportedly held by conspirator Anthony Livoti, as the purported "trustee" of these funds.

Viatical Services, Inc. ("VSI"), supposedly an independent company, was formed in or about March 1996 by Joel Steinger, Les Steinger, and MCNERNEY, and others to perform "post-investment services" for investors who purchased interests in viatical and/or life settlements in MBC's program. VSI purportedly monitored insurance policies sold by MBC to identify when premium payments were due, instructed MBC's "premium trustee" to pay premiums on each policy as they became due, tracked the status of the insureds covered by the policies in MBC's program, and collected and processed death benefits.

VSI was a Florida corporation with principal offices in Ft. Lauderdale, Florida, in the Southern District of Florida.

Certain Conspirators

From on or about October 1994 through on or about May 2004, Joel Steinger was MBC's ultimate decision-maker and *de facto* authority, managing all important business activities. His approval was required for all major decisions affecting MBC, including decisions on legal issues, policy acquisitions and sales, and premium accounts. Joel Steinger also had an active role in MBC's "policy acquisition department," where he bid on insurance policies and assigned individual investors to those policies. Despite Joel Steinger's role as MBC's ultimate decision-maker and *de facto* authority, his true role in the company's operations was not disclosed to

investors or regulators. Instead, he was represented to be a general consultant who provided various services to MBC.

Steven Steiner worked with MBC's sales staff from in or around October 1994 through in or around May 2004, and led MBC's public relations efforts. Steven Steiner met with and spoke to investors, encouraging them to purchase the viatical and life settlements sold by MBC. Joel Steinger, Steven Steiner, Les Steinger, and Peter Lombardi (the MBC Principals), were the so-called founders of MBC and purportedly split profits from the company evenly among themselves.

MCNERNEY was a senior equity partner and co-founder of a law firm based in Ft. Lauderdale, Florida (hereinafter referred to as "the McNerney Law Firm"). MCNERNEY had a prior relationship with Joel Steinger, having represented him in connection with a civil litigation matter prior to the formation of MBC. By the end of 1996, MBC was a significant client of the McNerney Law Firm and MCNERNEY was the primary partner handling and supervising almost all MBC matters.

MCNERNEY and his law firm performed a variety of duties for MBC, in addition to legal services. Beginning in or around 1996 the McNerney Law Firm was the initial escrow agent for MBC, accepting MBC investor checks, which were made payable to the firm, and depositing the checks in a firm-controlled bank account. Additionally, MCNERNEY and firm lawyers under his supervision acted as MBC's closing agent on investment transactions, reviewing documents associated with the acquisition, transfer, and sale of insurance policies, and directing the disbursement of investor funds.

MCNERNEY and his law firm also participated in the marketing of MBC's viatical and life settlements through hosting tours at the firm and other meetings with sales personnel, third

party brokers and sales agents, and, at times, investors. On these tours and in meetings with sales agents and potential investors, MCNERNEY and others under his supervision explained the legal documents and the operation of the premium reserve accounts. The McNerney Law Firm was included as a reference in marketing materials distributed to sales agents across the country. Thus, the McNerney Law Firm was used by MBC to help promote the investments.

MCNERNEY also handled what appeared to be traditional legal services for MBC, including, but not limited to, drafting and filing regulatory documents on behalf of the company, and representing MBC and its principals in numerous lawsuits and regulatory matters brought by investors who alleged that they had been defrauded by the company.

Anthony Livoti acted as the Trustee for most MBC policies from as early as 1996 through in or around May 2004. As premium trustee, Anthony Livoti was purportedly responsible for safeguarding the money set aside to pay policy premiums and for making premium payments on MBC policies. Anthony Livoti was purportedly instructed by VSI as to when payments on premiums should be made. Additionally, Anthony Livoti was designated as the "owner" of many of the insurance policies that MBC purchased, and he regularly signed insurance company documents that supposedly transferred ownership of the policies from the selling insureds to him.

From October 1994 through in or around 1997, Les Steinger, who was the brother of Joel Steinger and Steven Steiner, held the nominal title of President of MBC. Les Steinger's actual responsibilities involved the supervision of MBC's sales force, including a team of "marketing directors" who recruited and managed an international network of outside sales agents. In addition, Les Steinger played an active role in MBC's management by participating in important business decisions, including those related to legal and financial matters impacting the company.

Peter Lombardi was listed as a founding partner and as the sole shareholder of MBC. From in or around 1997 through on or about May 5, 2004, Peter Lombardi was the nominal president of MBC, although his duties were mostly limited to the accounting department. Throughout this time period, the true ultimate decision-maker and *de facto* authority was Joel Steinger.

Manner and Means of the Conspiracy

MCNERNEY knowingly participated in scheme whereby others fraudulently offered and sold MBC investments to the general public, raising more than \$1.25 billion from approximately 30,000 investors worldwide, resulting in investor losses of approximately \$837 million.

MBC solicited investors through an international network of thousands of sales agents and over 10 in-house marketing directors, all of whom, directly or indirectly, reported to the MBC Principals. Investors were solicited through MBC investment seminars held around the nation and internationally, an Internet website, advertisements, mailings, and by telephone.

As part of the investor solicitation, the investors were led to believe that MBC was a reputable and legitimate operation. In certain instances, investors met personally with MCNERNEY at the law firm, and MCNERNEY made assurances concerning the adequacy of the premium reserve system.

During his tenure as counsel for MBC, MCNERNEY made, or caused others to make, knowingly misleading representations concerning such matters as the management of MBC and its related entities and the sufficiency of the funds set aside to make premium payments on the investors' policies.

**The True Management of MBC
and Its Related Entities was Concealed**

MCNERNEY and his conspirators concealed from regulators and investors, directly and indirectly, the fact that MBC's ultimate decision-maker and *de facto* authority was Joel Steinger. The principal role of Joel Steinger at MBC was hidden from the public during investor solicitations and in public documents, such as corporate and regulatory filings. Many of these documents were prepared by MCNERNEY and others under his supervision at the McNerney Law Firm.

MCNERNEY and his conspirators used, and directed others to use, half-truths and knowingly misleading statements regarding the role of Joel Steinger and Les Steinger. For example, MCNERNEY and his conspirators referred to Joel Steinger as an outside consultant who worked for a company named Kensington Management, Inc. In reality, Kensington Management, Inc. was a shell company with no offices or employees, formed solely to receive Joel Steinger's share of the fraudulent proceeds from MBC.

Despite Joel Steinger's role as the ultimate authority at MBC, Les Steinger was originally listed as MBC's President until in or around 1997, when Florida state regulators learned that Les Steinger also had a regulatory history for defrauding investors. Thereafter, Peter Lombardi was given the title of "President" of MBC by Joel Steinger. While Peter Lombardi was a principal at MBC and the sole named shareholder, he had few responsibilities other than handling internal accounting at MBC. Joel Steinger remained the primary controlling principal throughout MBC's operation.

In or around 1997, and thereafter, MCNERNEY directed one or more junior attorneys to submit regulatory filings with Peter Lombardi listed as "President," even though MCNERNEY knew that Peter Lombardi was not the principal decision-maker and had no authority of a

principal executive, and there had been no actual change in management structure at MBC. MCNERNEY was concerned at the time that if the true operation and management structure of MBC was revealed it would result in a loss of MBC's license to do business in one or more states.

Furthermore, from at least 1997 until 2004, MCNERNEY and his conspirators concealed, purposefully minimized, described in a deliberately vague manner, and attempted to conceal Joel Steinger's primary decision-making role at MBC in order to avoid being compelled to disclose to investors and regulators that Joel Steinger, as a principal of MBC, had the following criminal and regulatory history, of which MCNERNEY was aware:

- a. That on or about January 28, 1981, Joel Steinger was criminally convicted of fraud in the case of *United States v. Joel Steinger*, Case No. 79-57-CR-EPS (Southern District of Florida);
- b. That on or about September 13, 1989, the Commodity Futures Trading Commission (the "CFTC") banned Joel Steinger from the commodities and futures industry;
- c. That on or about October 11, 1989, a Federal Judge permanently banned Joel Steinger from the commodities and futures industry; and
- d. That in 1998, the U.S. Securities and Exchange Commission ("SEC") charged Joel Steinger and Les Steinger with making false and misleading representations to investors while working at MBC. In connection with this SEC action, Joel Steinger and Les Steinger consented, without admitting or denying liability, to a judgment permanently prohibiting them from further violating the anti-fraud provisions of federal securities laws. Under this judgment, Joel Steinger and Les Steinger were forced to return \$850,000 of their profits, and had to pay \$50,000 each in civil money penalties.

In addition to concealing Joel Steinger's controlling position at MBC and his criminal history, MCNERNEY and the conspirators knowingly failed to disclose to investors MBC's numerous regulatory sanctions, some of which involved allegations of investor fraud. From in or about 1996 through on or about May 2004, state and federal regulators brought several actions against MBC, its principals, and its sales agents. Several states sanctioned MBC, the MBC Principals, and agents for securities violations. Many of these regulatory actions were based on complaints alleging that investors were being defrauded by MBC.

**Concealment of True Management Structure During
On-Site Visits of Regulators**

MCNERNEY also participated in actions designed to conceal the true role of Joel Steinger and the MBC Principals during on-site visits from regulators. MCNERNEY knew that MBC, the MBC Principals, and others provided a false impression to regulators during on-site visits to the business to perpetuate the false story that Joel Steinger did not control the business. MCNERNEY indicated to MBC employees that the role of Joel Steinger should be described as a consultant which was intended to minimize the role of Joel Steinger in the eyes of regulators. MCNERNEY also discussed with Joel Steinger directly whether Joel Steinger should be present when regulators visited the MBC offices. MCNERNEY agreed with Joel Steinger that Joel Steinger should absent himself from the office when there was an on-site visit by a regulator, giving the false impression that Joel Steinger was not present on a daily or regular basis.

False Assurances to Investors Directly and Indirectly

MCNERNEY and his conspirators led investors to believe that other entities that participated in the MBC investment program were independent, and, as such, provided additional safeguards to the investors' money.

Investors were told that Anthony Livoti had a “fiduciary” responsibility to MBC investors, and a legal obligation to use reasonable care when dealing with the premium money. In truth, during the course of the conspiracy, MCNERNEY became aware that Anthony Livoti’s relationship with Joel Steinger was such that it precluded a true fiduciary relationship, while creating an illusion about the independence of Anthony Livoti from MBC.

MCNERNEY filed, or caused others to file, corporate documents with regulators that listed Ameer Khan, a VSI employee, as the President and owner of the company. In reality, Joel Steinger gave Ameer Khan his titular “ownership” of VSI for little or no money. Separately, as set forth more fully below, MCNERNEY and his conspirators never disclosed their knowledge of the substantial and growing shortfall in the premium reserves to existing or new investors.

Fraud Involving Life Expectancies

MBC promised investors a “fixed return” on their investment, depending on the life expectancy that MBC predicted for the insured on the particular policy. The rates of return promised to investors were as follows:

<u>Life Expectancy</u>	<u>Fixed Return</u>
12 Months	12%
18 Months	21%
24 Months	28%
36 Months	42%
48 Months	50%
60 Months	60%
72 Months	72%

McNerney came to learn that MBC’s sales agents falsely represented to investors that MBC had a strong track record of accurately predicting life expectancies. During the course of the scheme, MCNERNEY learned that investors alleged that they had been told by MBC and its

agents that MBC had an "80% on time or early" success rate in predicting life expectancies. MCNERNEY knew or was willfully blind to the fact that this representation was false and he knowingly took no steps to disclose these allegations to past or future investors. MCNERNEY knew that MBC failed to accurately predict the life expectancies on most of the policies it sold throughout the 10 years that MBC operated.

Concealment of Arrest and Admission of Fraud
By Dr. Clark Mitchell

To further convince investors of the reliability of the life expectancy predictions, the MBC Principals assured investors that life expectancies on MBC policies were determined by an independent medical doctor who evaluated the health of the insured. Doctors hired by MBC to perform these supposed life expectancy evaluations would sign letters and affidavits mailed to investors that falsely stated that the doctor made an "independent" assessment of the insured's life expectancy.

One such doctor was Clark Mitchell who signed thousands of life expectancy letters and affidavits. MCNERNEY learned during 2001 that Clark Mitchell was arrested by Florida authorities in connection with, among other things, an allegation that he had falsified life expectancy letters sent to MBC investors. MCNERNEY also was aware that Clark Mitchell had told investigators that Joel Steinger dictated the life expectancies and that Clark Mitchell did not perform any independent review.

MCNERNEY knew that this allegation by law enforcement authorities and the statement by Clark Mitchell, if true, completely undermined the business model of MBC, as well as numerous representations that had been made to investors, regulators, and others. MCNERNEY participated, along with Joel Steinger and others, in a decision not to disclose this information to

regulators, investors, litigants and others. MCNERNEY knew at the time that such disclosure could lead to the end of MBC.

For each year that MBC operated thereafter, MCNERNEY and his conspirators knowingly did not disclose to investors and others the fact that Clark Mitchell was arrested in connection with alleged fraud concerning life expectancies, and that Clark Mitchell had described a substantial fraud related to the creation of fake life expectancies.

Ponzi Scheme of Premium Funds

As part of investor solicitations, MCNERNEY and his conspirators, directly and indirectly, would assure potential investors that MBC set aside enough money to pay premiums due during the projected life of the insured. The conspirators tried to give the impression to investors that there was almost no possibility the investors would personally have to pay the premium obligations on MBC policies. In truth, given that MCNERNEY knew that MBC failed to accurately predict the life expectancies on most of the policies it sold, the associated failure of the policies to mature, and an inventory of policies with increasing premiums, MCNERNEY came to learn during the course of the conspiracy that the conspirators failed to set aside sufficient funds to pay future premium obligations.

In approximately 2001, MCNERNEY learned that the premium account balance purportedly maintained by VSI and Anthony Livoti had a significant and increasing shortfall. MCNERNEY, along with others, knew that because of the increasing size of this shortfall, additional funds would be required from the original purchasers or another outside source in order to pay for the premiums for the life insurance policies that had already been viaticated. MCNERNEY knew that if such additional funds were not obtained it would likely lead to a lapse of the policies and undermine the ability of MBC and VSI to operate as a going concern.

After becoming aware of this substantial and increasing shortfall, MCNERNEY knowingly concealed this substantial risk from investors. Thereafter, MCNERNEY and his conspirators led others to believe that there was little or no likelihood that new purchasers would be required to make additional premium payments after their initial investment.

For example, MCNERNEY made statements, caused others to make statements, and had knowledge that other conspirators made statements, to investors and sales agents that, with regard to premium payments, “nobody had ever been forced to pay a penny” and similar statements, when touting the safety of the MBC investment. MCNERNEY made these statements and caused such statements to be made with the knowledge that such statements were misleading due to the substantial and increasing shortfall that existed in the premium escrow funds available to MBC, VSI and Anthony Livoti, among other things. MCNERNEY believed at the time these statements were made that investors in earlier policies would likely have to make additional premium payments or other outside funds would have to be used, or else the life insurance policies would lapse.

MCNERNEY knew or was willfully blind to the fact that, to address the problem of deficient premium reserves, as more policies went beyond life expectancy, the conspirators needed to sell more and more new policies, and/or contribute their own funds to fund the premium pool, to prevent the older policies from lapsing.

Acquisition of Problematic Policies and Undisclosed Risks

MCNERNEY knew or was willfully blind to the fact that MBC purchased life insurance policies that had provisions restricting the transfer of the policies to “gift assignments,” such that the insured could only transfer the policy as a gift and could not sell the policy for value.

MCNERNEY knew or was willfully blind to the fact that MBC purchased other categories of policies that were problematic, such as policies that could lose their value through changes in circumstances of the insured (*i.e.*, a change of employer), that created substantial risks that were knowingly concealed from investors.

Resale of Old Failed Policies to New Investors

MCNERNEY knew that given the failure of the vast majority of policies to mature, MBC faced a large number of disgruntled investors who complained to MBC about their investment, and in some instances filed lawsuits and complaints with regulators. Over time, MBC was forced to refund some investment funds.

MCNERNEY knew that prior to refunding the disgruntled investors, which occurred only rarely or at a stage of litigation consistent with the litigation strategy described below, the conspirators would often resell the failed policies to new unsuspecting investors, typically failing to divulge to the new investors that the policy had been the subject of earlier investor complaints or lawsuits and that the policy had a life expectancy which had been predicted to mature years earlier.

MCNERNEY knew that even though MBC claimed it no longer purchased HIV/AIDS policies because it was difficult if not impossible to accurately predict the life expectancy of these insureds, MBC continued to resell HIV/AIDS-related policies where investor funds had been refunded due to investor complaints.

To enable MBC to resell the failed MBC investments, MCNERNEY and others under his supervision at the McNERney Law Firm prepared documents in which the dissatisfied investors gave up their interest in receiving death benefits from their MBC policies. These investors were

required to sign these documents in order to receive a refund of all or part of their failed investment. Once the dissatisfied investor gave up his claim to the death benefit on the failed policy, MBC resold the interest in the failed policy to a new investor.

**Additional Misleading Conduct Concerning
Role of Anthony Livoti and VSI**

During the course of the scheme, MCNERNEY came to learn that Anthony Livoti and VSI had grossly inadequate internal controls and lacked books and records sufficient to account for investors' funds on a per policy basis. For example, MCNERNEY came to learn that the records maintained by Anthony Livoti were inadequate to readily determine the amount of escrow funds available with regard to a particular policy. MCNERNEY never disclosed this lack of financial controls and inadequate recording to investors, sales agents, state regulators or litigants.

To the contrary, after becoming aware that Anthony Livoti and VSI did not have adequate controls and failed to maintain books and records sufficient to accurately account for investor funds, MCNERNEY knowingly did not disclose to investors, sales agents, and state regulators and others the lack of independence of VSI, Anthony Livoti, and the escrow process from the control of MBC and the MBC Principals.

Litigation Strategy To Avoid Detection of Fraud

During the course of the scheme, MBC was sued numerous times by investors who frequently alleged, among other things, fraud and misrepresentation in connection with the sale of the investments. At the direction of Joel Steinger, MCNERNEY acted as the lead outside lawyer for MBC, and oversaw a litigation strategy that was designed to, among other things, conceal the role of Joel Steinger and Les Steinger in the business. This litigation strategy meant that, if a case advanced to a stage where depositions would be required of Joel Steinger or Les

Steinger, then MBC would settle the claim regardless of the cost. MCNERNEY knew that, in addition to revealing the true nature of their control over the business, Joel Steinger and Les Steinger would likely assert their Fifth Amendment privilege against self-incrimination in any testimony. Thus testimony by either Joel Steinger or Les Steinger would result in an adverse inference in any litigation, and would be significant to investors, regulators and others concerning the true nature of the involvement of Joel Steinger and Les Steinger in the business. Such testimony would also reveal the misleading nature of state regulatory filings that MBC made, including with regard to MCNERNEY's own participation in knowingly misleading filings, among other things.

Furthermore, in the discovery process during such litigations, including during depositions of various MBC employees, interrogatory responses, and otherwise, MCNERNEY knew or was willfully blind to the fact that MBC employees made false statements concerning aspects of the business, including when descriptions were provided as to who controlled the MBC business and who profited from it. MCNERNEY executed this fraudulent litigation strategy with the full knowledge and participation of Joel Steinger and Les Steinger in litigation matters.

Lack of Independence as a Lawyer
and Efforts to Give Plausible Legal Cover to Fraud

During the course of the conspiracy, MCNERNEY stopped acting with the independence of a legitimate attorney-client relationship and at times did not reject directions from Joel Steinger which ultimately furthered the aims of the fraud scheme. MCNERNEY did this because of, among other things, the substantial remuneration he received as the relationship partner of his firm with MBC. MBC became the largest client of his firm and thus the relationship gave MCNERNEY considerable power and influence within the firm.

MCNERNEY also was motivated by the glamour, prestige, and notoriety he received among the legal community within Florida and nationally.

Over time, MCNERNEY came to believe that half-truths, knowingly misleading statements, omissions, and concealment, were acceptable as a means of advancing the interests of MBC and the conspirators. Over time, MCNERNEY shifted from seeking legitimate legal answers to the business and legal hurdles MBC faced, and thus providing legitimate legal advice, to blindly accepting the words and excuses of Joel Steinger without sufficient skepticism, and then illegally providing plausible legal cover to advance the conspirators' fraudulent actions.

In one such instance of ceasing to provide legitimate legal advice, MCNERNEY used faulty logic to falsely describe to others that Peter Lombardi was the "President" and sole-shareholder of MBC because that is how he was listed on incorporation documents, when in truth and in fact Peter Lombardi did not have the authority of a president and this title was provided to Peter Lombardi because Joel Steinger was a convicted felon and fraudster. These misleading statements were knowingly made by MCNERNEY or others acting at his direction in state regulatory filings, among other places, for the purpose of preventing regulators, investors and others from learning the true nature of MBC's business.

In another instance of ceasing to provide legitimate legal advice and instead using half-truths and concealment to give plausible legal cover to the fraudulent conduct of the MBC Principals, MCNERNEY agreed with Joel Steinger to use purposefully vague and misleading language in regulatory filings about the role of Joel Steinger and Les Steinger, to perpetuate the manufactured story about how the business was operated. MCNERNEY knew that a true description would likely lead to revocation of MBC's license to operate. Thus, acting in concert with Les Steinger and other conspirators, and with their full knowledge, MCNERNEY and Joel

Steinger drafted together the misleading language used for regulatory filings that both knew to amount to a misleading description of the involvement of Joel Steinger and Les Steinger.

MCNERNEY knowingly concealed material information from his law firm partners when questions were asked about MCNERNEY's role in the MBC business, as well as about the role of Joel Steinger and Les Steinger in its operation. For example, at the insistence of a McNerney Law Firm partner, the firm sought advice of a separate outside law firm as to the adequacy of certain regulatory disclosures, including the precise language MCNERNEY used and intended to use in future regulatory filings to describe the role of Joel Steinger and Les Steinger at MBC. To obtain the answer that he and the conspirators wanted, which was acquiescence in the misleading and purposely vague filings, MCNERNEY knowingly provided that law firm with misleading information related to the role of Joel Steinger and Les Steinger.

Separately, MCNERNEY made false and misleading statements to members of his law firm concerning, among other things, Funds for Life, a separate viaticals firm, and the nature and extent of tours that investors and others received during visits to the McNerney Law Firm.

Conspiracy to Commit Mail and Wire Fraud

From as early as October 1994 though at least May 2004, in the Southern District of Florida, and elsewhere, MCNERNEY conspired with Joel Steinger, Les Steinger, Steven Steiner, Peter Lombardi, Anthony Livoti and others with the intent to further the objects of the conspiracy, and did knowingly combine, conspire, confederate and agree with the conspirators, to commit certain offenses against the United States, that is:

(a) to knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent

when made, and causing to be delivered certain mail matter by the United States Postal Service and any private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1341; and

(b) to knowingly and with intent to defraud devise and intend a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted certain wire communications in interstate and foreign commerce, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1343.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date:

5/16/11

By:

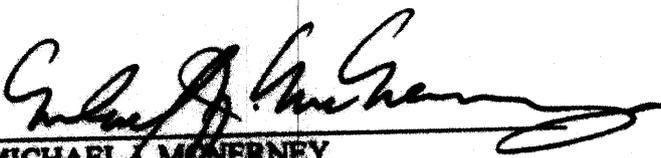


JERROLD DUFFY
ASSISTANT UNITED STATES ATTORNEY

ACKNOWLEDGEMENT OF DEFENDANT

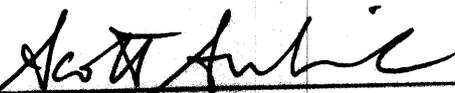
I, Michael J. McNerney, hereby confirm that I have reviewed the foregoing Statement of Facts with my counsel and adopt this Statement of Facts as my own statement. I agree that the Statement of Facts set forth above is true and correct, and I stipulate that the facts set forth in the Statement of Facts provide a sufficient factual basis for the plea of guilty in this case, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure.

Date: 5/16/11

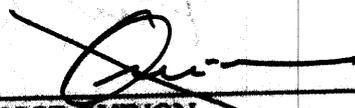
By: 
MICHAEL J. MCNERNEY
DEFENDANT

WITNESSED AND ACKNOWLEDGED BY:

Date: 5/18/11

By: 
SCOTT SREBNICK
ATTORNEY FOR DEFENDANT

Date: 5/18/2011

By: 
JOSE QUINON
ATTORNEY FOR DEFENDANT

ACKNOWLEDGEMENT OF DEFENDANT

I, Michael J. McNerney, hereby confirm that I have reviewed the foregoing Statement of Facts with my counsel and adopt this Statement of Facts as my own statement. I agree that the Statement of Facts set forth above is true and correct, and I stipulate that the facts set forth in the Statement of Facts provide a sufficient factual basis for the plea of guilty in this case, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure.

Date: 5/16/11 By: [Signature]
MICHAEL J. MCNERNEY
DEFENDANT

WITNESSED AND ACKNOWLEDGED BY:

Date: 5-16-11 By: [Signature]
SCOTT SREBNICK
ATTORNEY FOR DEFENDANT

Date: 5/16/11 By: [Signature]
JOSE QUINON
ATTORNEY FOR DEFENDANT