

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

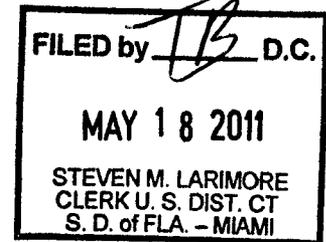
Case No. 08-21158-CR-JORDAN/O'SULLIVAN(s)
18 U.S.C. §371

UNITED STATES OF AMERICA

vs.

MICHAEL J. MCNERNEY,

Defendant.



SUPERSEDING INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times material to this Superseding Information:

MBC

1. 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, L.S., Steven Steiner, and Peter Lombardi (collectively, "the MBC Principals").

2. 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 investors' rights were protected and that their investment interest was irrevocable. The company said in

promotional materials that it conducted business with “honesty” and “integrity.”

3. 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.

4. 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.

5. 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.”

6. 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.

7. 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.

8. 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.

9. 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.

10. 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

11. 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 Anthony Livoti, as the purported “trustee” of these funds.

12. Viatical Services, Inc. (“VSI”), supposedly an independent company, was formed in or about March 1996 by Joel Steinger, L.S., **MICHAEL J. 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.

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

Certain Conspirators

14. From in or around October 1994 through in or around 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.

15. 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, L.S., and Peter Lombardi (the MBC Principals), were the so-called founders of MBC and purportedly split profits from the company evenly among themselves.

16. 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.

17. From October 1994 through in or around 1997, L.S., who was the brother of Joel Steinger and Steven Steiner, held the nominal title of President of MBC. L.S.'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, L.S. 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.

18. 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.

Defendant

19. Defendant **MICHAEL J. 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.

20. **MICHAEL J. 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.

21. **MICHAEL J. 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.

22. **MICHAEL J. 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.

CONSPIRACY TO COMMIT MAIL AND WIRE FRAUD
(18 U.S.C. § 371)

From in or around January 1995, through in or around May 2004, in the Southern District of Florida, and elsewhere, the defendant,

MICHAEL J. MCNERNEY,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the United States Attorney, 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 and artifice, in violation of Title 18, United States Code, Section 1341; and

(b) 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 transmitting and causing to be transmitted certain wire communications in interstate and foreign

commerce, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

23. A purpose of the conspiracy was for **MICHAEL J. MCNERNEY**, and his conspirators, to unjustly enrich themselves by luring investors, some of whom were located in the Southern District of Florida, into investing in MBC's viatical investments by making material misrepresentations concerning, among other things: (i) the condition and life expectancy of individuals insured by the life insurance policies; (ii) the use of funds raised from investors; (iii) the risks associated with investments in viatical settlements; (iv) the payment of insurance premiums during the anticipated term of the investment; (v) the independent nature of other persons and entities involved in the process outside of MBC, including but not limited to VSI and Anthony Livoti; (vi) past investors' successes in obtaining the promised returns on investment; and (vii) the identity and disciplinary history of MBC's management.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant, and his conspirators, sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

24. **MICHAEL J. MCNERNEY** and his conspirators knowingly participated in a scheme whereby the conspirators 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.

25. 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.

26. 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 **MICHAEL J. MCNERNEY** at the McNerney Law Firm, and **MCNERNEY** made knowingly misleading assurances concerning the adequacy of the premium reserve system.

27. During his tenure as counsel for MBC, **MICHAEL J. 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**

28. **MICHAEL J. 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.

29. **MICHAEL J. MCNERNEY** and his conspirators used, and directed others to use, half-truths and knowingly misleading statements regarding the role of Joel Steinger and L.S.. 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.

30. Despite Joel Steinger's role as the ultimate authority at MBC, L.S. was originally listed as MBC's President until in or around 1997, when Florida state regulators learned that L.S. 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.

31. In or around 1997, and thereafter, **MICHAEL J. 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 were revealed it would result in a loss of MBC's license to do business in one or more states.

32. Furthermore, from at least 1997 until 2004, **MICHAEL J. 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, et al.*, 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”) barred 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 L.S. with making false and misleading representations to investors while working at MBC. In connection with this SEC action, Joel Steinger and L.S. 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 L.S. were forced to return \$850,000 of their profits, and had to pay \$50,000 each in civil money penalties.

False Assurances to Investors Directly and Indirectly

33. **MICHAEL J. MCNERNEY** and his conspirators knowingly misled 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.

34. 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, **MICHAEL J. 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.

35. **MICHAEL J. MCNERNEY** filed, or caused others to file, knowingly misleading 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.

Fraud Involving Life Expectancies

36. 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%

37. **MICHAEL J. 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.

Ponzi Scheme of Premium Funds

38. As part of investor solicitations, **MICHAEL J. 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, that there was the associated failure of the policies to mature, and that MBC held 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.

39. After becoming aware of this substantial and increasing shortfall, **MICHAEL J. MCNERNEY** knowingly concealed this substantial risk from investors. Thereafter, **MCNERNEY** and his conspirators knowingly misled 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.

40. For example, **MICHAEL J. 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.

41. **MICHAEL J. 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

42. **MICHAEL J. 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.

43. **MICHAEL J. 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

44. **MICHAEL J. 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.

45. **MICHAEL J. 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.

46. **MICHAEL J. 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.

47. To enable MBC to resell the failed MBC investments, **MICHAEL J. 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.

Litigation Strategy To Avoid Detection of Fraud

48. 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, **MICHAEL J. 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 L.S. in the business. This litigation strategy meant that, if a case advanced to a stage where depositions would be required of Joel Steinger or L.S., 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 L.S. would likely assert their Fifth Amendment privilege against self-incrimination in any testimony. Thus testimony by either Joel

Steinger or L.S. 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 L.S. 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.

49. Furthermore, in the discovery process during such litigations, including during depositions of various MBC employees, interrogatory responses, and otherwise, **MICHAEL J. 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 L.S. in litigation matters.

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

50. During the course of the conspiracy, **MICHAEL J. 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.

51. Over time, **MICHAEL J. 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. **MCNERNEY** then 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.

52. In one such instance of ceasing to provide legitimate legal advice, **MICHAEL J. 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 had been found liable for fraud. 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.

53. **MICHAEL J. 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 L.S. 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 L.S. 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 L.S..

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects and purpose thereof **MICHAEL J. MCNERNEY** committed or caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. On or about September 3, 1998, **MICHAEL J. MCNERNEY** signed a letter addressed to attorney P.Z. for the purported purpose of obtaining an opinion concerning the adequacy of MBC disclosures related to the involvement of Joel Steinger and L.S., in which **MCNERNEY** knowingly provided misleading information and omitted material information.

2. On or about October 15, 1998, **MICHAEL J. MCNERNEY** caused his law firm to receive \$30,000 in funds from an individual investor in connection with an MBC investment.

3. On or about October 19, 1998, **MICHAEL J. MCNERNEY** transmitted a memorandum to partners of the McNerney Law Firm in which he knowingly made materially misleading statements and concealed material information from his law firm partners, concerning the operation of the MBC business and the role of Joel Steinger and L.S. in its operation.

4. On or about June 28, 2002, **MICHAEL J. MCNERNEY** knowingly caused a misleading filing with the State of Oklahoma, Department of Insurance, which contained materially misleading statements and omissions concerning the role of Joel Steinger and L.S. in the MBC

business.

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


WIFREDO A. FERRER
UNITED STATES ATTORNEY


JERROB DUFFY
ASSISTANT UNITED STATES ATTORNEY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PENALTY SHEET

Defendant's Name: MICHAEL J. MCNERNEY

Case No: _____

Count #: 1

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 371

*** Max. Penalty:** 5 years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**