

2. Other conspirators, not named herein, included other owners, executives, employees, and/or independent sales agents for the A&O Entities.

Background of Life Settlements

3. A life settlement is an investment in which a person, who is typically elderly or terminally ill, sells his life insurance policy for a cash payment, which is a percentage of the life insurance 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. Life settlement companies typically purchase life insurance policies from insured individuals.

4. Once the insured sells an insurance policy, the insured is no longer responsible for paying the policy's premiums and the life settlement company thereafter assumes responsibility for arranging the payment of any premiums.

5. 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, the "beneficiaries." 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.

6. Life settlement companies often sell fractionalized interests in life insurance policies as investments to individual investors. In such sales, investors are buying the right to receive a portion of the death benefit when the insured dies. The sale of fractional interests allows investors to invest smaller amounts of money, because each investor does not have to pay for the whole policy.

7. Investors who purchase 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. A life settlement is not profitable if the expenses 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 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 life settlements, the assessment of an insured’s life expectancy is used to determine, among other things: (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. The risk to the life settlement investor of the insured living past the calculated life expectancy – and thereby reducing the expected return on the investment – is often referred to in the industry as “maturity risk” or “longevity risk.”

A&O’s Bonded Life Settlements

10. Beginning in or about November of 2004, A&O obtained life settlements from a wholesale life settlement company, and began marketing and selling whole and fractionalized interests in those life settlements to investors. The A&O investments were referred to as Bonded Life Settlements.

11. A&O initially marketed Bonded Life Settlements directly to investors, but also soon began utilizing independent sales agents to market the investments. A&O paid these sales

agents substantial commissions, usually 10% of every Bonded Life Settlement investment, to incentivize the agents to make sales.

12. A&O's Bonded Life Settlements were fixed maturity investments with a term of 4 to 7 years, depending on the length of investment chosen by the individual investors.

13. A&O marketed the Bonded Life Settlements as providing a "guaranteed" minimum compounded annual rate of return, typically 10 or 12% depending on the amount of the initial investment, with the possibility of greater returns.

14. The primary distinction between A&O's Bonded Life Settlement investment and typical life settlements was A&O's claim that it could guarantee the investment against longevity risk by obtaining a reinsurance bond from a third-party reinsurer. A&O promised that if the insured lived beyond the investment term, then the reinsurance company would pay the investor the agreed-to minimum rate of return and assume ownership of the underlying insurance policy (as well as assume the obligation to pay future premiums).

15. To support its claims of guaranteed returns, A&O, and its sales agents, informed investors that:

- a. if the insured died before the investment term matured, then the A+ rated insurance company who issued the underlying insurance policy – of which the investor was a beneficiary– would pay the investor; and
- b. if the insured had not died at the end of the investment term, then the reinsurance company who issued the reinsurance bond would pay the investor the guaranteed minimum rate of return.

16. One of the primary risks of life settlement investments is the possibility that the underlying insurance policies will lapse for failure to pay premiums. In that situation, the insurance company has no obligation to pay when the insured dies. Because the reinsurance bonds obtained by A&O required that the underlying insurance policies be in full force and effect at the time of any claim, the reinsurance company would also have no obligation to pay if the policies lapsed for non-payment of premiums. Consequently, it was a distinct possibility that investors would lose their entire investments if the underlying insurance policies lapsed for non-payment of premiums.

17. To assuage any investors' potential concerns regarding the risk of the underlying insurance policies lapsing, A&O, and its sales agents, informed investors that A&O would use a portion of the investor funds to pay all future premiums due on the underlying insurance policies for the length of the investment period "up-front."

18. A&O provided sales agents with instruction on the Bonded Life Settlement investment and tips on how to market it to investors. In addition, A&O created a website and marketing materials for its sales agents, for distribution to potential investors, to assist in generating sales. A&O's website and marketing materials not only explained A&O's Bonded Life Settlement investment, but also included specific representations regarding A&O's management and past success.

19. A&O's representations to investors in its website and marketing material included:

- a. A&O's website in or about July of 2005 stated that A&O was a privately held corporation headquartered in Houston with offices in San Antonio, San Francisco, and Los Angeles.
- b. A&O's website in or about July of 2005 stated that A&O had over 150 employees nationwide that included Certified Public Accountants, insurance and securities attorneys, financial advisors, investment bankers, and economists.
- c. A&O's website in or about April of 2006 stated that A&O had a national staff of over 250 people that included Certified Public Accountants, insurance and securities attorneys, financial advisors, investment bankers, and economists.
- d. A&O's website in or about April of 2006 stated that A&O's past efforts had enabled its clients to leverage \$375 million into \$800 million in less than 5 years with a compounded annual rate of return of 16.58%.
- e. A&O's website and marketing literature in or about 2005 through 2006 contained a graphical flowchart of A&O's use of investor funds that depicted investor funds being deposited into an escrow account and then premium payments being made from the escrow account.

A&O's Capital Appreciation Bonds

20. In response, in part, to regulatory scrutiny from various state securities and insurance regulators, starting in or about January of 2007, A&O no longer offered the Bonded Life Settlement investment in which investors were assigned a fractionalized or whole ownership interest in a specific life insurance policy. Instead, A&O began offering investments referred to as Capital Appreciation Bonds.

21. A&O's Capital Appreciation Bonds were general obligations of the company and were securitized with a portfolio of life settlements. Unlike A&O's Bonded Life Settlements, investors in A&O's Capital Appreciation Bonds did not invest in one specific underlying life insurance policy but, instead, were promised a minimum rate of return backed by a pool of underlying life insurance policies.

22. A&O informed its independent sales agents that they were really selling the same investment because the Capital Appreciation Bonds had a fixed investment term with a guaranteed minimum rate of return, and the underlying pool of life insurance policies continued to have the additional security of reinsurance bonds from the third-party reinsurer.

23. A&O continued to pay its independent sales agents substantial commissions, usually 10% of every Capital Appreciation Bond investment, to incentivize the agents to sell its new investment product.

24. To facilitate the sales of its Capital Appreciation Bonds, A&O also continued creating marketing materials that it provided to its sales agents for distribution to potential investors. For example, in a sales insert entitled "A&O History," A&O claimed that it had offices in Houston, Chicago, Wilmington, Glendale, and Ft. Lauderdale. In that same insert, A&O claimed that its efforts had enabled its clients to leverage \$579 million into \$1.2 billion in less than 5 years.

25. In addition to the marketing material, A&O also gave its sales agents Private Offering Memoranda ("POM") to provide to investors that wanted to invest in A&O's Capital Appreciation Bonds. A&O's POM informed investors that 95% of investor funds received by A&O would be invested by A&O in purchasing and maintaining a portfolio of life settlements.

A&O's Sales Success

26. Due to A&O's marketing efforts, and the representations contained in its marketing materials and made by its independent sales agents, A&O obtained approximately \$100 million in investor funds from more than 800 investors. These investors were located in approximately 37 different states, including Virginia, and in Canada.

COUNT ONE

(Conspiracy to Commit Mail Fraud)

THE CONSPIRACY

27. The allegations set forth in paragraphs 1 through 26 of this Criminal Information are realleged and incorporated as though set forth in full herein.

28. From in or about November of 2004 through the present, within the Eastern District of Virginia and elsewhere, defendant

BRENT P. ONCALE

did unlawfully and knowingly combine, conspire, confederate, and agree with others, both known and unknown, to commit an offense against the United States, namely having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, did knowingly: (a) place and cause to be placed in any post office and authorized depository for mail matter, any matter and thing whatever to be sent and delivered by the Postal Service; (b) deposit and cause to be deposited any matter and thing whatever to be sent and delivered by any private and interstate commercial carrier; and (c) cause to be delivered by mail and private and interstate commercial carrier any matter and thing whatever according to the direction thereon, in violation of Title 18, United States Code, Section 1341.

PURPOSE

29. A purpose of the conspiracy was to mislead investors regarding A&O's safekeeping and use of investor funds and the risks of A&O's investment offerings in order to

obtain investor funds so that the conspirators could profit personally and fund their lavish lifestyles.

MANNER AND MEANS

30. BRENT P. ONCALE and his co-conspirators created marketing material, websites, and investment documentation containing numerous material misrepresentations and omissions designed to mislead investors regarding A&O's safekeeping and use of investor funds, as well as the risks of A&O's Bonded Life Settlements and Capital Appreciation Bonds.

Misrepresentations Regarding Safekeeping and Use of Investor Funds

31. Based on material misrepresentations and omissions by BRENT P. ONCALE and his co-conspirators, A&O's investors were led to believe that their money would be deposited into escrow accounts that would be utilized for the purchase of life settlements, the purchase of reinsurance bonds, and the payment of future premiums due for the underlying life insurance policies. In truth and fact, the escrow accounts were never utilized for any of these purposes and had no practical business purpose other than reassuring A&O's investors regarding the safety and legitimacy of their investments. The escrow accounts were merely pass-throughs and all A&O investor funds ultimately were commingled into A&O's bank accounts, over which BRENT P. ONCALE and his co-conspirators had control.

32. Although A&O's investors were told that their money would be utilized to pay at or near the time of their investments (i.e. "up front") all future premiums due for the underlying insurance policies for the term of their investments, in truth and fact, A&O's standard business practice was to only pay premiums as they became due, typically on an annual or quarterly basis.

33. Instead of paying all future premiums “up front” from the escrow accounts – and thereby ensuring that the underlying policies would not lapse for non-payment of premiums – BRENT P. ONCALE, and his co-conspirators routinely utilized investor funds for their personal enrichment.

34. BRENT P. ONCALE’s and his co-conspirators’ personal use of investor funds resulted in A&O utilizing new A&O investor monies to pay premiums associated with life settlements pledged to earlier A&O investors.

35. Based on material misrepresentations and omissions by BRENT P. ONCALE and his co-conspirators contained in A&O’s POM, investors in A&O’s Capital Appreciation Bonds were led to believe that 95% of investor funds received by A&O would be invested by A&O in purchasing and maintaining a portfolio of life settlements. In truth and fact, it was impossible for A&O to invest 95% of investor funds as described in the POM because BRENT P. ONCALE and his co-conspirators were paying sales agents commissions of approximately 10% for every sale.

36. BRENT P. ONCALE and his co-conspirators also failed to inform A&O Capital Appreciation Bond investors that the vast majority of investor money was utilized by the conspirators for purposes wholly unrelated to purchasing and maintaining portfolios of life settlements, which was a material omission.

Misrepresentations Regarding the Risks of A&O’s Investment Offerings

37. Based on material misrepresentations and omissions by BRENT P. ONCALE and his co-conspirators, A&O’s investors were led to believe that A&O had a proven track record of investment success in life settlements. For example, while A&O was offering Bonded Life Settlements, investors were told that A&O’s past efforts had enabled its clients to leverage \$375

million into \$800 million in less than 5 years with a compounded annual rate of return of 16.58%. In addition, while A&O was offering Capital Appreciation Bonds, investors were told that A&O's past efforts had enabled its clients to leverage \$579 million into \$1.2 billion in less than 5 years. In truth and fact, virtually none of A&O's investors made any money on their A&O life settlement investments because only one relatively small underlying life insurance policy matured during A&O's investment offerings.

38. Based on material misrepresentations and omissions by BRENT P. ONCALE and his co-conspirators, A&O's investors were led to believe that A&O was a sophisticated investment company that had office locations in multiple states. For example, in A&O's sales insert entitled "A&O History," A&O claimed that it had offices in Houston, Chicago, Wilmington, Glendale, and Ft. Lauderdale. In truth and fact, A&O only had one office location, which was in Houston, Texas.

39. Based on material misrepresentations and omissions by BRENT P. ONCALE and his co-conspirators, A&O's investors were led to believe that A&O had a large staff of professionals. For example, A&O claimed on its website at various times that it had over 150 employees nationwide that included Certified Public Accountants, insurance and securities attorneys, financial advisors, investment bankers, and economists. In truth and fact, A&O never had more than two employees, and these employees provided secretarial and administrative support, rather than professional services.

OVERT ACT

40. In furtherance of the conspiracy and to affect the objects thereof, within the Eastern District of Virginia and elsewhere, defendant ONCALE and other conspirators did

commit and cause to be committed the following overt act, among others:

- a. On or about June 22, 2007, cause a package containing a signed copy of an A&O Capital Appreciation Bond, with a bond maturity amount of \$1,057,405, to be delivered, via Federal Express, from A&O's office in Houston, Texas to investor F.S. in Richmond, Virginia.

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

COUNT TWO

(Conspiracy to Commit Money Laundering)

THE CONSPIRACY

41. The allegations set forth in paragraphs 1 through 40 of this Criminal Information are realleged and incorporated as though set forth in full herein.

42. From in or about November of 2004 through the present, within the Eastern District of Virginia and elsewhere, defendant

BRENT P. ONCALE

did unlawfully and knowingly combine, conspire, confederate, and agree with others, both known and unknown, to commit an offense against the United States, namely to knowingly conduct and attempt to conduct financial transactions affecting interstate and foreign commerce, which involved the proceeds of specified unlawful activity, that is the transfer of millions of dollars of A&O investor funds obtained under false pretenses to sales agents in the form of commissions, with the intent to promote the carrying on of specified unlawful activity, that is, mail fraud, and that while conducting and attempting to conduct such financial transactions knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(I).

OVERT ACT

43. In furtherance of the conspiracy and to affect the objects thereof, within the Eastern District of Virginia and elsewhere, defendant ONCALE and other conspirators did commit and cause to be committed the following overt act, among others:

- a. On or about July 2, 2007, cause a package containing a cashier's check, in the amount of \$48,000, to be delivered on behalf of A&O from Houston, Texas to sales agent T.B. in Richmond, Virginia as a commission payment for the sale of an A&O Capital Appreciation Bond.

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

Forfeiture Allegation

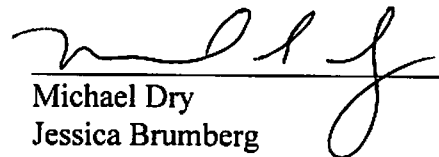
Pursuant to Federal Rule of Criminal Procedure 32.2, the defendant is advised that upon conviction of the offense charged in Count One of this information, he shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the violation charged in Count One.

If property subject to forfeiture meets the requirements of 21 U.S.C. §853(p), the government will seek an order forfeiting substitute assets.

(In accordance with 18 U.S.C. §981(a)(1)(C) and 28 U.S.C. §2461(c) and 31 U.S.C. §5332(b)(2)).

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

By:



Michael Dry
Jessica Brumberg
Assistant United States Attorneys
Eastern District of Virginia

Rayne

City: Richmond, Virginia
County/Parish _____

Related Case Information:
Criminal Information **Docket No.** 3:10cr256
Same Defendant _____ **New Defendant**
Magistrate Judge Case No. _____
Search Warrant Case No. _____
R 20/R 40 from District of _____

Defendant Information:

This case is related to other proceedings in this Court: YES NO _____ **If yes, docket No.** 3:10cr246-REP

Defendant Name: Brent P. ONCALE

Alias Name: NONE

[REDACTED]

Counsel for Defendant: Dan Cogdell, Esq., Cogdell & Ardoin, LLC, 5 Houston Center, 1401 McKinney, Suite 1625, Houston, Texas 77010 (713) 426-2244

U.S. Attorney Information:

AUSA: Michael S. Dry **Bar #:** _____

Interpreter: No Yes **List language and/or dialect:** _____

Location Status:

- Has Not Been Arrested**
- Already in Federal Custody**
- Already in State Custody** **Defendant is available for court proceedings in this District**
- On Pretrial Release**
- Fugitive**
- Unknown**
- Bond**
- Issue Summons**

U.S.C. Citations

Total # of Counts: 2 **Petty** **Misdemeanor** **Felony**

Statute	Description of Offense Charged	Count(s)
In violation of Title 18 U.S.C. § 371	Conspiracy to Commit Mail Fraud	<u>1</u>
In violation of Title 18 U.S.C. § 371	Conspiracy to Commit Money Laundering	<u>2</u>

Date: 09/09/2010 **Signature of AUSA** *[Signature]*

District Court Case No. (to be filled in by deputy clerk): _____