

08-20071-1  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 08-20071-1 JORDAN

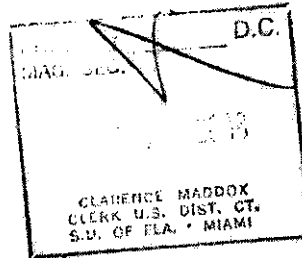
18 U.S.C. § 371  
18 U.S.C. § 1343  
18 U.S.C. § 2  
18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

MICHAEL LAUER,  
MARTIN GARVEY,  
ERIC HAUSER,  
LAURENCE ISAACSON, and  
MILTON BARBAROSH,

Defendants.



**INDICTMENT**

The Grand Jury charges that:

**GENERAL ALLEGATIONS**

At various times relevant to this Indictment:

**The Defendants and Related Persons and Entities**

1. Lancer Offshore, Inc. ("Offshore"), Viator Fund, Ltd. ("Viator"), and Orbiter Fund, Ltd. ("Orbiter") were hedge funds incorporated in the British Virgin Islands. In or about April 2002, Viator and Orbiter merged to form Omnifund, Ltd. ("Omnifund"), which was also a hedge fund incorporated in the British Virgin Islands. Lancer Partners, LP ("Lancer Partners"), a Connecticut limited partnership, was also a hedge fund. Offshore, Viator, Orbiter, Omnifund, and Lancer Partners are collectively referred to herein at times as "the Lancer Group hedge funds." Each of the

Lancer Group hedge funds solicited money from investors, pooled the money and purportedly invested it on behalf of its respective investors.

2. Lancer Management Group, LLC was the investment manager for the Orbiter, Viator, Omnifund, and Offshore hedge funds. Lancer Management Group II, LLC was the general partner and management company for the Lancer Partners hedge fund. Lancer Management Group, LLC and Lancer Management Group II, LLC are collectively referred to herein as "the Lancer Management Companies." The Lancer Management Companies maintained offices in New York and Connecticut.

3. Defendant **MICHAEL LAUER** was the founder and primary manager of each of the Lancer Group hedge funds. **LAUER** directed the day-to-day activities of the Lancer Group hedge funds, including, among other things, choosing the securities in which each fund would invest; issuing separate Private Placement Memoranda ("PPMs") and other documents which described how each of the Lancer Group hedge funds purportedly would be operated; soliciting money from, and communicating with, investors; and handling redemption requests. **LAUER** owned 80 percent of each of the Lancer Management Companies.

4. Defendant **MARTIN GARVEY** managed the Lancer Group hedge funds with **MICHAEL LAUER**. **GARVEY** owned 10 percent of the Lancer Management Companies.

5. Defendant **ERIC HAUSER** was the head trader for the Lancer Group hedge funds. **HAUSER** owned 10 percent of the Lancer Management Companies.

6. **MICHAEL LAUER**, **MARTIN GARVEY** and **ERIC HAUSER** benefitted from the Lancer Group hedge funds through, among other ways, incentive performance fees and management fees the hedge funds paid to the Lancer Management Companies. The Lancer Group

hedge funds paid the Lancer Management Companies approximately 20 to 25 percent of the hedge funds' respective purported net profits each year as incentive performance fees and approximately one to two percent of the total assets of the funds as management fees. LAUER received over \$40 million in cash from the fees.

7. Defendant LAURENCE ISAACSON was the president and member of the board of directors of some of the companies in which the Lancer Group hedge funds invested, including Augment Systems, Inc. ("AUGC"), ServiceMax of America, Corp. ("SMXP"), and Nu-D-Zine, Inc. ("NUDZ"). These companies had as their business addresses ISAACSON's office located at 1900 Corporate Blvd., Boca Raton, Florida. Through entities he controlled, ISAACSON often received a fee in connection with stock purchases and loans made to these companies by the Lancer Group hedge funds.

8. Defendant MILTON BARBAROSH was the president and a director of Stenton Leigh Capital Corporation ("Stenton Leigh"), a Florida corporation located in Boca Raton, Florida, which purportedly appraised companies that were being considered as investments by the Lancer Group hedge funds. BARBAROSH also had a financial interest in some of the entities for which he prepared appraisal valuations for the Lancer Group hedge funds, including SMXP and NUDZ.

9. "Consultant C" was, at times, a Managing Director of the Lancer Group hedge funds and an employee of Alpha Omega Group, an entity owned by MICHAEL LAUER. Consultant C identified and arranged investments for, and made stock trades on behalf of, the Lancer Group hedge funds. Consultant C often received a fee in connection with stock purchases and loans made by the Lancer Group hedge funds.

10. "Appraiser L" owned and operated a firm that appraised businesses.

11. Shamrock Partners, Inc. ("Shamrock") was a brokerage firm that conducted many of the stock trades on behalf of the Lancer Group hedge funds. Shamrock was owned by a person referred to in this Indictment as "the Shamrock Owner."

12. Capital Research, Inc. ("Capital Research") was an entity owned by **MICHAEL LAUER, MARTIN GARVEY, Consultant C,** and the Shamrock Owner. Capital Research was purportedly created to provide consulting services to small companies and assist the companies in raising funds. Capital Research often received a fee in connection with stock purchases and loans made by the Lancer Group hedge funds.

#### **Investments and Valuation of the Lancer Group Hedge Funds**

13. From in or around 1999 through in or around 2003, the Lancer Group hedge funds received more than \$700 million from investors in the funds. The value of an investor's interest in the Lancer Partners hedge fund supposedly was a percentage of the fund's net worth. The value of an investor's interest in the Offshore and Omnifund hedge funds was expressed as a net asset value ("NAV"). **MICHAEL LAUER** communicated the purported performance of the funds to investors through newsletters and other written statements and caused others, including Offshore's administrator, to report the value and performance of the funds.

14. The investors in the Lancer Group hedge funds were not informed as to the particular securities each fund held. Beginning in or about late December 1999, the Lancer Group hedge funds became extensively invested in restricted stock (stock that cannot be sold immediately on the open market) in companies which did not have significant annual revenues or profits and often had no operations. The free-trading stock of these companies was traded on the over-the-counter ("OTC") markets as opposed to the national stock exchanges. The stock was also thinly-traded, meaning that

the stock was not traded in significant volume except for transactions involving the Lancer Group hedge funds.

15. These companies, referred to at times in this Indictment as “shell companies,” included:

a. SMXP, formerly a lawn care company, which had little or no operations and no revenue from 1999 through 2003;

b. NUDZ, formerly a bath, bedding and home furnishing store which had filed for bankruptcy and had no operations from 1999 through its late 2002 merger with its successor, XtraCard Corp., Inc. (“XtraCard”);

c. AUGC, formerly involved in network file server systems and other business, which had suspended operations from 1999 through its late 2002 merger with its successor Biometrics Security Technology, Inc. (“Biometrics”), also known as Biometrics Secure Tech, Inc.; and,

d. Fidelity First Financial Corporation (“FFIRD”), formerly a lender in the subprime mortgage market which effectively had no operations from late 1999 through 2003.

16. In or about November 2002, while advising investors in the Lancer Group hedge funds that the performance and valuation of the funds had increased, **MICHAEL LAUER** began to decline requests from investors seeking “redemptions,” i.e. to redeem in cash their share of the funds.

17. In or about April 2003, Lancer Partners filed for bankruptcy. In or about July 2003, the United States District Court for the Southern District of Florida appointed an individual – known

as a Receiver – to take over the Lancer Group hedge funds with the specific purpose of, among other things, managing their business affairs and safeguarding their assets.

**COUNT 1**  
**Conspiracy to Commit Wire, Mail and Securities Fraud**  
**(18 U.S.C. § 371)**

1. Paragraphs 1 through 17 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around October 1999 through in or around July 2003, in the Southern District of Florida, and elsewhere, the defendants,

**MICHAEL LAUER,**  
**MARTIN GARVEY,**  
**ERIC HAUSER,**  
**LAURENCE ISAACSON, and**  
**MILTON BARBAROSH,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with each other, with Consultant C, and with others known and unknown to the Grand Jury, 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 or 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;

(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, in violation of Title 18, United States Code, Section 1343;

(c) to willfully, knowingly, and unlawfully, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, directly and indirectly, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, that is, shares of the Lancer Group hedge funds, and in connection with such transactions, (i) employing devices, schemes, and artifices to defraud holders of shares of the Lancer Group hedge funds; (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon holders of shares of the Lancer Group hedge funds, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a) and Title 17, Code of Federal Regulations, Section 240.10b-5.

#### **PURPOSE OF THE CONSPIRACY**

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to induce investors to invest in the Lancer Group hedge funds by making materially false representations and concealing and omitting to state material facts in order to unjustly enrich themselves through: (a) payments of incentive performance fees and management fees by fraudulently inflating the value of securities held by the Lancer Group hedge funds and by encouraging new investments and discouraging redemptions; (b) payments of other purported fees,

including "consulting" and "finder's" fees; (c) redemptions by the conspirators of their own personal holdings in the funds; and (d) sales by the conspirators of their own personal holdings of the securities in which the funds invested.

**MANNER AND MEANS OF THE CONSPIRACY**

The manner and means by which the defendants and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

**Falsely Inflated Net Worth and Net Asset Valuations**

4. **LAURENCE ISAACSON, MILTON BARBAROSH**, Consultant C, and others known and unknown to the Grand Jury would identify shell companies that **MICHAEL LAUER, MARTIN GARVEY, ISAACSON, BARBAROSH**, Consultant C, and others would cause the Lancer Group hedge funds to take a controlling interest in through the purchase of large amounts of securities issued by the shell companies.

5. **MICHAEL LAUER, MARTIN GARVEY, LAURENCE ISAACSON, MILTON BARBAROSH**, Consultant C, and others known and unknown to the Grand Jury would cause the Lancer Group hedge funds to acquire, sometimes at pennies per share, large amounts of restricted stock of the shell companies.

6. After causing the Lancer Group hedge funds to acquire large amounts of the stock of the shell companies, and at times within a few days of the Lancer Group hedge funds acquiring the large amounts of restricted stock, **MICHAEL LAUER, MARTIN GARVEY, ERIC HAUSER**, Consultant C, and others known and unknown to the Grand Jury would artificially create the appearance of a higher market value for the shell companies' stock at month's end and at year's end by, among other things:



a. directing brokers, including brokers at Shamrock, to place orders to purchase smaller amounts of the shell companies' unrestricted stock at the much higher "open market" price; and

b. directing brokers to place additional smaller orders to purchase the shell companies' unrestricted stock at gradually increasing prices, which would be designed to move the market price of the stock up to a target price by the end of the trading day.

7. **MICHAEL LAUER** would use the fraudulently inflated higher prices of the stock of the shell companies to value all of the stock in the shell companies held by the Lancer Group hedge funds, including the restricted stock which had been acquired for only pennies per share, resulting in grossly inflated valuations and performance of the Lancer Group hedge funds.

8. The falsely inflated values would:

a. generate large incentive performance and management fees for **MICHAEL LAUER, MARTIN GARVEY** and **ERIC HAUSER**;

b. discourage existing investors in the Lancer Group hedge funds from redeeming their holdings in the funds by creating the false appearance that the funds were advancing in performance and that the investors' holdings in the funds were increasing in value; and

c. encourage new investments in the Lancer Group hedge funds.

9. In order to maintain control of the shell companies and to conceal and perpetuate the fraud, **MICHAEL LAUER, MARTIN GARVEY, LAURENCE ISAACSON**, and Consultant C would:

a. install **ISAACSON** and other associates, including the wife of Consultant C, as directors and officers of the shell companies;

- b. cause the Lancer Group hedge funds to make loans to the shell companies;
- c. cause loans and other fund transfers to be made between some of the shell companies; and
- d. cause persons and entities holding other shares of the shell companies to enter into agreements restricting their ability to sell the stock.

**False Representations to Investors and Others**

10. To induce new investors to invest in the Lancer Group hedge funds, and to maintain existing investors, **MICHAEL LAUER** would make false and misleading representations to investors and others regarding, among other things:

- a. the status of the Lancer Group hedge funds, including the funds' valuation and performance and their holdings;
- b. the professional qualifications and experience of persons associated with the management of the Lancer Group hedge funds; and
- c. the status of audits of the Lancer Group hedge funds.

11. **MICHAEL LAUER, MARTIN GARVEY, ERIC HAUSER, LAURENCE ISAACSON, MILTON BARBAROSH,** and Consultant C would create and cause to be created false documents that were submitted to the auditors of the Lancer Group hedge funds and others containing false and misleading representations about the nature, activities of, and the valuation of, the shell companies.

12. **MICHAEL LAUER** would conceal from and fail to disclose to investors that **LAUER** and the Lancer Group hedge funds effectively controlled shell companies in which the

Lancer Group hedge funds invested, including NUDZ, SMXP, AUGC, and FFIRD, when LAUER had represented to investors that the hedge funds would have no such control.

#### **Fraudulent and Sham Appraisals**

13. **MICHAEL LAUER, MARTIN GARVEY, ERIC HAUSER, LAURENCE ISAACSON, MILTON BARBAROSH**, and Consultant C would cause falsely inflated valuations of shell companies to be prepared, including false valuations as of December 31, 2001, valuing holdings in NUDZ at approximately \$139 million; in SMXP at approximately \$145 million; and in AUGC at approximately \$279 million; and false valuations as of December 31, 2002, valuing holdings in FFIRD at approximately \$114 million.

14. In order to avoid the scrutiny of Offshore's auditor and others, **MICHAEL LAUER, LAURENCE ISAACSON, and MILTON BARBAROSH** would cause Appraiser L to issue purportedly independent valuations of the shell companies, which were in fact sham valuations prepared by **BARBAROSH** and his associate for Appraiser L's "rubber stamp" signature and which were based on false and misleading information provided by **ISAACSON** and **BARBAROSH**.

#### **Fake Portfolios**

15. **MICHAEL LAUER** would provide investors with false information regarding the portfolios of the Lancer Group hedge funds, including fake portfolios and lists he represented to be actual holdings or representative of the holdings in order to allay the investors' concerns regarding the investments in the Lancer Group hedge funds.

16. As a result of the above-described fraudulent scheme, the loss to investors in the Lancer Group hedge funds was in excess of \$200 million.

**OVERT ACTS**

In furtherance of the conspiracy and to achieve the objects and purpose thereof, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. In or around October 1999, **MICHAEL LAUER** caused Offshore to purchase approximately 14 million restricted shares of SMXP at 2 cents per share or a total of approximately \$300,000.

2. In or around October 1999, **MICHAEL LAUER** caused SMXP to enter into an agreement with an entity controlled by **MILTON BARBAROSH**, which owned a significant amount of SMXP shares, to restrict the entity's ability to sell its SMXP holdings.

3. On or around December 20, 1999, **MICHAEL LAUER** caused the Lancer Group hedge funds to purchase approximately 536,000 shares of restricted FFIRD shares at approximately \$1 per share or a total of approximately \$536,000.

4. In or around late December 1999, **MICHAEL LAUER, MARTIN GARVEY, ERIC HAUSER**, and Consultant C effectuated a plan to cause the Lancer Group hedge funds to purchase on the open market additional much smaller amounts of SMXP stock to move up the share price to an artificial price of approximately \$1.25 per share, which **MICHAEL LAUER** used to value the Lancer Group hedge funds' holdings of SMXP at approximately \$20.6 million.

5. In or around late December 1999, **MICHAEL LAUER, MARTIN GARVEY, ERIC HAUSER**, and Consultant C effectuated a plan to cause the Lancer Group hedge funds to purchase on the open market additional much smaller amounts of FFIRD stock to move up the share