

**Texas Pain Society's
8th Annual Scientific Meeting**

October 28, 2016

*How to Recognize A Legitimate Business
Deal & Make Money Legally*

Mike Kreager



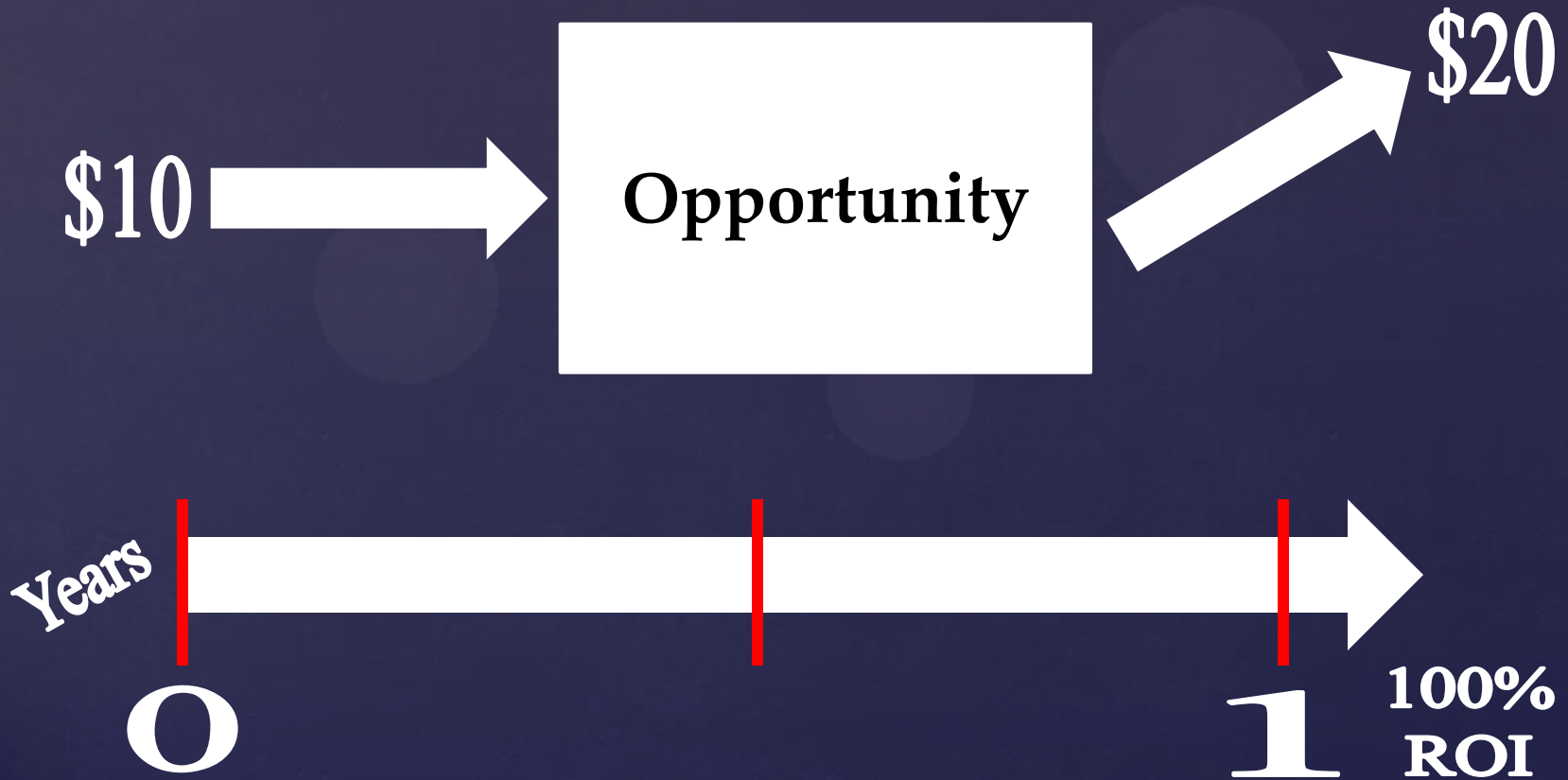
Kreager Mitchell, PLLC
7373 Broadway, Suite 500
San Antonio, Texas 78209
(210) 829-7722
jniето@kreagermitchell.com

- ❖ Board Certified Tax Law
- ❖ Best Lawyers in America (2007-2016)
- ❖ Texas Super Lawyers (2007-2016)
- ❖ J.D., Southern Methodist University
- ❖ LL.M. (in taxation), Southern Methodist University
- ❖ B.A., cum laude, Vanderbilt University

Mike Kreager, J.D., LL.M

- Mike Kreager has practiced health care, estate planning, business and tax law in San Antonio, Texas for 37 years. He was admitted to the Bar in 1979. Mike concentrates on providing a full range of services to individuals and businesses, with a particular emphasis on physicians and health care entities.
- Mike is Board Certified in Tax Law by the Texas Board of Legal Specialization. He graduated with honors from Vanderbilt University and in the top 10% of his class from SMU Law School in 1979. Mike also has a Master's Degree in tax law from SMU.
- Mike's law practice includes health care law, corporate, partnership and business entity and tax planning, business transactions and finance, family limited partnerships, estates, wills and trusts, and other practice areas relating to individuals and businesses.

Good Business Deal



Bad Business Deal



Questions to Ask

- 1. Who is the Promoter?**
- 2. What are the Economics?**
- 3. What is the Deal?**
- 4. What are the Compliance Concerns?**
- 5. Who can Advise You?**

Who is the Promoter?

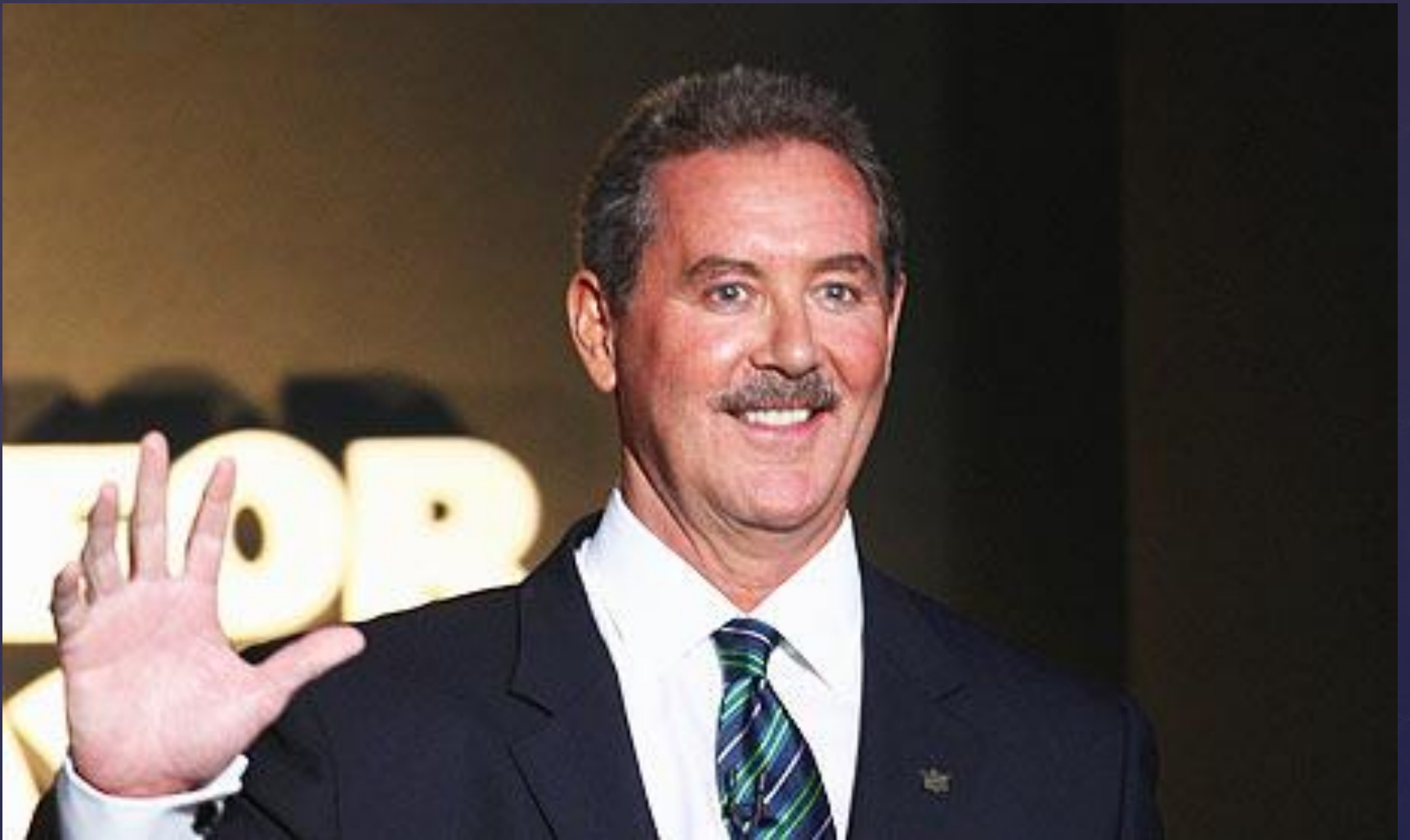
- 1. Do you know them?**
- 2. What are their qualifications?**
- 3. What is their track record?**
- 4. How to check them out?**



Bernie Madoff

- 1. Sterling Reputation**
- 2. Average 11-12% annual return
over 20 years**
- 3. Unknown Auditor**
- 4. Lack of Transparency**

- 5. 2008 Financial Crisis**
- 6. \$65 billion paper loss/\$17.5 billion actual**
- 7. 150 year sentence**
- 8. Victim Recovery – 65%**



Alan Stanford

- 1. Long term high profile**
- 2. Antinguan Bank CDs at double US CD rate**
- 3. Insider Governance**
- 4. Lack of Transparency**

5. \$6-8 billion loss

6. 100 year sentence

7. Victim Recovery - <5%



Edward Okun

- 1. Unknown Reputation**
- 2. Roll Up of 1031 Exchange Companies**
- 3. Lack of Transparency**

- 4. \$125 million loss**
- 5. 100 year sentence**
- 6. Victim Recovery – 44%**

What Are the Economics?

- 1. Initial Investment.**
- 2. Total Targeted Investment.**
- 3. What are the Projected Returns?**
- 4. How much debt?**

5. What are the key assumptions?

- **Revenue**
- **Costs**

6. What is the Promoter's Fee or Carried Interest?

What is the Deal?



Van Halen

Fruit

Fresh fruit platter, including apples, oranges, grapes, pears, melons, kiwi fruit and whole bananas

Hot Drinks

Hot coffee (brewed, not instant)

Hot water (for tea)

Lipton tea bags

Natural and herbal tea bags (e.g., Celestial Seasonings)

One (1) lb. Tupelo honey

Twelve (12) fresh lemons (with knife and cutting board)

Cream and sugar

NOTE: Water and coffee must be kept hot continuously with electric hot plates, urns or other suitable devices.

Munchies

Potato chips with assorted dips

Nuts

Pretzels

→ M & M's (WARNING: ABSOLUTELY NO BROWN ONES)

Twelve (12) Reese's peanut butter cups

Twelve (12) assorted Dannon yogurt (on ice)

Munchies

Potato chips with assorted dips

Nuts

Pretzels

 **M & M's (WARNING: ABSOLUTELY NO BROWN ONES)**

Twelve (12) Reese's peanut butter cups

Twelve (12) assorted Dannon yogurt (on ice)

- **The first band to take huge productions into third-level markets.**
- **9 eighteen-wheeler trucks, full of gear, where the standard was 3.**
- **Many technical errors —girders couldn't support the weight, flooring would sink, or doors weren't big enough.**
- **The contract rider read like a version of the Chinese Yellow Pages because there was so much equipment, and so many human beings to make it function.**

- **So just as a little test, in the technical aspect of the rider.**
- **Article 126, in the middle of nowhere, was: “There will be no brown M&M’s in the backstage area, upon pain of forfeiture of the show, with full compensation.”**
- **I would walk backstage, if I saw a brown M&M... we’ll, line-check the entire production. Guaranteed you’re going to arrive at a technical error.**
- **They didn’t read the contract.**

Look Out For

- 1. Capital Calls.**
- 2. Guarantees.**
- 3. Promoter Fees.**

- 3. Covenant not to Compete.**
- 4. Expulsion Right.**
- 5. Governance that is a Dictatorship.**

- 7. Lack of Voting Rights.**
- 8. Restrictions on Transfer of Ownership Valuation.**
- 9. Right to Exit.**
- 10. Ancillary Arrangements.**

Key Legal Issues for Practice Deals

Federal Anti-Kickback Statute.

Federal Stark Law.

State Anti-Kickback Statutes.

**What Every Practice Deal
Must Have**

Patient Volume



Tuomey Regional Medical Center

- 
- 1. Protect Hospital Outpatient Center.**
 - 2. 19 Physician Part-Time Contracts.**
 - 3. Compensation Based on Revenue.**
 - 4. Valuation Opinion.**
 - 5. Legal Opinion.**

Tuomey - Lawsuit

1. 20th Doctor Questioned.

2. Qui Tam.

3. 10 year history.

- 4. Week Long Jury Trial - \$237 million - 21,730 false claims.**
- 5. \$72 million settlement.**
- 6. Tuomey sues Law Firm.**

Health Diagnostic Laboratory Inc.



- 1. 2012: \$400 million Revenue
\$130 million Profit
33% Profit Margin
\$83 million distributed
to 16 owners**
- 2. Blood testing – cardiac and
other markers.**

- 3. Paid Physicians \$17 per blood draw.**
- 4. Encouraged excessive testing.**
- 5. Patients not billed.**

**1. DOJ Settlement for
\$100 million.**



- 1. Texas LP.**
- 2. Physician Investors.**
- 3. \$10,000 Buy In.**
- 4. Limited to 40% Physician
Ownership.**

- 5. Monthly Physician
distribution of Profit –
Multiple of Investment.**
- 6. Non-referrers Expelled.**

Cigna Sues Sky Toxicology for \$32 million

- 1. Waiver of Co-Pay.**
- 2. Inducement of Referrals – focused
on drug rehab centers.**
- 3. Sky High claims.**

- 4. Termination of Non-Referrers.**
- 5. Confidential Settlement.**
- 6. Sky Toxicology Closes.**

United Healthcare Sues Sky Toxicology for \$50 million

- 1. Physician distributions were disguised kickbacks.**
- 2. Targeted Physicians and Facilities for Investment based on ability to Refer.**
- 3. Terminated Low or No Referrers.**

Series LLC

- 1. Next Generation of Toxicology Investments.**
- 2. Series – Unique LLCs.**
- 3. Permits subdivisions of owners.**

LLC
(CLIA License)
Promoters 100%

Series 1

40%

Doctors 1-3

Series 2

40%

Doctors 4-5

Legal Issues

- 1. Exclusion of Government Programs**
 - AKS and Stark do not apply.
- 2. Texas Illegal Remuneration Statute**
 - Applies Regardless of Payor.
- 3. Consumer Protection.**

Key Documents

1. **Private Placement Memorandum.**
2. **Governing Documents.**
3. **Projections.**

Key Advisors

1. CPA.
2. Healthcare Attorney.