

Rod Max Mediates HealthSouth Recovery of \$133 Million in Suit Against Investment Bank UBS

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HealthSouth recovers \$133 million in suit against investment vbank UBS

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HealthSouth Corp. continued its winning streak against the regime of former Chief Executive Richard Scrushy, recovering \$133 million Thursday from an investment bank accused of aiding a massive corporate fraud at the Birmingham-based company.

UBS, a New York investment bank that sold shares and bonds of the physical therapy company to investors, agreed to pay \$100 million cash and forgive \$33 million it was owed by HealthSouth. The agreement settles the UBS portion of a Jefferson County Circuit Court lawsuit against the bank, other HealthSouth advisers and Scrushy.

The suit said UBS investment bankers knew HealthSouth faked its books to the tune of \$2.6 billion from 1996 through 2002 to boost profits and trigger performance bonuses for top executives. It also says UBS analysts enthusiastically recommended investors buy HealthSouth shares, while knowing the stock was being propped up by phony numbers.

"This settlement represents another milestone in HealthSouth's recovery of damages sustained by the company under prior management," said John Whittington, HealthSouth's general counsel.

The case began in 2002, when shareholder Wade Tucker sued Scrushy, UBS, auditor Ernst & Young and others, claiming their actions harmed the company. The action was a derivative lawsuit, meaning it was filed on behalf of HealthSouth. Scrushy's part of the case is set for trial in January, lawyers said. The portion of the case against Ernst & Young is still pending.

More than a dozen former HealthSouth employees and executives pleaded guilty to faking profits, assets and cash balances after prosecutors closed in. They included five former chief financial officers who held the post under Scrushy's tenure, which ended with an FBI raid on HealthSouth's U.S. 280 headquarters in March 2003. All five testified against him during a 2005 federal criminal trial at which he was acquitted.

The HealthSouth fraud cut the company's shares by more than 90 percent, to less than 10 cents each, after it was publicized. The company acknowledged bankruptcy was a threat, and tens of millions of dollars were spent to reconstruct the financial books.

Thursday's win wasn't the first for HealthSouth's post-Scrusby management and board, which replaced all former executives and directors with ties to the company's founder:

In 2006, Scrusby was ordered to repay HealthSouth \$48 million, plus interest. That's how much Scrusby was paid in bonuses while CEO. The Jefferson County suit argued the bonuses were triggered only by fraud and should be refunded. The judge concurred.

In 2007, HealthSouth collected a \$440 million tax refund from the IRS. The refund was to reimburse the company for overpaying taxes on fictitious profits devised by HealthSouth's top managers.

20% of 2007 profit:

The \$133 million recovery represents about 20 percent of HealthSouth's 2007 profit, which was \$653 million. Shares of HealthSouth, which reported the settlement after the stock market closed Thursday, have fallen 46 percent in the past year.

Scrusby is in federal prison in Beaumont, Texas, after being convicted of paying bribes to former Gov. Don Siegelman for a spot on a state health-care permitting board. In June 2007, Scrusby was sentenced to serve six years, 10 months.

His Birmingham federal criminal trial lasted seven months and was the first government attempt to prosecute a CEO under the Sarbanes-Oxley laws, which were passed after the fraud and bankruptcy of Enron Corp. to increase criminal penalties on dishonest executives.

Under the terms of an earlier settlement HealthSouth reached with investors who sued in a class action, 25 percent of the UBS settlement proceeds will go to class members. The rest will go to pay down HealthSouth debt, the company said.

Much of that debt was taken out under Scrusby to pay for acquisitions, acquisitions the government said during the criminal trial were merely a smokescreen designed to hide the fraud.

"Max concluded the mediation last week after several months of work with the parties in Miami, New York and Birmingham."