

## In re HealthSouth Bondholder Litigation

**COURT:** United States District Court, Northern District of Alabama, Southern Division  
**CASE NUMBER:** 03-cv-1502  
**JUDGE:** Hon. Karon O. Bowdre  
**CLASS PERIOD:** 03/31/1998 - 03/18/2003  
**CASE CONTACTS:** Max W. Berger, Salvatore J. Graziano, Lauren McMillen Ormsbee

Numerous securities class action lawsuits were filed against HealthSouth and certain individual defendants. On June 24, 2003, the Court appointed the Retirement Systems of Alabama ("RSA") to serve as Lead Plaintiff on behalf of all persons who were damaged as a result of their purchases of HealthSouth debt securities between March 31, 1998 and March 18, 2003 (the "Class Period"). BLB&G was appointed to serve as Co-Lead Counsel for the bondholder class.

### **BLB&G and Lead Plaintiffs Obtain Additional Settlements of \$133.5 Million with UBS and E&Y – Total Recoveries of \$230 Million**

On April 23, 2010, RSA announced that it had reached separate class action settlements with UBS AG, UBS Warburg LLC, Benjamin D. Lorello, William C. McGahan and Howard Capek (collectively, UBS) and with Ernst & Young LLP (E&Y). The total consideration to be paid in the UBS settlement is \$100 million in cash and E&Y has agreed to pay \$33.5 million in cash, for a total of \$133.5 million. These settlements follow an earlier settlement with HealthSouth and its former outside directors valued at approximately \$90 million for the bond class. Bond purchasers will also receive approximately 5% of the recovery achieved in Alabama state court in a separate action brought on behalf of HealthSouth against UBS and Richard Scrushy. The total settlement for injured HealthSouth bond purchasers will be in excess of \$230 million. RSA believes that this is an outstanding recovery for the class in that it should recoup over a third of bond purchaser damages. Please click on the [Case Documents](#) page to obtain a copy of the Notice of Settlement. On July 26, 2010, the district court granted final approval to the UBS and E&Y settlements, and entered a final judgment and order of dismissal with prejudice as to all remaining parties.

### **BLB&G and Lead Plaintiffs Obtain \$445 Million Recovery for HealthSouth Investor Class**

On February 22, 2006, RSA announced that it and several other institutional plaintiffs leading investor lawsuits arising from the corporate scandal at HealthSouth Corporation had reached a class action settlement with HealthSouth, certain of the company's former directors and officers, and certain of the company's insurance carriers. The total consideration to be paid in the settlement is approximately \$445 million, comprised of \$230 million in cash (to be paid by HealthSouth's insurance carriers) and a combination of HealthSouth stock and warrants with an approximate value of \$215 million. The bondholder portion of this settlement is approximately \$90 million.

Former HealthSouth CEO Richard Scrushy is not a party to this settlement, nor does the settlement resolve the investors' pending claims against other defendants, including HealthSouth's former auditor, Ernst & Young LLP, HealthSouth's former banker, UBS, and former officers of the company who have pleaded guilty to crimes related to the HealthSouth scandal. One significant aspect of the settlement is that HealthSouth, RSA, and the other plaintiffs have expressly agreed to jointly prosecute their respective claims against Ernst & Young, UBS, and certain other defendants that the company, as well as the investors, have sued.

A settlement fairness hearing was held on January 8, 2007 before the Honorable Karon Owen Bowdre, United States District Judge, at the United States Courthouse, Northern District of Alabama, Southern Division. On January 11, 2007,

Judge Bowdre issued a Partial Final Judgment and Order of Dismissal with Prejudice, approving the settlement and finding it fair, reasonable and adequate to the Bondholder Class in all respects.

## **Background**

On March 19, 2003, the investment community was stunned by the charges filed by the Securities and Exchange Commission against Birmingham, Alabama based HealthSouth Corporation and its former Chairman and Chief Executive Officer, Richard M. Scrushy, alleging a "massive accounting fraud." Stephen M. Cutler, the SEC's Director of Enforcement, said "HealthSouth's fraud represents an appalling betrayal of investors."

On August 2, 2004 the RSA, together with the other Bondholder Plaintiffs, the Houston Firefighters' Relief and Retirement Fund and the State Universities Retirement System of Illinois, filed their Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws setting forth the legal theories and claims. The Bondholder Complaint asserts 53 Counts of securities law violations against HealthSouth; the Company's senior officers, including Scrushy; the entire HealthSouth Board of Directors; the Company's former auditors, Ernst & Young; and every investment bank that sold HealthSouth's debt to investors, including the lead investment bankers, Salomon Smith Barney (in its various iterations prior to becoming Citigroup Global Markets, a subsidiary of Citigroup) and UBS Warburg, together with the lead investment bankers at those two firms and the primary securities analyst at UBS.

The facts supporting these claims are asserted in the Joint Second Amended Consolidated Class Action Complaint for Violations of the Securities Laws, which Bondholder Plaintiffs filed together with the plaintiffs in the HealthSouth Stockholder Litigation. The facts alleged in the Joint Complaint, which are based on the extensive investigation conducted by Lead Counsel, detail a massive scheme undertaken over the course of sixteen years to manipulate HealthSouth's financial statements by creating fictitious revenue and income, capitalizing normal operating expenses, failing to write off impaired accounts receivable and other assets, and cheating Medicare and private insurers. As set forth in the Joint Complaint, this scheme - the longest running financial fraud in U.S. history - included regular meetings, referred to within HealthSouth as "family meetings," during which "family members," operating under the direction of former CEO Scrushy, decided how much income needed to be created, and how to do so in order to meet Wall Street's expected financial results. The Joint Complaint also describes the roles Ernst & Young and the investment banks and bankers played in HealthSouth's financial fraud.

HealthSouth has withdrawn the financial statements it issued during the Class Period, and has admitted that its earnings were overstated by over \$2.8 billion, wiping out every dollar of profit reported by HealthSouth as a public company. Fifteen former employees - including its most senior accounting officers, including every chief financial officer in HealthSouth's history - already have pleaded guilty to criminal fraud charges.

On July 19, 2006, the Bondholder Plaintiffs and the Stockholder Plaintiffs filed an Amendment to the Joint Second Amended Consolidated Class Action Complaint. On June 30, 2006, after hearing oral arguments on Defendants' motions to dismiss on June 28, 2006, the Court issued several orders. Judge Bowdre sustained Plaintiffs' claims against Ernst & Young for violations of the Securities Act of 1933 (the "Securities Act") for making false statements in the registration statements of four HealthSouth debt offerings made between September 2000 and May 2002, as well as Plaintiffs' claims for violations of the Securities and Exchange Act of 1934 (the "Exchange Act") for conduct after July 30, 1999. Judge Bowdre also sustained Plaintiffs' claims against UBS and certain of its current and former employees for violation of the Exchange Act for conduct after July 30, 1999. The Court reserved ruling on Plaintiffs' Rule 10b-5 (a) and (c) claims against all of the Underwriter Defendants, and also reserved ruling, pending input from the SEC, on Plaintiffs' Securities Act claims against the Underwriter Defendants for making false statements in the registration statements and in connection with the sale of the four bond issues. In oral rulings made January 23, 2007 and affirmed in a written order on September 6, 2007, the Court denied E&Y and the UBS Defendants' motions to dismiss "scheme to defraud" claims under § 10(b) of the Exchange Act, and granted in part and denied in part UBS's motion to dismiss certain claims under the Securities Act. On February 4, 2009, the Court denied UBS's Rule 12(c) motion for judgment on the pleadings to dismiss plaintiffs'

§10(b) "scheme to defraud" claims. On February 26, 2009, the Court granted UBS's motion for partial summary judgment, dismissing the remaining claims against UBS brought under § 11 of the Securities Act.

On October 3, 2007, Bondholder Lead Plaintiff moved for class certification and appointment as class representative. On September 30, 2009, the Court issued an order certifying the Bondholder Class, appointing RSA and named plaintiffs Houston Firefighters' Relief and Retirement Fund ("HFRRF") and State Universities Retirement System of Illinois ("SURS") as Bondholder Class representatives, and appointing BLB&G and Cunningham Bounds, LLC Bondholder Class Counsel and Donaldson & Guin, LLC as Bondholder Class Liaison Counsel.