



# Verdict Weakens Ignorance Defense

*Former Executives  
Of Enron, HealthSouth  
Also Blame Underlings*

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NEW YORK, March 16 — Former WorldCom Inc. chief executive Bernard J. Ebbers found out Tuesday what it feels like to take the ultimate gamble and lose.

Facing a criminal case in which prosecutors had no documents clearly linking him to the multibillion-dollar central fraud, Ebbers, 63, took the stand, admitted he had no clue about what was happening in his own company and endured a humiliating cross-examination. On Tuesday, 12 New Yorkers convicted him anyway.

As a result, the other corporate titans on trial and awaiting trial for equally large financial crimes — HealthSouth Corp. founder Richard M. Scrushy and Enron Corp. leaders Kenneth L. Lay and Jeffrey K. Skilling — should be sleeping uneasily, outside legal analysts said.

"This is a fatal blow to the 'the CEO is above it all and out of the loop' defense," said defense attorney Jacob S. Frenkel. "This goes to show that CEOs can be held accountable for false filings" to the Securities and Exchange Commission even when they do not get personally involved in the preparation. Ebbers was convicted of seven false-filing counts, even though he personally signed on-

BY ADAM ROUNTREE — BLOOMBERG NEWS

**Bernard J. Ebbers climbs into a taxi after the guilty verdict was delivered. He testified during his trial that he missed \$800 million swings in key expenses.**

See STRATEGY, E5, Col. 1



# Jury Rejects Out-of-Loop Defense

STRATEGY, From E1

ly two of filings.

The Ebbers verdict could serve as a bellwether for the current crop of corporate scandals because his defense — that he was misled by trusted underlings — is echoed in claims from the leaders of Enron and HealthSouth.

"He is one of the most prominent CEO defendants, and, in deciding whether to settle criminal cases, lawyers are going to be looking to see what happens in other cases," said Robert J. Giuffra Jr., a partner at Sullivan & Cromwell LLP in New York.

Earlier high-profile defendants such as Martha Stewart and Frank P. Quattrone were tried for personal misdeeds, and the heads of Tyco International Ltd. and Adelphia Communications Corp. simply argued that their actions were not criminal.

By contrast, Ebbers's defense lawyers conceded fraud had occurred but sought to distance their client from it.

Lead attorney Reid H. Weingarten argued that the government's star witness — former finance chief Scott D. Sullivan — was falsely accusing Ebbers of crimes to cut his own prison time.

But that strategy set the case up as a "he said-he said" case and put strong pressure on Ebbers to testify and contradict Sullivan's assertion that he repeatedly told Ebbers in private meetings that he was making improper expense and revenue adjustments. ♦

Once on the stand, Ebbers was put into the position of repeatedly having to explain how he could have missed \$800 million swings in a key expense area at a time he was canceling the company coffee service to save \$4 million.

In the end, according to one of the jurors, some panel members decided not to believe either Ebbers or Sulli-

van, preferring instead to seek corroborating evidence from documents and witnesses they perceived to be honest.

After the verdict, Weingarten defended his decision to put Ebbers on the stand. "I thought it was an easy decision, and I thought he did fine. . . . I would do it again today," Weingarten said.

Outside lawyers agreed the decision made sense, but they noted that the defense team was fighting a difficult battle. "It wasn't as if Ebbers was testifying against a very appealing witness" in Sullivan, said Angela C. Agrusa, a litigator who specializes in complex financial fraud cases. "What you can't overcome is that the company lost a lot of money, and he is the boss."

Still, the analysts cautioned, every jury is independent, and there are enough differences between Ebbers's case and those of the Enron and HealthSouth bigwigs that Tuesday's win for the government does not automatically translate into a defeat for the other defendants.

Lay, like Ebbers, claims to have been kept in the dark by subordinates, but he may do better because of the role he played at Enron and the complexity of the fraudulent partnerships that ultimately brought it down, they said.

Lay served as the outside face of the company for years, dealing with investors and hobnobbing with politicians and international leaders, rather than running day-to-day operations. Unlike Ebbers, who was convicted of participating in WorldCom's fraud from its beginning, Lay is charged mainly for optimistic statements he made to investors and employees in the weeks before Enron filed for bankruptcy protection.

"Lay will have to consider that the Ebbers jury didn't buy the out-of-the-loop defense, but what else can he do? He can't argue there wasn't a

fraud," said former federal prosecutor David M. Rosenfield. A spokeswoman for Lay declined to comment.

For his part, Scrushy's attorney Donald V. Watkins took pains to distinguish his client's case from that of Ebbers. For one thing, Watkins said, Scrushy, 52, is on trial in Birmingham, a city he has lavished with charitable contributions. For another, HealthSouth never filed for bankruptcy protection, unlike Enron and WorldCom.

"As we have consistently stated throughout the course of the trial . . . unlike Enron and WorldCom, HealthSouth was, and continues to be, a solid and real company," Watkins said. "This fine company was inspired and developed by Richard Scrushy, and we expect full vindication at the conclusion of the trial."

Lay, 62, may also think pleading guilty is not an option, the outside lawyers said.

"I don't know that a conviction is going to put pressure on people to plead guilty, particularly if you're 60 years old and looking at a guideline sentence of 15 or 20 years," said Lawrence Byrne, a partner at White & Case LLP. "That's effectively a life sentence, so what choice do you have but to go to trial?"

Still, Ebbers's conviction sends a strong warning that jurors will be skeptical of business executives who pocketed hundreds of millions of dollars yet claim they were simply functioning as a "coach" rather than running the show.

"The message to others awaiting like trials as well as those running other corporate giants is clear: If you play in big leagues, but only intend to coach, expect to get benched to the nearest federal prison," said Charna E. Sherman, a defense attorney.

*Masters reported from New York. Johnson reported from Washington. Staff writer Ben White also contributed to this report.*