

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE HEALTHSOUTH)	Consolidated Case No.
CORPORATION SECURITIES)	CV-03-BE-1500-S
LITIGATION)	
)	<u>CLASS ACTION</u>
)	
This Document Relates To:)	
)	
<i>In re HealthSouth Corporation</i>)	
<i>Stockholder Litigation</i> , Consolidated)	
Case No. CV-03-BE-1501-S)	

PARTIAL FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE AS TO UBS DEFENDANTS

This matter came before the court for hearing on July 22, 2010 pursuant to the Order Preliminarily Approving Settlement with UBS Defendants and Providing for Notice (“Notice Order”) dated May 12, 2010 (doc. #1668), and on “Motion by Stockholder Lead Plaintiffs for Final Approval of Settlement with UBS Defendants” (doc. #1680); the motion includes the application of the Stockholder Lead Plaintiffs and the UBS Defendants¹ (collectively, the “Settling Parties”) for approval of the UBS Settlement set forth in the Stipulation of Settlement with UBS Defendants dated as of April 12, 2010, (the “Stipulation” or “Settlement”) (doc. #1663). By Order of

¹ UBS Defendants means defendants UBS AG; UBS Warburg, LLC; Howard Capek; Benjamin D. Lorello; and William C. McGahan.

the court dated March 31, 2009 (doc. # 1581), this action was certified as a class action on behalf of the Stockholder Class pursuant to Federal Rule of Civil Procedure 23. Due and adequate notice was given to the Stockholder Class (of which the UBS Stockholder Class is a subset) as required in the Notice Order of the certification of the class, of the right to opt out of the class, and of the proposed settlement with the UBS Defendants on behalf of the UBS Stockholder Class. The court has considered all papers filed and proceedings held in this matter. Therefore, being fully informed in the premises and finding that good cause exists, the court GRANTS the motion for final approval of the settlement and ORDERS as follows:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise stated in this Order.

2. This court has jurisdiction over the subject matter of the Stockholder Action and over all parties to the Stockholder Action, including all UBS Stockholder Class Members and all UBS Defendants.

3. Pursuant to Federal Rule of Civil Procedure 23, this court approves the Settlement set forth in the Stipulation and finds that

(a) the Stipulation is, in all respects, fair, reasonable, and adequate and in the best interest of the UBS Stockholder Class;

(b) no collusion existed in connection with the Stipulation;

(c) the Stipulation was the product of informed, arm's-length negotiations among competent and able counsel; and

(d) the record is sufficiently developed and complete to have enabled the Stockholder Lead Plaintiffs and the UBS Defendants to have adequately evaluated and considered their positions.

4. Therefore, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the court finally approves the Stipulation and the Settlement contained in it in all respects, and directs the Settling Parties to perform its terms.

5. The court finds that the UBS Stockholder Class includes all persons and entities who, between September 20, 2000 and March 18, 2003, inclusive, purchased or otherwise acquired the stock or options of HealthSouth and were damaged thereby. Excluded from the UBS Stockholder Class are current and former defendants, members of the immediate family of any current or former defendant, the directors, officers, subsidiaries and affiliates of HealthSouth, any person, firm, trust, corporation, officer, director or other individual or entity in which any current or former defendant has a controlling interest, and the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such excluded party. Also excluded from the UBS Stockholder Class are those Persons identified in Exhibit A to this Order, who the court finds and concludes validly and timely requested exclusion from the UBS Stockholder Class.

6. The court DISMISSES as to the UBS Defendants only all Released Claims of the Stockholder Lead Plaintiffs and the UBS Stockholder Class with prejudice, without costs as to any Settling Party, except as and to the extent of costs provided in the Stipulation and in this Order. However, this Judgment shall not

dismiss any claims of the Stockholder Lead Plaintiffs or the UBS Stockholder Class against the Non-Settling Defendant or any claims of the Bondholder Class. This Judgment also shall not change or modify any of the terms of the Stipulation of Partial Settlement, filed with the court on September 26, 2006 (the “HealthSouth Settlement”) (doc. #533) and/or the Corrected Stipulation of Settlement with Ernst & Young LLP dated as of March 26, 2009 and filed on March 26, 2009 (the “E&Y Settlement”) (doc. #1577).

7. Upon the Effective Date², Stockholder Lead Plaintiffs, all Members of the UBS Stockholder Class, and anyone claiming through or on behalf of any of them, are permanently BARRED, ENJOINED and RESTRAINED from instituting, commencing or prosecuting in the Federal Actions, or any other action or proceeding, any Released Claims against any of the Released Persons. The Released Claims against each and all of the Released Persons shall be released and dismissed with prejudice and on the merits, and the UBS Stockholder Class shall be deemed to have covenanted not to sue the Released Persons with respect to any such Released Claims. Nothing in this paragraph shall release the Released Claims against the Released Persons or any Person listed on Exhibit A to this Order, who have timely and validly opted out of the UBS Stockholder Class.

8. Upon the Effective Date, the Stockholder Lead Plaintiffs and the UBS Stockholder Class, on behalf of themselves, their heirs, executors, administrators,

²Based on the definition of Effective Date contained in the UBS Stipulation (doc. 1663), the court understands this date to be the date on which this Judgment becomes final.

predecessors, successors, parents, subsidiaries, affiliates and assigns, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Persons, regardless whether such Stockholder Lead Plaintiff or UBS Stockholder Class Member executes and delivers a Proof of Claim and Release form in this Settlement, in the HealthSouth Settlement or the E&Y Settlement, as applicable.

9. Upon the Effective Date, each of the Released Persons, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, parents, subsidiaries, affiliates and assigns, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all of the Released Persons' Claims against each and all of the Stockholder Lead Plaintiffs, Stockholder Named Plaintiffs, Stockholder Plaintiffs' Lead Counsel and UBS Stockholder Class Members.

10. The Released Persons are released and discharged from all claims for indemnity or contribution or any other claim, however denominated, against the Released Persons where the injury to the Person bringing the claim is, or is measured by, that Person's liability and/or settlement payment to the Stockholder Lead Plaintiffs, the UBS Stockholder Class or any UBS Stockholder Class Member, that have been or may hereafter be brought by any Person, whether arising under state, federal, foreign or common law as claims, cross-claims, counterclaims, or third-party claims, in any court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere, based upon, arising out of, relating to, or in

connection with the Released Claims (collectively, the “Barred Claims”), and all such claims are permanently barred and any Person is permanently enjoined from bringing any such claim. Nothing in this Order shall affect any claims for indemnity among the Released Persons or their insurance carriers.

11. Accordingly, to the full extent provided by Section 21D(f)(7)(A) of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(f)(7)(A), the court bars all Barred Claims: (a) against the Released Persons; and (b) by the Released Persons against any Person, other than any Person whose liability to the UBS Stockholder Class has been extinguished pursuant to the Settlement and this Judgment.

12. Any final verdict or judgment obtained by or on behalf of the Stockholder Lead Plaintiffs, the UBS Stockholder Class or any UBS Stockholder Class Member against any Person, other than the Released Persons, relating to the Released Claims, shall be reduced in accordance with the PSLRA and applicable law. However, UBS Stockholder Class Members’ participation in any recovery from the UBS Defendants shall not be reduced as a result of this Judgment.

13. The notice given to the UBS Stockholder Class, including the individual notice to all Members of the UBS Stockholder Class who could be identified through reasonable effort, provided the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation, to all Persons entitled to such notice. The notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the

Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended including by the PSLRA, and the requirements of due process.

14. Any order entered regarding any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

15. Neither the Stipulation nor the Settlement contained in it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement may be offered or received: (a) against the UBS Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by the UBS Defendants of the truth of any fact alleged by UBS Stockholder Class Members or the validity of any claim that has been or could have been asserted in the Federal Actions or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Federal Actions or in any litigation, or of any liability, negligence, fault, or wrongdoing of the UBS Defendants; (b) against the UBS Defendants as evidence of a presumption, concession, admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant, or against the Federal Plaintiffs; (c) against the UBS Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or (d) against the UBS

Defendants or Federal Plaintiffs, as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial. The UBS Defendants and/or their respective Related Parties may file the Stipulation and/or this Judgment in any other action in which they are parties or that may be brought against them to support a defense, claim or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. Without affecting the finality of this Judgment in any way, this court hereby retains continuing jurisdiction over the following: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) allowance, disallowance or adjustment of the claim of any UBS Stockholder Class Member on equitable grounds; (c) disposition of the Settlement Fund; (d) hearing and determining applications for attorneys' fees, interest and expenses in the Stockholder Action; (e) all parties hereto for the purpose of construing, enforcing and administering the Stipulation; and (f) exclusive jurisdiction to enforce the provisions of the bar orders in this Judgment.

17. The court finds that during the course of the Stockholder Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The court commends counsel on the professional manner in which they conducted and resolved this complex matter.

18. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or the Settlement set forth in the Stipulation is terminated pursuant to its terms, or in the event that the Settlement Fund, or any portion thereof, is returned to UBS or its insurers, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all findings and conclusions made, certifications and orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

19. Without further order of the court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation. However, counsel shall notify the court of any such extensions.

20. The court finds no reason for delay in the entry of this Final Judgment and Order of Dismissal with Prejudice as to UBS Defendants and immediately directs the Clerk to enter judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DONE and ORDERED this 26th day of July 2010.


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE