

In re HealthSouth Corp. Shareholders Litigation  
Del.Supr.,2004.

(The decision of the Court is referenced in the  
Atlantic Reporter in a 'Table of Decisions Without  
Published Opinions.')

Supreme Court of Delaware.

In re HEALTHSOUTH CORPORATION  
SHAREHOLDERS LITIGATION, Richard M.  
Scrushy, Defendant Below, Appellant,

v.

Edward R. BIONDI, individually and derivatively on  
behalf of Healthsouth Corporation, and James  
Bachand, derivatively on behalf of Healthsouth  
Corporation, Plaintiffs Below, Appellees,  
and HEALTHSOUTH CORPORATION, a Delaware  
Corporation, Nominal Defendant Below, Appellee.

**No. 22, 2004.**

Submitted April 7, 2004.

Decided April 14, 2004.

Reargument Denied April 30, 2004.

Court Below-Court of Chancery, in and for New  
Castle County, C.A. No. 19896.

Before [HOLLAND](#), [BERGER](#) and [STEELE](#),  
Justices.

#### ORDER

\*1 This 14th day of April 2004, it appears to the  
Court that:

1) This is a derivative suit in which the plaintiffs  
seek relief from a transaction (the "Buyback")  
whereby the defendant Richard M. Scruschy,  
HealthSouth Corporation's former Chairman and  
Chief Executive Officer, extinguished a loan of over  
\$25 million that he owed to HealthSouth. In the  
Buyback, Scruschy paid HealthSouth with shares he  
owned in Healthsouth that were valued in the stock  
market at the dollar amount of the principal balance  
then needed to extinguish his obligations regarding  
the loan in full.

2) The underlying premise of the Buyback was  
that the stock market price was a reliable indicator of  
the value of Scruschy's stock in HealthSouth. The  
market value had been established, in large measure,  
in reliance upon HealthSouth's certified financial  
statements and other public releases regarding its  
financial condition.

3) The record reflects that shortly after Scruschy  
transferred enough of his shares to HealthSouth to  
retire his debt in full, based upon their market value,  
the first public revelations of financial problems at  
HealthSouth occurred. Those disclosures and  
subsequent public revelations indicated that the  
financial information upon which the market was  
relying when HealthSouth accepted Scruschy's shares  
to retire his debt was materially misleading. As a  
result of that inaccurate information, HealthSouth  
received shares worth less than the value of the loan  
Scruschy was retiring.

4) The plaintiffs filed a motion for summary  
judgment. For purposes of their motion, the plaintiffs  
assumed that Scruschy was not aware that  
HealthSouth's financial statements and prior public  
releases about its financial condition were materially  
inaccurate. The plaintiffs proceeded on this basis  
because they contended that Scruschy's actual  
knowledge of the material inaccuracy of  
HealthSouth's financial documents was irrelevant to  
their claims of unjust enrichment and equitable fraud.

5) The Court of Chancery agreed with the  
plaintiffs' assertion that neither of those claims  
require that Scruschy have actual knowledge that the  
HealthSouth financial statements were materially  
inaccurate. Following briefing and argument, the  
Court of Chancery issued an opinion on November  
24, 2003 that granted the plaintiffs' motion for  
summary judgment. It held that the Buyback unjustly  
enriched Scruschy and also held for the plaintiffs on  
the claim of equitable fraud. The remedy of  
rescission was granted.

6) On December 22, 2003, the Court of  
Chancery entered a Final Judgment Order under Rule  
54(b) (the "Judgment Order"), setting a closing date  
of January 2, 2004 to effect the rescission of the

Buyback. Scrusy did not attend the closing and did not comply with the rescission order. Instead, on January 2, 2004, Scrusy filed a Motion to Alter or Amend the Judgment Order. The Court of Chancery denied that motion with prejudice.

7) Scrusy filed an appeal with this Court from the Judgment Order and from denial of his Motion to Alter or Amend the Judgment Order.

\*2 8) This Court has determined that the Judgment Order of the Court of Chancery should be affirmed on the basis of and for the reasons assigned in its written opinion dated November 24, 2003 and that the Court of Chancery's denial of Scrusy's Motion to Alter or Amend the Judgment Order should be affirmed for the reasons stated in its transcribed verbal rulings during a telephone conference on January 6, 2004.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Court of Chancery be, and the same hereby are, AFFIRMED.

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847 A.2d 1121, 2004 WL 835879 (Del.Supr.)

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