Verdict Could be a Bad Sign for Other Executives on Trial

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Dow Jones Newswires
March 15, 2005

NEW YORK -- The conviction of Bernard Ebbers, the former chairman and chief executive of WorldCom, on all counts Tuesday could signal how other corporate chieftains' trials will go, corporate governance experts said.

"It's very bad news for Mr. [Richard] Scrushy" -- the former head of HealthSouth Corp., who is involved in his own legal proceedings -- "and other chief executive officers," said Frank Razzano, a former regulator who now works as a white-collar-criminal defense attorney. "It means that this jury did not buy the defense that, 'I'm the CEO and I didn't know.' What it means is that juries expect chief executives to know what's going on at the company or have an obligation to find out what's going on at the company and are going to hold those CEOs responsible for what's going on at the company."

This Ebbers trial was one of several court cases arising from the wide-ranging accounting scandals that unraveled in the wake of the 1990s stock market boom. The trial of Dennis Kozlowski, the former Tyco International Ltd. chief executive, ended in a mistrial and he is undergoing a second trial. HealthSouth's Mr. Scrushy is on trial in Alabama. And former Enron heads Kenneth Lay and Jeffrey Skilling will be tried next year.

Key Role of Sullivan

Mr. Ebbers's case was undone by the testimony of Scott Sullivan, WorldCom's former chief financial officer, who pleaded guilty and agreed to testify against his former boss in hopes of receiving a reduced sentence. Mr. Sullivan told the jury that he repeatedly kept Mr. Ebbers in the loop on the $11 billion fraud that eventually forced WorldCom into bankruptcy. The company has since re-emerged as MCI Inc.

But the jury looked past Mr. Sullivan's self-interested reasons for cooperating and instead laid the responsibility for the company's failure at Mr. Ebbers's feet.

"That would suggest to me that this jury at least, and juries in general, are unhappy with CEOs who say they didn't know what was going on at their company when fraud is committed on their watch," Mr. Razzano added.

Still other experts said the WorldCom circle of blame should be widened to include the company's board of directors, which was packed with insiders and Ebbers cronies and was asleep at the switch when the fraud took place.

"There was clearly a massive failure of board oversight at the company," said Gavin Anderson, chief executive of GovernanceMetrics International, which monitors corporate governance. "Before the fraud you had a complete failure of corporate governance."

In January, 10 former WorldCom directors had agreed to pay $54 million -- $18 million out of their pockets -- to settle allegations in connection with the fraud. The settlement fell apart after the judge overseeing the shareholder litigation ruled the deal illegal because it exposed banking defendants to greater liability.

Mr. Anderson said he sees signs corporate boards are becoming more vigilant in policing executives, and pointed to the recent corporate upheavals at Hewlett-Packard Co., Walt Disney Co. and American International Group Inc. as examples of boards taking a more activist role in running companies.

"The board should have an activist role," he said. "If I'm a shareholder, that's what I want."

Rewrite Rules?

Despite the public bloodletting of so many executives, numerous insiders believe the only way to permanently change corporate behavior is to rewrite governance rules to force boards to be more accountable and correct flaws in the way company leaders are paid.

"The protection of investors will depend little on whether Ebbers, Lay, or Scrushy will go to jail and for how long," said Lucian Bebchuk, director of the Harvard Law School's Program on Corporate Governance. "It will depend on whether or not we adopt the necessary structural reforms to make boards accountable and eliminate flaws in compensation arrangements."