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## Scrushy jury restarts deliberations

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By Verna Gates and Peggy Gargis

BIRMINGHAM, Alabama - A US federal judge replaced a sick juror in the corporate fraud trial of HealthSouth Corporation founder Richard Scrushy and ordered the panel, which has already deliberated for 16 days, to start again from scratch.

US District Judge Karon Bowdre told the court in Birmingham, Alabama, that recurring health problems of a male juror led her to replace him with a male alternate, and told jurors they would have to restart deliberations anew.

Legal experts were divided on whether the development would aid the prosecution or the defence.

Bowdre said jurors had agreed to work longer days, extending their deliberations from 7.30am to 4.30pm -- from 8.30am to 3pm previously, in the hope of reaching a verdict.

The jurors deliberated for nearly an hour before adjourning later in the day. Before Wednesday, they had deliberated 16 days.

The juror replacement could delay a verdict for Scrushy, 52, who went on trial in January. He is accused of directing a \$2.7 billion accounting scam from 1996 to 2002 at HealthSouth in a bid to inflate the company's stock price and enrich himself.

The Alabama native, who has denied any wrongdoing, appeared outside court with his lawyers and said it was good that jurors would work longer days.

"We are confident that vindication will come," said Donald Watkins, one of his lawyers. "The evidence does not change."

A jury of seven men and five women began deliberations on May 19. Earlier this month, jurors said they could not reach a decision on any of the 36 charges against Scrushy, and Bowdre told them to try harder to break the deadlock.

Deliberations had been called off on many days due to juror illness and other matters. For example, the jury did not meet on Monday and Tuesday because of illness and an unspecified emergency involving a juror. It was not clear if the juror involved was the one who was replaced.

Randy Mastro, a partner at the law firm of Gibson, Dunn & Crutcher in New York and a former federal prosecutor, said it is acceptable for a judge to replace an ill juror.

"Logically those deliberations do have to start afresh because you have a new juror in the room," he said.

"This adds a whole new dynamic," said Doug Jones, former US Attorney for the Northern District of Alabama. He said there's no way to predict whether the move would favor the prosecution or the defence since the stance of the original jurors or alternate was unknown.

But Thomas Lane, a partner at Thelen Reid & Priest in New York, said the development could be unfavorable for the prosecution because it means jurors, who already have deliberated weeks with no decision, could lose interest and become less fervent about reaching a verdict as discussions drag on.

"I personally find the longer the jurors are out, the more danger we're going to end up with a hung jury, which is certainly something the government doesn't want," Lane said.

Charna Sherman, a lawyer with Squire, Sanders & Dempsey in Cleveland, said the move could only help the prosecution since jurors must start fresh. "This development bodes to be a fortuitous turn that reopens the possibility of a conviction," Sherman said.

US Attorney Alice Martin, lead prosecutor, said she had no concerns that jurors would become less interested because of the length of deliberations.

"We're confident this jury will find Mr Scrushy guilty," Martin said.

Judge Bowdre noted that jurors, who have been on duty since the trial began in January, have

made extraordinary time sacrifices and cautioned against making judgments about the speed at which they had worked.

"Reaching a decision in a complex, five-months-long trial should not be compared to the actions of jurors in shorter cases with less difficult issues at hand," Bowdre said.

Scrushy is the first chief executive tried for violating the 2002 Sarbanes-Oxley Act, a corporate reform law that requires CEOs to certify the accuracy of their companies' financial statements.

The fired CEO also faces multiple counts of mail and wire fraud, money laundering and other charges in connection with the fraud at the chain of physical therapy and outpatient surgery centres.

Scrushy, who has denied any wrongdoing, could face life in prison and forfeiture of much of his wealth if convicted. He has blamed the fraud on subordinates, many of whom have pleaded guilty in the scheme.

- REUTERS

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