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## Ex-McKesson Execs Acquitted of Fraud

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SAN FRANCISCO -- Two former McKesson Corp. executives were acquitted Friday on one count each of federal securities fraud, but a mistrial was declared on six other counts in a \$9 billion accounting scandal at the pharmaceutical distribution company.

Charles W. McCall, the former McKesson Corp. chairman, was charged with fabricating revenue and then trying to cover up a conspiracy to inflate profits before its 1999 merger with Atlanta-based HBO & Co.

Jay Lapine, the former general counsel of HBO, a health services software maker, faced similar charges.

The two were tried before a federal jury that heard six weeks of testimony. The panel, after deliberating six days, said it was hopelessly deadlocked on the remaining charges.

One holdout juror led to an 11-1 vote of guilt on three securities fraud counts against each defendant. A unanimous vote of all 12 jurors is needed to establish guilt.

"It got to the point where he didn't want to be talked to anymore," jury foreman Carl Friedrich told The Associated Press of the one holdout juror.

Four other executives of the combined firm, now the nation's largest pharmaceutical distributor, were convicted in the scheme in which HBO executives overstated revenue by more than \$300 million.

McCall had been HBO chairman until the company was sold to McKesson in January 1999 for \$12 billion. He briefly became chairman of the combined entity, which retained the McKesson name, before getting fired in June 1999 after the accounting scheme was uncovered.

Lapine briefly kept his job as general counsel after the merger, but was later fired.

U.S. District Judge Martin Jenkins declared a mistrial on the remaining six securities fraud counts against each defendant. Prosecutors said they were mulling whether to retry the men on those counts.

"We are disappointed in the verdict," San Francisco U.S. Attorney Kevin Ryan said.

Attorneys for the two men were happy with the verdict and were keeping their fingers crossed that there would be no retrial. Guilty verdicts could result in 10-year sentences.

"I hope they adopt a reasonable stance and choose not to go forward," said Lapine's lawyer, Mark Topel.

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Through their attorneys, both defendants declined comment. McKesson also declined comment.

Albert Bergonzi, the former HBO president and later a McKesson executive vice president, pleaded guilty in 2003 to securities fraud, admitting that executives conspired to make the merger more attractive with San Francisco-based McKesson.

Bergonzi said he participated in the scheme to falsify earnings reports by inflating software sales and backdating contracts to record revenue in prior quarters from 1998 to 1999, according to his plea agreement.

After detecting the conspiracy, McKesson restated its financial results for 1998 and the first three months of 1999. The revised accounting revealed gross exaggerations. In late 1998, for instance, HBO reported a profit that was seven times higher than the true result.

After news of the scandal broke in April 1999, the company's shares plunged from \$65.75 to \$34.50 \_ a one-day drop of 48 percent.

Meanwhile, three other executives connected to the scandal have also pleaded guilty and agreed to cooperate with authorities. They include Jay Gilbertson, HBO's former chief financial officer, Dominick DeRosa, formerly HBO's senior vice president of sales and Timothy Heyerdahl, formerly HBO's senior vice president of finance.

The case is United States v. McCall and Lapine, 00-00505.

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