

Ramesh “Sunny” Balwani, Former Theranos President and COO, Found Guilty on All Twelve Fraud Counts in High-Profile Trial

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Headlines that Matter for Companies and Executives in Regulated Industries

Ramesh “Sunny” Balwani, Former Theranos President and COO, Found Guilty on All Twelve Fraud Counts in High-Profile Trial

On July 7, 2022, a federal jury in the Northern District of California found Ramesh “Sunny” Balwani, the former president and COO of failed blood-testing startup Theranos, guilty of ten counts of wire fraud and two counts of conspiracy to commit wire fraud.

Balwani and his co-defendant, Elizabeth Holmes, were first charged with fraud in an indictment filed in June 2018. In its Third Superseding Indictment, filed in July 2020, the government alleged that Balwani and Holmes schemed to defraud investors by soliciting investments while misrepresenting the capabilities of Theranos’s proprietary blood analyzer and the financial strength of the company, and schemed to defraud patients who used Theranos’s faulty blood testing laboratory services. Each was charged with two counts of conspiracy to commit wire fraud and ten substantive counts of wire fraud. The jury found Balwani guilty on all twelve counts.

Following a separate trial, Holmes was found guilty in January 2022 on only four counts—three counts of wire fraud and one count of conspiracy to commit wire fraud—based on the alleged scheme to defraud investors. The jury hung on three counts, which the government subsequently dismissed, and acquitted Holmes on five counts related to the alleged scheme to defraud patients. Holmes’s motion for judgment of acquittal remains pending, with sentencing set for September 26, 2022. Each count of conviction carries a maximum twenty-year sentence. Balwani will likely also move for a judgment of acquittal. Both defendants are expected to appeal.

SEC and DOJ Seek Rehearing En Banc in Case Invalidating Civil Administrative Enforcement Authority on Constitutional Grounds

On July 1, 2022, the SEC and DOJ jointly petitioned the U.S. Court of Appeals for the Fifth Circuit for rehearing en banc in *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), a decision holding that the SEC's civil administrative enforcement authority was unconstitutional on three grounds.

In *Jarkesy*, an administrative law judge found that a hedge fund founder and his advisory firm committed securities fraud in connection with the formation of two investment funds involving over 100 investors holding about \$24 million in assets, and the Commission upheld the order, directing them to pay \$300,000 in penalties and to disgorge \$685,000 in ill-gotten gains. They petitioned the Fifth Circuit for review, and in May 2022, a divided panel of the Fifth Circuit vacated the SEC's order, finding that the SEC's civil administrative enforcement proceeding was unconstitutional. The court held that: (1) the SEC's in-house adjudication violated the petitioners' Seventh Amendment right to a jury trial, (2) Congress unconstitutionally delegated legislative authority to the SEC by failing to provide an intelligible principle regarding whether and how the SEC would bring an administrative enforcement proceeding, and (3) statutory removal restrictions on SEC administrative law judges violated the Take Care Clause of Article II of the Constitution.

The SEC–DOJ petition requests full review of the decision by the Fifth Circuit sitting en banc, and argues that: (1) the panel's Seventh Amendment holding conflicts with Supreme Court and Fifth Circuit precedents, (2) the panel's nondelegation holding improperly applies the nondelegation doctrine to Executive Action, and (3) the panel's holding regarding the removal restrictions on administrative law judges at minimum warrants further review.

The petition can be found [here](#).

Spine Device Distributor and Owners To Pay \$1 Million To Resolve False Claims Act Suit Over Alleged Kickbacks

On July 1, 2022, the Department of Justice announced that Reliance Medical Systems, LLC, a Utah-based distributor of spinal implant devices, its two owners, and two physician-owned distributorships that the owners operated agreed to pay \$1 million to resolve allegations that they violated the False Claims Act by paying physicians to use Reliance medical devices in spinal surgeries. According to the government, the defendants' physician-owned distributorships paid physicians based on their referrals, made false statements to health care providers, and terminated physicians who did not refer enough patients. The settlement is the most recent in a series of settlements with persons affiliated with Reliance, which has reportedly led to recoveries of over \$9.25 million.

The DOJ press release can be found [here](#).

Department of Justice Releases Strategic Plan For Fiscal Years 2022-2026

On July 1, 2022, the Department of Justice released its Strategic Plan for fiscal years 2022 to 2026, announcing five high-level goals: (1) Uphold the Rule of Law, (2) Keep Our Country Safe, (3) Protect Civil Rights, (4) Ensure Economic Opportunity and Fairness for All, and (5) Administer Just Court and Correctional Systems. These goals collectively include 17 subsidiary priorities, ranging from

enhancing and fighting cybercrime to combatting corruption, financial crime, and fraud, and lists specific strategies for achieving each.

The strategic plan can be found [here](#).

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