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DOJ Coached Key Witness In Wage-Fixing Case, Jury Told

By **Katie Buehler**

Law360 (April 13, 2022, 8:49 PM EDT) -- Attorneys for the former owner and former clinical director of a physical therapist staffing company implored a Texas federal jury Wednesday to acquit the men of charges they orchestrated a wage-fixing scheme, claiming prosecutors had coached the pair's alleged co-conspirator and misconstrued evidence to create the case.

The company's former owner, Neeraj Jindal, and former clinical director, John Rodgers, are both charged with price-fixing, conspiracy to obstruct, and obstructing proceedings before the Federal Trade Commission. But during closing arguments in Sherman, Texas, defense attorneys urged an Eastern District of Texas jury to see the government's case for what they claim it actually is: a victimless case created to support a theory.

"The government is taking evidence and misconstruing it to fit their narrative," Rodgers' defense attorney, Brian Poe, said.

Jindal and Rodgers are **accused of developing a scheme** with at least one competing staffing business in the Dallas-Fort Worth area to lower wages paid to physical therapists and physical therapist assistants to maintain the company's value as Jindal attempted to sell it in 2017. This is the government's first criminal wage-fixing case, and the Eastern District of Texas has recognized the alleged scheme as price-fixing under antitrust law.

During the six-day trial, Sheri Yarbary, the pair's alleged co-conspirator who received a leniency agreement for her cooperation, testified she and Rodgers agreed through text messages in March 2017 to lower the wages paid to contracting physical therapists and physical therapist assistants.

Her testimony at trial, however, was different from what she told the FTC when it investigated the alleged scheme in 2017, defense attorneys said. Transcripts of the FTC proceedings show Yarbary denied to investigators that she and Rodgers had agreed to lower rates and claimed she was just pretending to go along with Rodgers, who she thought was not being serious.

Poe accused the government of coaching the alleged co-conspirator, asking the jury to remember what he described as her "canned" responses while on the witness stand.

Paul Coggins of Locke Lord LLP, representing Jindal, said the government had "worked her over" and provided her with a get-out-of-jail-free card before she appeared at trial.

Without her testimony, there was no evidence of an agreement, defense attorneys argued, which doomed the government's entire case.

"I believe if you're going to accuse someone of anything, you damn well come with evidence," Poe said.

U.S. Department of Justice attorney Matthew Lunder told the jury they didn't have to like Yarbary personally, but they should consider her testimony coupled with the rest of the evidence. He encouraged them to decide for themselves whether she was cajoled or coerced by the government.

Prosecutors argued records of text messages, emails and phone calls between Rodgers and Jindal prove the pair worked to "fix the market" and then cover up their crime when the FTC started

investigating.

First, they coordinated an outreach effort, texting the owners of five competing staffing businesses to discuss lowering wages collectively, the government claims. Then Jindal and Rodgers took steps to cover up the scheme by providing incomplete documents to the FTC and reaching out to Yarbary to allegedly tell her to delete messages about the deal.

Finally, both lied during their respective interviews with the FTC, prosecutors said, claiming their intentions weren't to fix wages, but simply feel out what other competitors were paying physical therapists and physical therapists assistants.

"All the details come together to show the simple truth: The defendants committed a crime and then committed more crimes trying to cover it up," DOJ attorney Jariel Rendell told the jury.

The federal government is represented by Matthew W. Lunder, Jariel A. Rendell and Rachel Kroll of the DOJ's Antitrust Division.

Jindal is represented by Paul Coggins and Jennifer McCoy of Locke Lord LLP.

Rodgers is represented by Brian D. Poe.

The case is USA v. Jindal, case number 4:20-cr-00358, in the U.S. District Court for the Eastern District of Texas.

--Editing by Orlando Lorenzo.

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