

Info On Outcome's Lies 'Needed To Come Out,' Analyst Says

By **Lauraann Wood**

Law360, Chicago (February 13, 2023, 10:29 PM EST) -- A former analytics manager for Outcome Health testified Monday that he regularly created false analytical records for clients and eventually told a Wall Street Journal reporter about deceptive practices at the company because he wanted others to know "it was all built on a lie."

In an ongoing criminal fraud trial against former Outcome CEO Rishi Shah and others, former product analytics manager David Ma testified that he contacted the WSJ reporter to discuss what he considered unethical business practices at Outcome in 2017 after he learned the company had raised hundreds of millions of dollars to continue and grow its health education and advertising business.

Ma testified that he had previously wanted to tell others that Outcome was misleading the public and overselling its inventory so he could "make known what [he] already knew," but that he didn't know how to get the information out and could not persuade other former employees to speak out alongside him. The fundraising news led Ma to contact the reporter because "they didn't deserve the funding that they had received because it was all built on a lie," he testified.

"Overall, I had this sort of feeling inside of me that the information needed to come out," Ma said.

The testimony came during Ma's second day on the witness stand in the U.S. government's case against Shah, former Outcome president Shradha Agarwal and former operational and finance chief Brad Purdy. They each face wire fraud, mail fraud and bank fraud charges alleging that they grew Outcome into a company worth billions **by lying** to lenders and investors, cherry-picking or exaggerating data and silencing employees who raised concerns.

Outcome placed televisions and tablets displaying educational content in doctors' offices and then sold ads on those devices to its clients. Devices that air clients' ads were determined through a "list-match" process in which Outcome stacked its purported "network" of physician offices against a client's list of desired offices to identify where the two lists overlap and where the ads could be played.

Ma began working for Outcome as a senior sales analyst in June 2014 and was the company's product analytics manager from January 2015 until he left the company that October. In those roles, Ma testified that he worked under former growth chief Ashik Desai and later Agarwal to create false metrics and projections that often included "made-up" numbers, which the company would use to report device performance, help secure new clients and extend its business with existing ones.

Ma testified Monday that Outcome operated deceptively and unethically for "pretty much [his] entire tenure." He said the deception became clear to him within his first few months on the job, "but we didn't talk a lot about it" and any concerns he raised about creating and sharing the false metrics would often get explained away as a normal part of Outcome's business.

That's the kind of response Ma testified that he received from Agarwal when he aired his concerns over the company's misleading metrics

and inventory overselling during one of their bi-weekly meetings in February 2015. He said he "spoke about it in euphemisms" while he was discussing the issue with Agarwal because he was unsure how delicately he needed to "dance around the topic."

"I didn't want to directly imply that something very unethical was going on," Ma said. "I didn't want to be seen as someone who wasn't a team player or wasn't with the program."

The most memorable part of Agarwal's response to those concerns included her saying "we throw smoke bombs" that help the company to "clean up our operations," Ma testified. He said the response made him feel "a little bit better" at first because a company cofounder was telling him "this was just kind of the way it is."

But Ma grew less and less comfortable with her response as time passed because "it was my understanding that the cofounder of the company was OK with us lying to clients," he testified.

"It was one of the reasons that I realized that I don't think the company was ever going to be clean," he testified.

Trial recessed Monday with Ma testifying on cross-examination from Purdy's counsel. He is to resume testifying Tuesday morning.

The government claims Outcome lied to clients about the number of doctors they could advertise to, charged them for advertising that never ran because of lack of equipment and fabricated return on investment studies to cover their tracks. The company's former executives hid their conduct by sending clients false proof that the company has satisfied its end of the deal, according to the government.

Prosecutors had also charged Desai with participating in the scheme, but he **admitted his role** in the alleged scheme about two weeks after he was named in the government's **superseding indictment**. Desai is now considered the government's star witness in the case and is expected to testify as early as Thursday.

Former analysts Kathryn Choi and Oliver Han, who were eventually hired to fill Ma's sales analyst role, were also charged **and pled guilty** in a separate criminal case over the alleged fraud.

As a result of its former employees' conduct, Outcome overcharged clients \$6 million in 2015 and more than \$25 million in 2016, the company admitted in a **nonprosecution agreement** it entered with the government. The company has already paid out \$65.4 million to victims of the fraud but set aside \$4.5 million more for other victims pursuant to the nonprosecution agreement.

The government is represented by Kyle Hankey and William Johnston of the DOJ's Criminal Division, and Matthew Madden and Saurish Appleby-Bhattacharjee of the U.S. Attorney's Office for the Northern District of Illinois.

Shah is represented by John Hueston, Karen Ding, Michael Hayes Todisco, Spencer M. Schmider and Vicki Chou of Hueston Hennigan LLP, and Christopher Grohman of Benesch Friedlander Coplan & Aronoff.

Agarwal is represented by Koren Bell, A. Alexander Lowder and Stephen Larson of Larson LLP, and Patrick W. Blegen and Kelsey Hipp Killion of Blegen & Garvey.

Purdy is represented by Theodore Poulos, Eric Pruitt, John Pavletic Jr. and Terence Campbell of Cotsirilos Tighe Streicker Poulos & Campbell Ltd.

The case is U.S.v. Shah, case number 1:19-cr-00864, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Celeste Bott. Editing by Peter Rozovsky.

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