

Verdict in First SDNY White-Collar Jury Trial Since Start of Pandemic

By **Jamie Gottlieb Furia**

After four days of deliberations, a jury returned a verdict against two former MiMedx Group Inc. executives for their involvement in an alleged fraud scheme. The three-week trial before U.S. District Judge Jed Rakoff marked the first white-collar jury trial in the Southern District of New York since March, when the COVID-19 pandemic began.

MiMedx is a biopharmaceutical company that develops and markets regenerative biologics utilizing human tissue. Its products are used to treat ailments such as diabetic sores. In 2017, *Fortune* magazine named MiMedx the fifth fastest-growing public company in America.

MiMedx's former CEO Parker Petit and former President and COO William Taylor were accused of engaging in so-called channel stuffing by using various agreements with distributors to ship more MiMedx product to downstream recipients than would actually be sold. The two men were accused of falsely booking the nonexistent revenue via secret deals with MiMedx business partners to boost stock value and fill their pockets. The government alleged that Petit and Taylor cut side deals with distributors to induce them to buy MiMedx products that the distributors had no intention of selling. For example, the defendants allegedly paid one distributor \$200,000, disguised as a "consulting fee," in exchange for over a million dollars' worth of sham orders, which were then booked as revenue. The government further alleged that the defendants used family trust funds to make a loan to another distributor in exchange for a \$4 million purchase of products. According to the government, the defendants undertook this illegal scheme to beat MiMedx's quarterly guidance on the stock market.

Petit and Taylor were charged with securities fraud and conspiracy to commit securities fraud. Neither defendant testified at trial. Their lawyers argued that recognizing revenue from distributors at the time a contract is signed is standard industry practice.

The jury rendered a somewhat patchwork verdict, finding Petit guilty on the securities fraud charge but acquitted on the conspiracy charge, but finding Taylor guilty on the conspiracy charge and acquitted on the fraud charge.

The pandemic had delayed the trial at least twice, but Judge Rakoff rejected the defendants' most recent bid to postpone the trial. Judge Rakoff made certain logistical accommodations in the courtroom in light of the public health crisis. For example, both sides were limited to three people per counsel table, and seating in the courtroom gallery was greatly restricted. Witnesses testified from inside a plexiglass box, and the lawyers stood at similarly adorned lecterns. The jurors deliberated in an empty courtroom and practiced social distancing, among other safety measures. There were no reports of virus-related concerns during the trial or jury deliberations.

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