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Securities experts chime in on Shkreli trial

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As jurors deliberated for a fourth consecutive day at the securities and wire fraud trial of former pharmaceutical exec Martin Shkreli, legal experts have trouble looking away.

This is a strange case after all: an alleged Ponzi-like scheme where the victims didn't lose any money.

The trial, which began on June 26, centers around the self-professed "Pharma Bro," whose grin and online trolling became synonymous with the price hiking in the medicine industry.

Those aspects are just noise, however, since Shkreli is being accused by the government of funneling money from a company he launched — Retrophin (NASDAQ: RTRX) — to investors in his hedge fund MSMB Capital in an effort to hide the fact that the hedge fund was actually failing, they say.

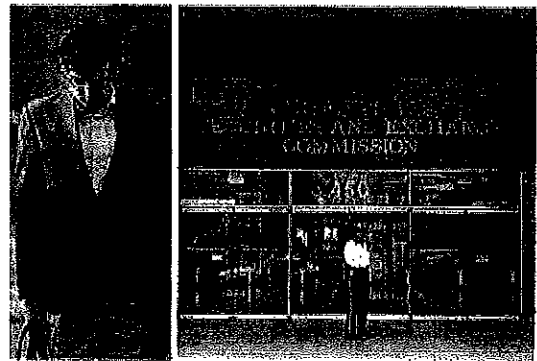
Below are some stand out "Shkreli stories" since deliberations began July 31:

What happened to the \$750 pill that catapulted Shkreli to infamy?

Jurors in Shkreli trial ask for clarity about the term "fraudulent intent"

Shkreli jokingly declares himself Scaramucci's successor

Crains Opinion: Pharma's bad boy is getting a raw deal



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"White collar securities cases are inherently difficult for the government to prove," says SEC prosecutor David Chase. "It's compounded when some of the alleged victims have made millions of dollars with the alleged fraud."

His defense team, led by Manhattan attorney Benjamin Brafman, counter that by saying it can't be a Ponzi scheme because each of the investors who took the stand — among them Sarah Hassan, Schuyler Marshall, Darren Blanton and David Geller— made a profit thanks to Shkreli's investment savvy.

A jury of seven women and five men have the potential to send 34-year-old Shkreli to 20 years in prison if they don't buy into what the defense is saying.

"Assuming, that he actually did repay everyone, the question is how and from where he got the money he repaid them with," Ira Matetsky, a partner at New York law firm **Ganfer & Shore**, told me. "If he always had a plan to develop that source of income, it would suggest there was no fraudulent intent."

Yet, if Shkreli got the money by taking it from the shareholders of Retrophin, that would not be as good a defense, Matetsky added. Shkreli's defense team says the Retrophin shares that were given to **MSMB** investors were approved by the company.

"Or if hypothetically he had no realistic plan for repaying them but then he got lucky and won the lottery and used that money to repay the investors, it wouldn't negate that he knew or should haven't known he couldn't repay them otherwise," Matetsky said.

Another commentator says Shkreli's defense team has the advantage.

If Brafman is successful in getting a "not guilty" verdict, it would show the difficulty in prosecuting these types of cases, according to former SEC prosecutor David Chase.

"White collar securities cases are inherently difficult for the government to prove," he said. "It's compounded when some of the alleged victims have made millions of dollars with the alleged fraud."

Jacquelyn Kasulis, chief of the business and securities fraud section for the Eastern District U.S. Attorney's Office, led government prosecutors in the case. They maintain that Shkreli misled his investors.

"If the jury overcame the fact that some of these investors were profitable but still accepted the government's theory that it doesn't matter, so be it," Chase, currently a private securities attorney, adds. "A lot of criminal defendants believe because of the risk of facing a long prison sentence it's better to plea out. He's likely going to second guess his decision to not plea and he'll have a long time to think about it. Some offers from the government are no brainers that make sense and others aren't. Some defendants feel they are better off rolling the dice."

Shkreli certainly did when he revealed to reporters that he did not want to take a plea deal and preferred to have his time in court.

Regardless of what the verdict is, the circumstances certainly threw the jury for a loop. Rumor has it that the jury has a few hold outs. Judge Kiyo Matsumoto asked one juror — who was within earshot of hearing that outside the Brooklyn courthouse — to dismiss it and deliberate using only the evidence that was presented.

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