

## Once Upon a Time in Federal Court

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On January 14, so called Pharma Bro Martin Shkreli was found personally liable for antitrust claims brought by the FTC and 7 State AGs. His company Vyera raised the price of medication Daraprim by 4000% after it purchased the drug. The parasitic brain infection the drug treats is especially deadly and according to doctors could only be treated with Daraprim. Shkreli then worked to prevent manufacturers from successfully competing in the generic drug market.

Although Shkreli's prison sentence began in 2017, the court said he continued to exert his influence over the company, which in December agreed to pay \$40 million for its part. The former CEO is now banned from the pharmaceutical industry for life. While a lifetime ban may seem like an extreme remedy, be mindful that State AGs don't reserve this punishment for those in prison, and have imposed industry bans in other actions and industries. Shkreli has also been ordered to pay disgorgement to the states in \$64.6 million. As part of his criminal judgment, he had already lost several assets including his prized Wu-Tang Clan album, a source inspiration for General James' words of condemnation in her victory press release. Another executive Kevin Mulleady also settled, paying \$10 million.

State AGs have been extremely active in the pharmaceutical antitrust space in recent years, including when it comes to generic drug pricing. Specifically, State AGs have alleged that generic drug manufacturers of topical products conspired to inflate prices and reduce competition. Most of the State AGs have been investigating the practice since 2016, with defendants now numbering in the dozens in their 3<sup>rd</sup> Amended Complaint. The states are caught up in an MDL, but their bellwether trial on dermatology treatments will be the first up.

Shkreli's lifetime ban may not even be the biggest antitrust news out of federal court for the State AGs the past week, as 48 states appealed the dismissal in their Facebook case the same day. Like the FTC, state AGs have challenged Facebook's acquisition of companies such as WhatsApp and Instagram as anticompetitive and creating a monopoly. Unlike the FTC however, the state AG claims were dismissed with prejudice as time-barred, which led to last week's appeal. And in other major state antitrust news, the Texas-led multistate coalition suing Google for ad tech manipulation and deception had its complaint largely unredacted, making public new details of the States' allegations. Expect States to continue to use their antitrust tools in the pharma and big tech space as these remain top priorities for 2022, and join the Kelley Drye State Attorneys General team on January 27 at 1:00 ET to learn more about what to expect from State AGs in the coming year.



State Attorney General Consumer Protection Priorities for 2022 Thursday January 27 at 1:00pm ET

Consumer protection enforcement efforts are expected to increase dramatically this year. Recent pronouncements from State Attorneys General around the country bring privacy, big tech and the misuse of algorithms, and basic advertising related frauds into particular scrutiny.

Please join Kelley Drye State Attorneys General practice Co-Chair Paul Singer, Advertising and Marketing Partner Gonzalo Mon, Privacy Partner Laura VanDruff, and Senior Associate Beth Chun for discussion and practical information on these and other state consumer protection, advertising, and privacy enforcement trends.

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