

## Reverse Payments After *Actavis*

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Katten attorneys Brian Sodikoff, James Calder and Thomas Maas address the impact of the Supreme Court's ruling in *FTC v. Actavis* in the years since the decision in June 2013. The ruling exposed reverse payment (or pay-for-delay) settlements to antitrust attack under traditional antitrust rule of reason analysis, which impacts many settlements between brand-name and generic pharmaceutical companies in patent litigation under the Hatch-Waxman Act.

However, the Supreme Court did not set forth a comprehensive framework for evaluating these agreements under the rule of reason, explicitly leaving this task to the lower courts. The lack of a concrete blueprint for evaluating whether potential reverse payments violate the antitrust laws make counseling in this area extremely difficult. Practitioners and pharmaceutical companies are well advised to keep a close watch on the cases moving through the courts.

In the wake of *Actavis*, this article assesses 18 prominent cases in various stages of litigation. The authors provide insights, including what they see as trends and key battleground issues that are currently being hotly contested.

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