analysis for reverse-payment settlements. The questions posed above, and one even more fundamental question, have yet to be answered.

## IV. ONE YEAR LATER, AND STILL AT THE BEGINNING: WHAT IS A PAYMENT?

In January 2014, the U.S. District Court for the District of New Jersey dismissed an antitrust challenge to a reverse-payment settlement in *In re Lamictal Direct Purchaser Antitrust Litigation* because there was no cash payment flowing from the patent holder to the would-be generic competitor, narrowly interpreting *Actavis* as imposing a "bright-line" requirement of a cash payment. The court therefore held that it was unnecessary to engage in the requisite rule-of-reason analysis to determine the settlement's anticompetitive effects (if any).

Just a few months earlier in September 2013 in the same district, however, a different judge took a less restrictive view of *Actavis* in *In re Lipitor Antitrust Litigation*. The *Lipitor* court treated as an open question the issue of whether an antitrust complaint could meet the "plausibility" pleading standard under *Bell Atlantic Corp. v. Twombly* where no major cash payment was involved in a reverse-payment settlement between Pfizer and Ranbaxy that allegedly unlawfully delayed generic entry of Pfizer's super-blockbuster Lipitor. Instead, Pfizer had agreed to drop its patent-infringement suit against Ranbaxy based on Pfizer's patented blood-pressure medication, Accupril, in exchange for a $1 million payment by Ranbaxy (Pfizer's claims were allegedly worth significantly more) and for Ranbaxy's dropping its action against Pfizer over Lipitor. Nevertheless, the court granted the plaintiffs leave to amend their complaint to include allegations of non-cash payments while noting that "nothing in *Actavis* strictly requires that the payment be in the form of money."

In *In re Nexium Antitrust Litigation*, the U.S. District Court for the District of Massachusetts gave *Actavis* its broadest application and denied that defendants' motion to dismiss the complaint. The court read *Actavis* as sweeping in non-monetary payments, stating that "[n]owhere in *Actavis* did the Supreme Court explicitly require some sort of monetary transaction." The court applied *Actavis* to the brand-name manufacturer's agreements to forgive patent infringement damages in other cases and to agreements not to launch the brand-name manufacturer's own authorized generic in competition with the generic manufacturers.

In February 2014, the court administratively stayed the *Nexium* case to draft an opinion setting forth its reasoning for granting some of the defendants' motions for summary judgment on the ground that there was insufficient evidence of a "large, unjustified reverse payment" under *Actavis* and also for denying other motions for summary judgment on that same issue. A month later, the court granted two of the plaintiffs' motions for reconsideration and reopened the case for the limited purpose of allowing further briefing on, *inter alia*, the existence of a reverse payment. An opinion is expected this fall.

## V. A CALL FOR REASONING IN A RULE OF REASON

As Chief Justice Roberts stated in the dissent in *Actavis,* and as many commentators stated when the Supreme Court decided *Actavis*, much if not virtually all of the guidance on the antitrust analysis of reverse-payment settlements is being left to the district courts. Divergent post-*Actavis* district-court views about what exactly constitutes a "payment," and whether cash is

required, demonstrate that district courts, almost a year after