

SmithKline Beecham filed a petition in February 2016 asking the Supreme Court to grant review of the *King Drug* ruling, but the Court declined to take the case.<sup>73</sup> This leaves the Third Circuit's ruling in place, confirming that *Actavis* scrutiny can be extended to noncash Generation 2.0 agreements.

In short, Generation 2.0 has featured lucrative side deals and strategic no-cash clauses involving brand-name drug companies and generics. These tactics allow companies to camouflage the nature of the transfer by arguing that no "pay" had been received for the "delay." According to that pharma perspective, the payment supposedly corresponds to the secondary considerations and side deals, while the primary agreement to delay generic entry is made without any value exchange. More expansive readings of *Actavis*, however, threaten to dampen the number of Generation 2.0 settlements. Instead, companies desperate to extend the monopoly life of drugs are turning toward actions in Generation 3.0, where the generic is no longer a potential friend and is instead an opponent to be attacked.

<sup>73</sup> Petition for a Writ of Certiorari, *SmithKline Beecham vs. King Drug*, cert. denied, 137 S.Ct. 446 (2016) (No. 15-1055), 2016 WL 704916.