Three months later, Pfizer and Ranbaxy reached their "agreement" to settle the newly initiated litigation.[33] With all terms considered, some industry estimates pegged the value of the settlement at more than $1.5 billion for the generic.[34] A nice haul indeed, but how much of that figure was payment for keeping Lipitor off the market?

In 2014, this question went before a district court in New Jersey. The court dismissed one group of purchasers' class action for failure to state a claim because the plaintiffs were unable to provide "a reliable estimate" of the monetary value of the reverse payment.[35] It can indeed be difficult to tease out the value of a reverse payment, making these types of complex settlements an attractive option for pharmaceutical companies. If the test involves providing a reliable estimate of the value of the reverse payment, the plaintiff would first need to determine the market value of each piece of the settlement, including: the value to the generic of ending the (supposedly sham) litigation with Pfizer; earning the rights to market generic Lipitor in international markets; ending the Accupril case,; and ending the Caduet litigation.[36] Next, the plaintiff would have to show how much the generic actually "paid" for these pieces of the settlement and then prove that the gap between the market value and the actual value of the settlement represents the reverse payment from Pfizer to the generic to secure Lipitor delay. This presents an enormous hurdle for a plaintiff to clear, and it has led to the dismissal of other related Lipitor class actions.[37]

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Lipitor was not the only set of cases dismissed for an apparent failure to define the scope of a reverse payment. In other cases, courts also have not been easily persuaded

[33] End-Payor Amended Complaint, *supra* note 20, at para. 279.

[34] *Ibid*. at para. 284.

[35] *In re Lipitor*, 46 F. Supp. 3d at 550.

[36] So little about the Caduet litigation was mentioned in the end-payor complaint that the district court cited it as a reason for dismissing the case, since the complaint failed to address in any way how settling the Caduet litigation factored into the global scope of the settlement. *In re Lipitor*, 46 F. Supp. 3d at 523, 533, 548.

[37] *In re Lipitor Antitrust Litig*., No. 3:12-cv-02389 (D.N.J. Oct. 30, 2014), http://assets.law360news.com/0592000/592594//mnt/rails_cache/https-ecf-njd-uscourts-gov-doc1-11919306435.pdf (dismissing end-payors' class action suit). Appeals continued after the dismissals. *See* Kelly Knaub, *3rd Circ. Urged to Merge Lipitor, Effexor Antitrust Appeals*, LAW360 (Apr. 3, 2015, 9:30 PM), www.law360.com/articles/639404/3rd-circ-urged-to-merge-lipitor-effexor-antitrust-appeals. Some argue that the standard used in *Lipitor* requiring a "ballpark" estimate of the payment sets too high a bar. Aaron Edlin et al., *The Actavis Inference: Theory and Practice*, 67 RUTGERS U. L. REV. 585, 600–01 (2015). In *Actavis*, the Supreme Court cast suspicion on settlement payments that far exceeded expected litigation costs. *Fed. Trade Comm'n v. Actavis, Inc*., 133 S. Ct. 2223, 2237 (2013). Thus, Edlin et al. argue that a mere