Actavis opinion fixation on cash.[54] In addition, the *Loestrin* court had concerns similar to the *Lipitor* case about needing the "true value" of the no-authorized-generic payment, although the court also worried that its ruling would allow pharmaceutical companies to structure settlements simply to "avoid cash payments" and antitrust scrutiny.[55]

During his tenure at the FTC, the former chairman, Jon Leibowitz, similarly articulated the absurdity of limiting the Supreme Court's *Actavis* ruling to cash payments and ignoring no-authorized-generic agreements:

> It used to be that a brand might say to a generic, "if you go away for several years, I'll give you $200 million." Now, the brand might say to the generic, "if I launch an AG, you will be penalized $200 million, so why don't you go away for a few years and I won't launch an AG."[56]

A landmark opinion in June 2015 from the Third Circuit overturned the district court ruling in *Lamictal*. With the case title having changed to *King Drug v. SmithKline Beecham*, the Third Circuit vacated the decision and rejected the trial court's logic.[57] The Third Circuit, as you may recall, was among the first to look skeptically at side deals involving cash in its opinion in the *K-Dur* case. In *King Drug*, that skepticism was extended to noncash reverse payments, including no-authorized-generic agreements. The court found that such noncash payments are not immune to *Actavis*-style scrutiny and that direct purchasers suing over the settlement in question had sufficiently pleaded their antitrust claims.[58]

To fill in the case details, *King Drug* arose out of a settlement between GlaxoSmithKline and first generic filer Teva over Glaxo's brand drug Lamictal, an anticonvulsant drug used to treat epilepsy and bipolar disorder. In the Paragraph IV litigation, the district judge invalidated the primary claim in Glaxo's patent on Lamictal.[59] One month later, the parties agreed to settle in what was, by that point, a case that the brand-name drug company was likely to lose.[60]

[54] *In re Lamictal Direct Purchaser Antitrust Litigation*, No. 12-cv-995 (WHW), 2014 WL 282755, (D.N.J. Jan. 24, 2014), vacated, *King Drug Co. of Florence, Inc. v. Smithkline Beecham Corp.*, 791 F.3d 388 (3d Cir. 2015); *In re Loestrin 24 FE Antitrust Litig.*, 45 F. Supp. 3d 180 (D.R.I. 2014) (granting motion to dismiss), vacated, No. 14–2071, 2016 WL 698077 (1st Cir. Feb. 22, 2016); *see also* Carrier, *Eight Reasons "No-Authorized-Generic" Promises Constitute Reverse Payment*, at 703–05; *cf. In re Effexor XR Antitrust Litig.*, No. 11–5479, 2014 WL 4988410 (D.N.J. Oct. 6, 2014) (granting a firm's motion to dismiss a generic's claims that a no-AG agreement constituted an illegal reverse payment).

[55] *In re Loestrin 24 FE Antitrust Litig.*, 45 F. Supp. 3d 180, 190 & 193 (D.R.I. 2014).

[56] Carrier, *Eight Reasons*, *supra* note 53, at 716, citing FTC, Statement of Chairman Jon Leibowitz on the Release of the Commission's Interim Report on Authorized Generics (June 2009), www.ftc.gov/os/2009/06/P062105authgenstatementLeibowitz.pdf.

[57] *King Drug Co. of Florence, Inc. v. Smithkline Beecham Corp.*, 791 F.3d 388 (3d Cir. 2015).

[58] *Ibid.* at 409.

[59] *Ibid.* at 397.

[60] *Ibid.* at 409–10.