in order to restrict competition: that appears to be clear evidence of a problematic payment.[66]

The Third Circuit also found that a no-authorized-generic agreement cannot be written away as an "exclusive license" to a generic. This term is an evasive bit of pharma lingo popular in no-authorized-generic cases – similar to using the term "rightsizing" to describe a major round of corporate layoffs. Instead of a license, the settlement was an agreement not to compete in a certain arena – the generic market price tier.[67] Teva received a generic monopoly period it "could not capture by early entry alone" – because standard early entry these days brings with it a threat of an authorized generic. In other words, what Teva received was exclusivity it could "only hope to obtain … with the brand's self-restraint."[68] This is an agreement that only seems to favor Teva, which would certainly be a strange licensing agreement, unless you take into account the true anticompetitive nature of the clause and the benefits Glaxo gains from delayed entry. (Between this case and *Lipitor*, any pharmaceutical deal that appears to involve an act of generosity should be viewed with extreme suspicion.)

The *King Drug* ruling reverberated throughout the pharmaceutical law world, our comfy niche of choice for this book. In a ruling similar to that in *King Drug*, the First Circuit in February 2016 overturned the district court's ruling in *Loestrin*, also finding that deals with noncash considerations can violate antitrust laws, and, importantly, walking back other rulings requiring specific calculations of the value of noncash payments.[69] Instead, the First Circuit ruled that an estimate of a "large and unjustified" payment can suffice at least to plead an antitrust claim.[70] Following the *King Drug* and *Loestrin* rulings, the FTC filed a complaint in another no-authorized-generic case in March 2016, adding more intrigue to a case we will discuss further in Chapter 3.[71] This was the FTC's first formal complaint involving a no-authorized-generic noncash agreement.[72]

[66] *Ibid*. at 405.
[67] *Ibid*. at 406–08 & 406 n. 27.
[68] *Ibid*. at 408.
[69] *In re Loestrin 24 FE Antitrust Litigation*, No. 14–2071, 2016 WL 698077 (1st Cir. Feb. 22, 2016).
[70] *Ibid*. at *31.
[71] Complaint for Injunctive and Other Equitable Relief, *FTC vs. Endo Pharm., Inc., et al* (E.D. Pa. Mar. 30, 2016) (No. 2:16-cv-01440), www.ftc.gov/system/files/documents/cases/160331endocmpt.pdf; *see also* Ed Silverman, *Cash Is Not King: FTC Sues Drug Maker over Pay-For-Delay Deal*, STAT (Mar. 31, 2016), www.statnews.com/pharmalot/2016/03/31/patents-monopoly-antitrust/. For a description of the path of the case, see Kelly Knaub, *Endo Settles Pay-For-Delay Suit as FTC Renews Watson Case*, Law360 (Jan. 23, 2017, 11:07 pm), https://www.law360.com/ip/articles/883817?utm_source=rss&utm_medium=rss&utm_campaign=section.
[72] Press Release, FTC, FTC Sues Endo Pharm. Inc. and Others for Illegally Blocking Lower-Cost Generic Versions of the Branded Drugs Opana ER and Lidoderm (Mar. 31, 2016), www.ftc.gov/news-events/press-releases/2016/03/ftc-sues-endo-pharmaceuticals-inc-others-illegally-blocking-lower.