all familiar with what's going on."[49] A legal complaint also alleges the involvement of reverse payments and citizen petitions, offering an example of how "multiplicity tactics" are often involved in generic delay.[50]

Perhaps the most notable recent case in the product hopping space is the case that may eventually begin its downfall. Litigation over a product hop involving Namenda, an important Alzheimer's disease treatment, reached the Court of Appeals for the Second Circuit in spring 2015.[51] In a May decision, a three-judge panel denied the drug manufacturer Actavis's appeal, a decision that had the effect of forcing the company to continue selling the old version of Namenda alongside its newer product, Namenda XR.[52]

The old form of Namenda is a twice-a-day treatment for moderate to severe Alzheimer's. In July 2013 – suspiciously, a full three years after it was approved by the FDA – Actavis introduced Namenda XR, a higher-dose treatment that could be taken once daily.[53] In August 2014, about one year before patents would expire on original Namenda, Actavis tried to pull the old form of the drug completely off the market. One month later, the New York Attorney General's Office filed a complaint alleging antitrust violations and seeking a preliminary injunction to force Actavis to continue selling the older formulation. The requested injunction was received in December 2014, and the decision was eventually upheld by the Second Circuit.[54]

Namenda is important, and not just because it was one of the first cases in which product hopping was found to be potentially anticompetitive. Most important, the Namenda product hop took place in a market that the company completely dominated: Namenda is the only treatment in its class available for Alzheimer's and the only treatment approved for moderate-to-severe Alzheimer's.[55] Thus, unlike other cases of product hopping where other drugs might be available as an inexact substitute, switching to Namenda XR was the only choice for Alzheimer's patients who completely depend on the treatment.[56]

[49] *Ibid*. at para. 108 (citing *Warner Chilcott Management Discusses Q4 2012 Results – Earnings Call Transcript*, Seeking Alpha (Feb. 22, 2013, 11:50 AM)), http://seekingalpha.com/article/1216961-warner-chilcott-management- discusses-q4-2012-results-earnings-call-transcript.

[50] *Ibid*. at paras. 62–64.

[51] New York *ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638 (2d Cir. 2015).

[52] *Ibid*. at 643.

[53] *Ibid*. at 647–48.

[54] *Ibid*. at 649–50.

[55] *See Current Alzheimer's Treatments*, Alzheimer's Ass'n, www.alz.org/research/science/alzheimers_disease_treatments.asp (noting that memantine, the generic name for Namenda, is the only NMDA receptor antagonist treatment for Alzheimer's and was the only treatment approved for moderate-to-severe Alzheimer's at the time of the product hop). A newly introduced drug approved for moderate-to-severe Alzheimer's, Namzaric, combines memantine with donepezil, a cholinesterase inhibitor that had already been approved for Alzheimer's treatment in the United States in 1996. *Ibid*. The combination drug, however, is also sold by Actavis.

[56] *Actavis PLC*, 787 F.3d at 654 n.27.