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Foreword: The Future of Reverse Payments in the Wake of FTC v. Actavis, Inc.

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Symposium

The Future of Reverse Payments in the Wake of *FTC v. Actavis, Inc.*

Reverse payment patent litigation settlements, wherein the payments flow from plaintiff brand name drug companies to defendant generic competitors, often including agreements that the generic companies will delay market entry, have evaded consistent legal treatment and divided courts for over a decade. In December 2012, the United States Supreme Court granted the Federal Trade Commission's petition for writ of certiorari to review *FTC v. Watson Pharmaceuticals*. In *Watson*, the Eleventh Circuit found that, absent sham litigation or fraud, reverse payment settlements are legal under antitrust law as long as the settlement agreement falls within the exclusionary scope of the patent. The *Watson* decision was followed mere months later by the Third Circuit's *In re K-DUR* decision, concluding that reverse-payment settlements should be deemed presumptively unlawful under a quick-look rule of reason approach. Because "different courts have reached different conclusions" regarding the legality of reverse-payment settlements, the Supreme Court endeavored to resolve the circuit split in *FTC v. Actavis, Inc.*

On June 17, 2013, with Justice Breyer writing the majority opinion in a 5-3 decision, the Supreme Court reversed the Eleventh Circuit, holding that governments and private plaintiffs have a cause of action under the antitrust laws against brand name and generic pharmaceutical companies engaging in reverse payment settlements. The Court directed lower courts reviewing such claims to apply a full rule of reason analysis to drug companies' potentially anticompetitive conduct.

In the spring of 2013, in anticipation of the Court's decision, the *Minnesota Journal of Law, Science & Technology* invited scholars and practitioners who have analyzed and developed the jurisprudence of reverse payment settlements to respond to *FTC v. Actavis, Inc.* The following eleven response

pieces digest the opinion, critique both Justice Breyer's majority opinion and Chief Justice Roberts' dissent, and provide direction for courts and practitioners in navigating the new legal landscape of reverse-payment settlements in the wake of *FTC v. Actavis, Inc.*

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