

# HILLIARD | SHADOWEN LLP

**ECONOMIC JUSTICE | CIVIL RIGHTS**



# Issues to Watch

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- ▶ **PAY FOR DELAY**

- ▶ PLEADING STANDARDS

- ▶ ACCELERATION CLAUSES

- ▶ PROCOMPETITIVE EFFECTS IN DIFFERENT MARKET

- ▶ CAUSATION

- ▶ Burden Shifting

- ▶ At-Risk Launch – Lawful Competition

- ▶ New Plaintiff Strategies



# Issues to Watch (cont'd)

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## ▶ **PRODUCT HOPPING**

### ▶ STANDARD FOR EXCLUSIONARY CONDUCT

- ▶ Rule of Reason/Profit Sacrifice/Hard Switch
- ▶ Carrier & Shadowen, *Product Hopping: A New Framework*, 92 Notre Dame L. Rev. (forthcoming 2016)

### ▶ “PRICE DISCONNECT”

- ▶ Accepted in *Namenda*
- ▶ Subject to Empirical Attack?
- ▶ Why don't MCOs Defeat Product Hops?



# Cases to Watch – Pay for Delay

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## ▶ LOESTRIN:

- ▶ *In re Loestrin 24 Fe Antitrust Litig.*, No. 14-2071, \_\_\_ F.3d \_\_\_, 2016 WL 698077 (1st Cir. Feb. 22, 2016)
  - ▶ Decided February 22, 2016
  - ▶ Remanded for further proceedings

## ▶ LAMICTAL

- ▶ *Smithkline Beecham Corporation, DBA Glaxosmithkline, et al. v. King Drug Company Of Florence, Inc., et al.*, 15-1055, (S. Ct.)
  - ▶ Certiorari petition circulated for March 18 conference
  - ▶ Case proceeding in the district court

## ▶ NEXIUM

- ▶ *In re: Nexium (Esomeprazole) Antitrust Litig.*, Nos. 15-2005, 15-2006 & 15-2007 (1st Cir.)
  - ▶ Briefing to be complete in Summer 2016



# Cases to Watch – Pay for Delay (cont'd)

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## ▶ EFFEXOR

- ▶ *In re Effexor XR Antitrust Litig.*, Nos. 15-1184, 15-1185, 15-1186, 15-1187, 15-1274, 15-1323, 15-1342 (3d Cir.)
  - ▶ Fully briefed as of February 15, 2016
  - ▶ Oral argument not yet scheduled

## ▶ LIPITOR

- ▶ *In re Lipitor Antitrust Litig.*, Nos. 14-4202, 14-4203, 14-4204, 14-4205, 14-4206, 14-6202, 14-4632 (3d Cir.)
  - ▶ Plaintiffs' brief filed December 18, 2015
  - ▶ Defendants' brief stayed pending decision on page limits
  - ▶ Oral argument not yet scheduled



# Cases to Watch – Product Hopping

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## ▶ NAMENDA

- ▶ *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638 (2d Cir.) cert. dismissed sub nom. *Allergan PLC v. New York ex rel. Schneiderman*, 136 S. Ct. 581 (2015)
  - ▶ Government case settled November 30, 2015 (defendant paid Attorney General's costs)
  - ▶ Private litigation pending

## ▶ DORYX

- ▶ *Mylan Pharmaceuticals, Inc., v. Warner-Chilcott PLC, et al.*, No. 15-2236 (3d Cir.)
  - ▶ Fully briefed as of March 2, 2016
  - ▶ Oral argument date not yet set



# Cases to Watch – Product Hopping (cont'd)

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## ▶ SUBOXONE

- ▶ *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litig.*, 64 F. Supp. 3d 665 (E.D. Pa. 2014)
  - ▶ Motion to dismiss denied
  - ▶ Fact discovery to be completed by September 30, 2016

## ▶ SPECIAL NOTE:

- ▶ Financial analyst (Bernstein Research) report:
  - ▶ “The forced switch is by far the most effective lifecycle management tool available to brand co's –effectively migrating the entire customer base away from the generic threat. Payors do not have the tools to resist the change and going forward we would expect that this will increasingly be the strategy of choice.”

