



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of

SCHERING-PLOUGH CORPORATION,  
a corporation,

UPSHER-SMITH LABORATORIES, INC.,  
a corporation,

and

AMERICAN HOME PRODUCTS  
CORPORATION,  
a corporation.

Docket No. 9297

PUBLIC VERSION

**MEMORANDUM IN OPPOSITION TO UPSHER-SMITH'S MOTION TO BAR  
COMPLAINT COUNSEL FROM ASSERTING THAT SCHERING-PLOUGH MADE  
"A \$60 MILLION NON-CONTINGENT PAYMENT"**

Clinging to its argument that Schering's \$60 million payments were contingent on something other than Upsher allowing Schering to maintain its K-Dur 20 monopoly, but faced with overwhelming evidence to the contrary, Upsher, now tries to remove this damaging factual issue from the hearing. In its motion, Upsher seeks nothing less than a gag order preventing complaint counsel and its experts from uttering the words "\$60 million non-contingent payments." This extraordinary relief is premised on Upsher's claim that, based on the "record in this case" and as a "matter of fact," complaint counsel are wrong in our contention that Schering made \$60 million in non-contingent payments.

Upsher's motion is without merit and should be denied because:

- Whether Schering's payments totaled \$60 million and were non-contingent are factual issues in dispute and we are entitled to prove our position; and
- The evidence confirms that the payments totaled \$60 million and were non-contingent.

### ARGUMENT

#### **I. Relevant Factual Evidence is Admissible and Cannot Be Excluded Simply Because Upsher Claims the Fact is Undisputed**

Under Commission Rule 3.43(b), "[r]elevant, material, and reliable evidence shall be admitted."<sup>1</sup> At trial complaint counsel intend to prove that Schering made \$60 million in payments to Upsher, and that these payments were guaranteed and not contingent on Upsher doing anything toward the development, FDA approval, or marketing of the Niacor-SR product for which Schering purportedly paid.

Upsher does not argue that evidence concerning the non-contingent nature of the \$60 million payments is irrelevant. How could it? The amount and structure of Schering's payments to Upsher are critical to assess whether the payments were for Niacor-SR, or to keep Upsher's generic K-Dur 20 product off the market. Nor does Upsher claim that such evidence is inadmissible on some other grounds.<sup>2</sup> Rather, Upsher argues that complaint counsel and its

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<sup>1</sup> FTC Rules of Practice for Adjudicatory Proceedings, 16 C.F.R. § 3.43(b) (2001).

<sup>2</sup> A court should exercise its "power to exclude evidence *in limine* only when evidence is clearly inadmissible on all potential grounds." *Hawthorne Partners v. AT&T Tech., Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); accord *National Union Fire Ins. Co. v. L.E. Meyers Grp.*, 937 F. Supp. 276, 287 (S.D.N.Y. 1996) (denying motion *in limine* to exclude extrinsic evidence as to contract terms); *Koch v. Koch Indus. Inc.*, 2 F. Supp. 2d 1385, 1388-05 (D. Kan. 1998) (denying motion *in limine* where the "deposition testimony cited by the plaintiffs create[d] enough of a factual question" on the issue of an expert's damages calculation that the matter was "best

experts should be precluded from asserting that Schering made "\$60 million in non-contingent payments" because based on "the record in this case" and "as a matter of fact," we are wrong.<sup>3</sup>

Simply put, Upsher is "arguing that the court should rule as a matter of law that no question of fact exists" on this matter.<sup>4</sup> Since a factual dispute does exist as to this issue, a motion to exclude is simply improper,<sup>5</sup> and Upsher's motion *in limine* should be denied.<sup>6</sup>

## **II. The Evidence Confirms that the \$60 Million Payment was Non-Contingent**

As a matter of law, Upsher's motion is ill conceived because it seeks to resolve in a motion *in limine* what is clearly a material factual dispute between the parties. More fundamentally, Upsher's motion ignores substantial evidence from the agreement itself, respondents' admissions, fact and expert witnesses, and documents; evidence which proves that Schering's payments for \$60 million to Upsher were guaranteed and were not contingent on Upsher doing anything to make Niacor-SR a product capable of being sold to consumers.

**The Agreement.** The agreement itself lists a three-part ..... totaling \$60 million.<sup>7</sup> It does not condition these up-front royalty payments upon any actions or

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reserved for trial.").

<sup>3</sup> Upsher-Smith's Memorandum in Support of its Motion to Bar Complaint Counsel from Asserting that Schering Made a "\$60 Million Noncontingent Payment," at 1 & 5.

<sup>4</sup> *Uniroyal Goodrich Tire Co. v. Mutual Trading Corp.*, 1992 U.S. Dist. LEXIS 19170 at \* 4 (N.D. Ill. Dec. 15, 1992).

<sup>5</sup> *Id.*

<sup>6</sup> *Koch*, 2 F. Supp. 2d at 1388 ("The movant has the burden of demonstrating that the evidence is inadmissible on any relevant ground.").

<sup>7</sup> CX 787 at SP1200194 (Attachment A).

conditions -- let alone the development or sales of Niacor-SR or any other "licensed" products.<sup>8</sup> Schering's duty to pay the \$60 million was even exempt from the agreement's *force majeure* clause, which states that the

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This means that Schering's obligation to pay the \$60 million was absolutely required, and was not contingent even upon

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It is difficult to imagine a contractual duty less contingent than Schering's obligation to pay the \$60 million to Upsher.

**Party admissions.** In response to complaint counsel's pretrial request for admissions, Schering concedes that the "\$60 million in Up-Front payments" it made to Upsher "were not contingent on Upsher taking any actions or satisfying any conditions concerning the development of Niacor-SR," regardless of whether "Upsher abandoned the development of Niacor-SR,"<sup>11</sup> and

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<sup>8</sup> CX 787 at SP1200192-SP1200199.

<sup>9</sup> CX 787 at SP1200199.

<sup>10</sup> CX 787 at SP1200199.

<sup>11</sup> Respondent Schering-Plough Corporation's Objections and Responses to Complaint Counsel's Revised Second Request for Admissions, Answer to Request No. 70 (Attachment B).

even if Upsher "did not inform Schering" that it had done so.<sup>12</sup> In fact, Schering admits that it continued to pay installments on the \$60 million despite making virtually no sales of the underlying products<sup>13</sup> and even after Upsher had ceased to seek FDA approval for Niacor-SR as a new drug.<sup>14</sup>

**Board of Directors' Testimony and Documents.** The minutes from the Schering board of directors' meeting where it approved the Schering/Upsher agreement specifically refer to .....<sup>15</sup> Schering's general counsel told the board of directors in a memo that Upsher demanded a ..... and identified three ..... in the agreement.<sup>16</sup> One of Schering's directors understood that .. with Upsher would be .....  
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<sup>12</sup> Schering, Answer to Request No. 72.

<sup>13</sup> See Schering, Answer to Request No. 75 (admitting that "Schering made a payment of \$12 million to Upsher approximately two years" after the original agreement), Answers to Request No. 84-87 (admitting that Schering has made no sales of Niacor-SR and less than \$1 million in sales of Prevalite since June, 1997 and has no current plans to sell any of the products).

<sup>14</sup> Schering, Answer to Request No. 429.

<sup>15</sup> CX 340 at SP0700003 (Attachment C).

<sup>16</sup> CX 338 at SPI200270 (Attachment D).

<sup>17</sup> Morley dep. at 58-59 (Attachment E).

<sup>18</sup> Morley dep. at 59.

.....<sup>19</sup> During his testimony, Schering's chairman and chief executive officer, Richard Kogan, made it perfectly clear that the \$60 million in payments were

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**Expert Witness Testimony.** Each of the five licensing expert witnesses in this case conclude that the payments totaled \$60 million and were non-contingent.<sup>21</sup> Not even Upsher's own experts deny these obvious facts. One of Upsher's licensing experts testified that the payments were ..... and that .....

.....<sup>22</sup> Upsher's other experts concur.<sup>23</sup> Both of Schering's licensing experts also agree with our position, one of whom testified that it ..... of the parties

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<sup>19</sup> Morley dep. at 59-60. Another member of Schering's board of directors understood that the guaranteed payments added up to \$60 million, that Schering had ..... it would pay the \$60 million, and that Schering was obligated to pay the \$60 million without regard to the success of Niacor-SR. Patricia Russo dep. at 30-31 (Attachment F).

<sup>20</sup> Kogan dep. at 35 (Attachment G).

<sup>21</sup> Dr. Nelson Levy (complaint counsel), Richard DiCicco (Upsher), Walter Bratic (Upsher), Dr. Zola Horovitz (Schering), and Kenneth McVey (Schering).

<sup>22</sup> Bratic dep. at 108 (Attachment H).

<sup>23</sup> DiCicco dep. at 79 (testifying that Upsher received a ..... (Attachment I).

to make the \$60 million payments non-contingent and that .....

.....<sup>24</sup>

Complaint counsel's licensing expert corroborates the testimony of respondents' experts. Dr. Nelson Levy, based on his two decades of pharmaceutical industry experience, analyzed the agreement and concluded that the payments totaled ..... and were .....<sup>25</sup>

**Upsher's Statements.** Upsher's chief operating officer, who negotiated the agreement with Schering, testified that even if the government were to declare the license invalid, ...  
.....<sup>26</sup> Even Upsher's motion acknowledges that "the payments were not contingent upon Niacor SR being approved by regulatory bodies in the United States or Europe."<sup>27</sup>

In sum, this extensive evidence demonstrates that Schering's payments totaled \$60 million and were not contingent on the success of Niacor-SR or any other licensed products. At

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<sup>24</sup> McVey dep. at 99 (Attachment J); see also Horovitz dep. at 77 .....  
..... (Attachment K).

<sup>25</sup> CX 753 at FTC0020505 (Attachment L). Contrary to respondents argument (Upsher Mem. at 4-5), Dr. Levy's opinion is not offered as a legal construction of the agreement, but rather is based on his extensive industry experience and a detailed review of the record. CX 753 at FTC0020527 .....  
.....  
..... Thus, the accuracy of Dr. Levy's testimony is a "matter of weight and not admissibility." *Liquid Air Corp. v. Rogers*, 834 F.2d 1297, 1308 (7th Cir. 1987). See also Complaint Counsel's Opposition to Respondents' Joint Motion to Exclude the Expert Testimony of Dr. Nelson L. Levy.

<sup>26</sup> Troup Investigational Hearing at 143 (Attachment M).

<sup>27</sup> Upsher-Smith's Motion to Bar Complaint Counsel from Asserting that Schering-Plough Made a "\$60 Million Noncontingent Payment," at 5 n.2.

a minimum, it shows that there is a material dispute of fact as to these issues, which "cannot be determined on a motion *in limine*."<sup>28</sup>

### III. Upsher's Factual Arguments are Unpersuasive

Upsher throws out various explanations for why the payments did not total \$60 million or were contingent. These explanations are either irrelevant or unpersuasive. First, Upsher disputes what it perceives is our characterization of a single \$60 million payment, on the basis that Schering actually made the payments in three installments. Upsher misses the point. Whether Schering made three payments or one, the point is that Schering's \$60 million in payments were not contingent on anything relating to Upsher's Niacor-SR product, but only on Upsher's agreement to delay marketing its generic K-Dur 20 product until September, 2001.

Next, Upsher asserts that the \$60 million in payments was contingent upon the approval of Schering's board of directors. This unremarkable insight, however, does nothing to further Upsher's argument. It goes without saying that Schering's payments first required Schering's agreement to make the payments. Without board approval, there would have been no agreement, no \$60 million in payments, and no delay of generic K Dur-20 entry. Therefore, the Schering board's approval did not make the payments "contingent," it simply authorized Schering to make them.

Finally, Upsher disputes complaint counsel's reference to the payments as totaling \$60 million, because their present value was closer to \$54 million. Again, Upsher seizes upon a meaningless distinction. Complaint counsel do not dispute that the present value of the payments

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<sup>28</sup> *Uniroyal*, 1992 U.S. Dist. LEXIS 19170 at \*4.

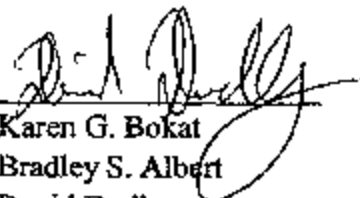


was less than \$60 million. But, whether the payments were \$60 million or \$54 million, we will prove that these payments far exceeded the value of the licenses obtained by Schering and that Schering's payments were for a delay in Upsher's expected generic K-Dur 20 entry.

**CONCLUSION**

For the foregoing reasons, complaint counsel respectfully request that Your Honor deny Upsher's motion *in limine* to bar complaint counsel and its expert witnesses from asserting that Schering-Plough made a "\$60 million non-contingent payment."

Respectfully submitted,

  
Karen G. Bokat  
Bradley S. Albert  
David Dudley  
Counsel Supporting the Complaint

Dated: January 22, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that this 22nd day of January, 2002, I caused a copy of the foregoing Public Version of Memorandum in Opposition to Upsher-Smith's Motion to Bar Complaint Counsel from Asserting that Schering-Plough Made "A \$60 Million Non-Contingent Payment" to be served upon the following person by hand delivery:

Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
Room 104  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

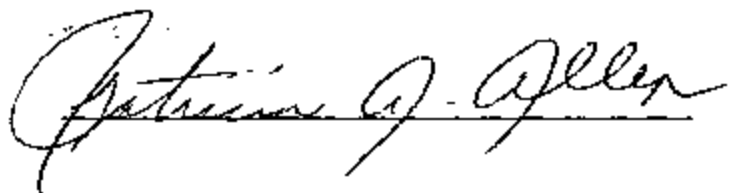
I caused one original and one copy to be served by hand delivery and one copy to be served by electronic mail upon the following person:

Office of the Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

I caused copies to be served upon the following persons by electronic mail and Federal Express:

Laura S. Shores  
Howrey Simon Arnold & White  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Christopher Curran  
White & Case LLP  
601 13th St., N.W.  
Washington, D.C. 20005



# ATTACHMENT A

This document has been redacted.

# ATTACHMENT B

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
Schering-Plough Corporation, a corporation,	)	
Upsher-Smith Laboratories, a corporation,	)	Docket No. 9297
and	)	
American Home Products Corporation, a corporation.	)	

**RESPONDENT SCHERING-PLOUGH CORPORATION'S  
OBJECTIONS AND RESPONSES TO COMPLAINT COUNSEL'S  
REVISED SECOND REQUEST FOR ADMISSIONS**

Pursuant to Federal Trade Commission ("FTC") Rule of Practice Section 3.32, respondent Schering-Plough Corporation ("Schering") submits these objections and responses to Complaint Counsel's Revised Second Request for Admissions.

**GENERAL OBJECTIONS AND STATEMENT**

Schering objects to Complaint Counsel's Revised Second Requests for Admissions to the extent that they seek to impose on Schering burdens or duties inconsistent with or in addition to those requested under the FTC's Rules of Practice. Schering further objects to the "Definitions" and "Instructions" provided with these requests to the extent that they are vague or ambiguous and to the extent that they impose requirements beyond those imposed by the FTC's Rules of Practice.

**Request No. 70:** *Under the Schering/Upsher Agreement, if Upsher abandoned the development of Niacor-SR, Upsher would still receive the full \$60 million in Up-Front Payments.*

**Answer:** Admitted, but only so long as Upsher complied with its obligation to make clinical trial data and intellectual property available to Schering.

**Request No. 72:** *Under the Schering/Upsher Agreement, if Upsher abandoned the development of Niacor-SR, and did not inform Schering that it, Upsher, had abandoned the development of Niacor-SR, Upsher would still receive the full \$60 million in Up-Front Payments.*

**Answer:** Schering admits this request, excepting that the payments to Upsher were conditional upon Upsher's obligations of good faith and fair dealing.

**Request No. 73:** *Schering made a payment of \$28 million to Upsher within 48 hours of the date on which the Schering/Upsher Agreement was approved by Schering's Board of Directors.*

**Answer:** Admitted.

**Request No. 74:** *Schering made a payment of \$20 million to Upsher approximately one year from the date on which the Schering/Upsher Agreement was approved by Schering's Board of Directors.*

**Answer:** Admitted.

**Request No. 75:** *Schering made a payment of \$12 million to Upsher approximately two years from the date on which the Schering/Upsher Agreement was approved by Schering's Board of Directors.*

**Answer:** Admitted.

**Request No. 80:** *Since June 1997, Schering has made no sales of Pentoxifylline pursuant to the license obtained in the Schering/Upsher Agreement.*

**Answer:** Admitted.

**Request No. 81:** *Schering had no intention, as of September 2001, to sell Pentoxifylline pursuant to the license obtained in the Schering/Upsher Agreement.*

**Answer:** Schering admits that, by September 2001, it no longer had plans to sell Pentoxifylline.

**Request No. 82:** *Since June 1997, Schering has made no sales of Klor CON products pursuant to the license obtained in the Schering/Upsher Agreement.*

**Answer:** Admitted.

**Request No. 83:** *Schering had no intention, as of September 2001, to sell the Klor CON products pursuant to the license obtained in the Schering/Upsher Agreement.*

**Answer:** Schering admits that, by September 2001, it no longer had plans to sell Klor-Con products.

**Request No. 84:** *Since June 1997, Schering has made no sales of Niacor-SR pursuant to the license obtained in the Schering/Upsher Agreement.*

**Answer:** Admitted.

**Request No. 85:** *Schering had no intention, as of September 2001, to sell Niacor-SR pursuant to the license obtained in the Schering/Upsher Agreement.*

**Answer:** Schering admits that, by September 2001, it no longer had plans to sell Niacor-SR.

**Request No. 86:** *Since June 1997, Schering sales of Prevalite, pursuant to the license obtained in the Schering/Upsher Agreement, have totaled less than \$1 million.*

**Answer:** Admitted.

**Request No. 87:** *Schering had no intention, as of September 2001, to make any additional sales of Prevalite pursuant to the license obtained in the Schering/Upsher Agreement.*

**Answer:** Schering admits that, by September 2001, it no longer had plans for additional sales of Prevalite as of September 2001.

**Request No. 92:** *The Schering/Upsher Agreement placed no obligation on Schering to carry out any activities concerning the marketing of Niacor-SR in Europe.*

**Answer:** Denied. The Schering/Upsher license contemplated a "detailed agreement," and drafts of that agreement placed an obligation on Schering to carry out activities concerning the marketing of Niacor-SR in Europe.



**Request No. 420:** *Schering decided not to enter into a license agreement with Kos for Niaspan in part because of the size of the potential sales of Niaspan.*

**Answer:** Denied. Schering never sought to enter into a license agreement with Kos for Niaspan. However, Schering did consider a proposal to enter into a co-marketing/detailing agreement with Kos for Niaspan.

**Request No. 428:** *Prior to January 1, 2000, Schering was never informed by Upsher that Upsher intended to seek or considered seeking FDA approval of an ANDA for Kos' Niaspan product.*

**Answer:** After reasonable inquiry, the information known to or readily obtainable by Schering is insufficient to allow Schering to admit or deny whether it was informed by Upsher that Upsher intended to seek or considered seeking FDA approval of an ANDA for Kos' Niaspan product prior to January 1, 2000.

**Request No. 429:** *In September 1998, Schering was informed by Upsher that Upsher had ceased its activities directed at submitting to the FDA an NDA for Niacor-SR.*

**Answer:** Admitted.

**Request No. 430:** *Prior to September 1998, Schering had not been informed by Upsher that Upsher had ceased its activities directed at submitting to the FDA an NDA for Niacor-SR.*

**Answer:** After reasonable inquiry, the information known to or readily obtainable by Schering is insufficient to allow Schering to admit or deny if Schering had been informed by Upsher that Upsher had ceased its activities directed at submitting an NDA prior to September 1998.

**Request No. 431:** *Prior to September 1998, Schering had no discussions with Upsher about whether Upsher had reduced its level of efforts or activity directed at submitting an NDA for Niacor-SR to the FDA.*

**Answer:** After reasonable inquiry, the information known to or readily obtainable by Schering is insufficient to allow Schering to admit or deny whether

**Request No. 418:** *Schering decided not to enter into a license agreement with Kos for Niaspan in part because of clinical data demonstrating a flushing side effect resulting from taking Niaspan.*

**Answer:** Denied. Schering never sought to enter into a license agreement with Kos for Niaspan. However, Schering did consider a proposal to enter into a co-marketing/detailing agreement with Kos for Niaspan.

**Request No. 420:** *Schering decided not to enter into a license agreement with Kos for Niaspan in part because of the size of the potential sales of Niaspan.*

**Answer:** Denied. Schering never sought to enter into a license agreement with Kos for Niaspan. However, Schering did consider a proposal to enter into a co-marketing/detailing agreement with Kos for Niaspan.

**Request No. 428:** *Prior to January 1, 2000, Schering was never informed by Upsher that Upsher intended to seek or considered seeking FDA approval of an ANDA for Kos' Niaspan product.*

**Answer:** After reasonable inquiry, the information known to or readily obtainable by Schering is insufficient to allow Schering to admit or deny whether it was informed by Upsher that Upsher intended to seek or considered seeking FDA approval of an ANDA for Kos' Niaspan product prior to January 1, 2000.

**Request No. 429:** *In September 1998, Schering was informed by Upsher that Upsher had ceased its activities directed at submitting to the FDA an NDA for Niacor-SR.*

**Answer:** Admitted.

**Request No. 430:** *Prior to September 1998, Schering had not been informed by Upsher that Upsher had ceased its activities directed at submitting to the FDA an NDA for Niacor-SR.*

**Answer:** After reasonable inquiry, the information known to or readily obtainable by Schering is insufficient to allow Schering to admit or deny if Schering had

# ATTACHMENT C

This document has been redacted.

# ATTACHMENT D

This document has been redacted.

# ATTACHMENT E

**In The Matter Of:**

*SCHERING-PLOUGH CORP., UPSHER-SMITH  
LABORATORIES AND AMERICAN HOME PRODUCTS COR*

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*H. BARCLAY MORLEY*

*August 23, 2001*

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*For The Record, Inc.*

*Court Reporting and Litigation Support*

*603 Post Office Road*

*Suite 309*

*Waldorf, MD USA 20602*

*(301) 870-8025 FAX: (301) 870-8333*

Original File 10823HOB.ASC, 84 Pages  
Min-U-Script® File ID: 1094911690

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# ATTACHMENT F

**In The Matter Of:**

*SCHERING-PLOUGH CORP., UPSHER-SMITH  
LABORATORIES AND AMERICAN HOME PRODUCTS CORP.*

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*PATRICIA A. RUSSO*

*August 21, 2001*

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*For The Record, Inc.  
Court Reporting and Litigation Support  
603 Post Office Road  
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Original File 10821RUS.ASC, 61 Pages  
Min-U-Script® File ID: 0873477176

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# ATTACHMENT G

**In The Matter Of:**

*SCHERING-PLOUGH & UPSHER-SMITH  
MATTER NO. 9910256*

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*RICHARD KOGAN*

*October 23, 2000*

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*For The Record, Inc.  
Court Reporting and Litigation Support  
603 Post Office Road  
Suite 309  
Waldorf, MD USA 20602  
(301) 870-8025 FAX: (301) 870-8333*

Original File 11102KOG.ASC, 52 Pages  
Min-U-Script® File ID: 0719176492

**Word Index included with this Min-U-Script®**

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# ATTACHMENT H



**In The Matter Of:**

*SCHERING-PLOUGH & UPSHER-SMITH  
MATTER NO. D09297*

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*WALTER BRATIC  
December 4, 2001*

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*For The Record, Inc.  
Court Reporting and Litigation Support  
603 Post Office Road  
Suite 309  
Waldorf, MD USA 20602  
(301) 870-8025 FAX: (301) 870-8333*

Original File 11204BRA.ASC, 325 Pages  
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# ATTACHMENT I

**In The Matter Of:**

*SCHERING-PLOUGH CORP. & UPSHER-SMITH LABS  
MATTER NO. D09297.*

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*RICHARD L. DiGICCO*

*November 27, 2001*

**CONFIDENTIAL**

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*For The Record, Inc.  
Court Reporting and Litigation Support  
603 Post Office Road  
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Waldorf, MD USA 20602  
(301) 870-8025 FAX: (301) 870-8333*

Original File 11127DICASC, 231 Pages  
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# ATTACHMENT J

**In The Matter Of:**

*SCHERING-PLOUGH & UPSHER-SMITH  
MATTER NO. 9910256*

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*KENNETH MCVEY  
November 16, 2001*

**CONFIDENTIAL**

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*For The Record, Inc.  
Court Reporting and Litigation Support  
603 Post Office Road  
Suite 309  
Waldorf, MD USA 20602  
(301) 870-8025 FAX: (301) 870-8333*

Original File 11116MCV.ASC, 288 Pages  
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# ATTACHMENT K

**In The Matter Of:**

*SCHERING-PLOUGH CORP. & UPSHER-SMITH LABS  
MATTER NO. D09297*

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*ZOLA P. HOROVITZ  
November 14, 2001*

**CONFIDENTIAL**

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Court Reporting and Litigation Support  
603 Post Office Road  
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Original File 111141HOR.ASC, 237 Pages  
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# ATTACHMENT L

**United States of America  
Federal Trade Commission**

**In the matter of  
Schering-Plough Corporation  
Upsher-Smith Laboratories, Inc.  
and American Home Products Corporation**

**Docket No. 9297**

# **Expert Report**

**by**

**Nelson L. Levy, Ph.D., M.D.**

**August 13, 2001**

The remaining pages of the expert report have been redacted.

# ATTACHMENT M

**In The Matter Of:**

*SCHERING-PLOUGH & UPSHER-SMITH  
MATTER NO. 9910256*

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*IAN TROUP  
May 25, 2000*

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*For The Record, Inc.  
Court Reporting and Litigation Support  
603 Post Office Road  
Suite 309  
Waldorf, MD USA 20602  
(301) 870-8025 FAX: (301) 870-8333*

Original File 00525TRO.ASC, 166 Pages  
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