

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

**MOTION OF RESPONDENT SCHERING-PLOUGH CORPORATION FOR
LEAVE TO SUBMIT ONE ADDITIONAL EXPERT REPORT**

Respondent Schering-Plough Corporation (“Schering”) hereby respectfully requests leave to submit one additional brief expert report. As set forth below, the report is needed to rebut the opinion of one of Complaint Counsel’s rebuttal experts on a topic that was raised for the first time in his rebuttal expert report. In support of the motion, Schering states as follows:

1. The Second Revised Scheduling Order (“Scheduling Order”) contemplates that Complaint Counsel will identify rebuttal experts and provide expert reports in reponse to certain of respondents’ experts on November 6, 2001. The Scheduling Order provides specifically that such reports are to be limited to rebuttal of matters set forth in Respondents’ expert reports. It provides further that in the event material outside the scope of fair rebuttal is presented, “[r]espondents will have the right to seek appropriate

relief (such as striking Complaint Counsel’s rebuttal expert reports or seeking leave to submit rebuttal expert reports on behalf of Respondents.”) Scheduling Order at 1 (emphasis added).

2. On November 6, 2001, Complaint Counsel served on respondents the Rebuttal Expert Report of Dr. Bertram Pitt. Dr. Pitt is a Professor of Internal Medicine at the University of Michigan School of Medicine. According to his report, Dr. Pitt has served on a FDA advisory committee that makes recommendations regarding whether NDAs should be approved. Pitt Report at 2.

3. Dr. Pitt rendered an opinion on the question “whether [Niacor SR] was likely to be approved by the Federal Food and Drug Administration.” Pitt Report at 3. None of Complaint Counsel’s original experts opined on this question, and, consequently, none of respondents’ experts rendered an opinion on it either.

4. Schering therefore requests leave to submit a brief report from Michael H. Davidson, M.D., an expert qualified to opine on this question. Dr. Davidson, who is an Associate Professor of Medicine at the Rush Presbyterian St. Luke’s Hospital in Chicago and the President and Chief Executive Officer of the Chicago Center for Clinical Research, is a leading expert in the area of hypercholesterolemia (high cholesterol) and drugs used to treat that condition. He was involved in the clinical trial research on Niacor SR and in discussions with the FDA about the drug’s prospects for approval.

5. Dr. Davidson is prepared to testify that based on his expertise, his involvement in the clinical trials of Niacor SR, and his personal knowledge of discussions with FDA officials about Niacor SR, the FDA would have approved an NDA for Niacor

SR. Given the importance of this issue, Schering would be severely prejudiced were it unable to present expert testimony on the subject.

6. Schering anticipates that Dr. Davidson's report will be quite brief and in any event not longer than Dr. Pitt's 8-page report.

5. Schering would be prepared to serve Dr. Davidson's report on November 15, 2001, when the balance of Complaint Counsel's rebuttal expert reports is due. Dr. Davidson will be available for a deposition within the time already set for expert depositions. No changes to the Scheduling Order therefore would be required if the Court were to grant Schering's motion.

Respectfully submitted,

John W. Nields, Jr.
Marc G. Schildkraut
Laura S. Shores
Charles A. Loughlin
HOWREY SIMON ARNOLD & WHITE LLP
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 783-0800

Attorneys for Respondent
Schering-Plough Corporation

Dated: November 8, 2001

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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In the Matter of)	
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Schering-Plough Corporation,)	
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Upsher-Smith Laboratories,)	Docket No. 9297
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**ORDER GRANTING SCHERING-PLOUGH CORPORATION'S
MOTION FOR LEAVE TO SUBMIT ONE ADDITIONAL EXPERT REPORT**

IT IS HEREBY ORDERED that Schering-Plough Corporation's Motion for Leave to Submit One Additional Expert Report is hereby GRANTED.

D. Michael Chappell
Administrative Law Judge

Date: _____, 2001

CERTIFICATION

I hereby certify that this 26th day of October, 2001, I caused an electronic copy of the Motion of Respondent Schering-Plough Corporation for Leave to Submit One Additional Expert Report to be filed with the Secretary of the Commission. I further certify that these are true and correct copies of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission.

Erik T. Koons

CERTIFICATE OF SERVICE

I hereby certify that this 8th day of November, 2001, I caused an original, one paper copy and an electronic copy of the foregoing Motion of Respondent Schering-Plough Corporation for Leave to Submit One Additional Expert Report to be filed with the Secretary of the Commission, and that two paper copies were served by hand upon:

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

and one paper copy was hand delivered upon:

Karen Bokat
Bureau of Competition
Federal Trade Commission
Washington, D.C.
601 Pennsylvania Ave, N.W.
Washington, D.C. 20580

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

Erik T. Koons