

Complaint Counsel's cross-motion to the extent that it seeks to limit respondents' experts' ability to present their opinions in response to Dr. Levy's opinion in this regard.

With respect to the question of Dr. Pitt's testimony, Schering will soon file a motion in limine that will seek to exclude some of the testimony Dr. Pitt intends to present at the hearing on the subject of FDA approvability. Schering will show that, under clearly relevant case law, certain portions of his testimony are subject to exclusion. Because the issues that will be raised in Schering's motion in limine are closely related to those raised by Upsher's motion and Complaint Counsel's cross-motion, Schering respectfully suggests that the Court may wish to defer resolution of all motions relating to Dr. Pitt until briefing on Schering's motion in limine is completed.

Respectfully submitted,

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Dated: December 20, 2001

CERTIFICATE OF SERVICE

I hereby certify that this 20th day of December, 2001, I caused an original, one paper copy and an electronic copy of the foregoing Respondent's Response to Complaint Counsel's Cross-Motion In Limine to Exclude Expert Testimony on FDA Approval of Niacor

CERTIFICATION

I hereby certify that this 20th day of December, 2002, I caused an electronic copy of Respondent's Response to Complaint Counsel's Cross-Motion In Limine to Exclude Expert Testimony on FDA Approval of Niacor-SR 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