

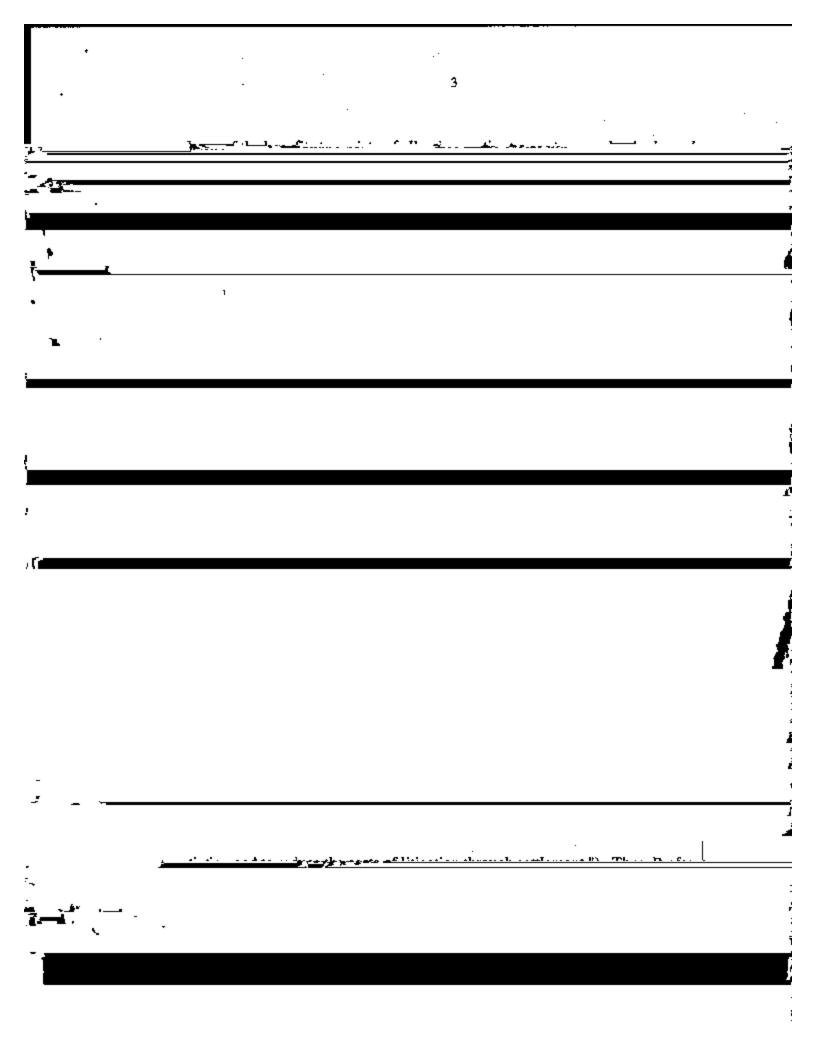
are far beyond the permissible scope of expert testimony. Accordingly, Schering and

Upsher request that this Court limit Professor Bazerman's testimony to proper and

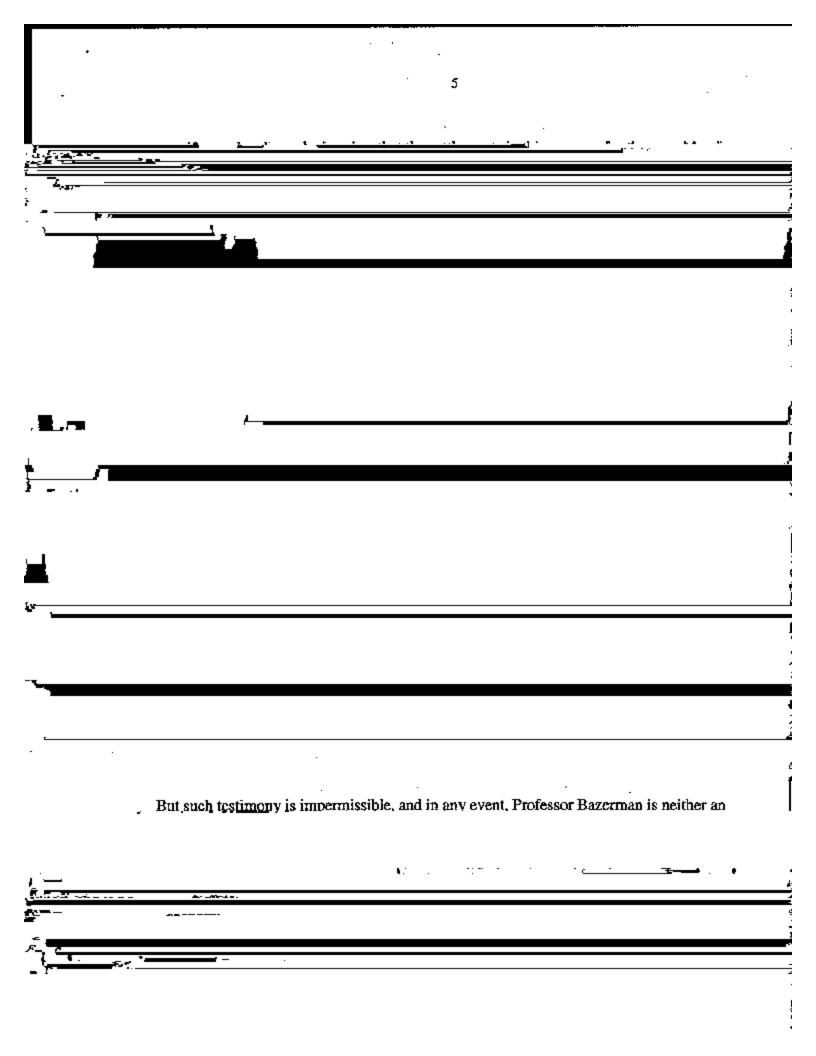
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		ATES OF AMERICA RAL TRADE COMMISSION	
	In the Matter of)	
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	Upsher-Smith Laboratories, a corporation,) Docket No. 9297 PUBLIC VERSION	
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	Complaint counsel designated Professor Bazerman as a proposed expert witness	
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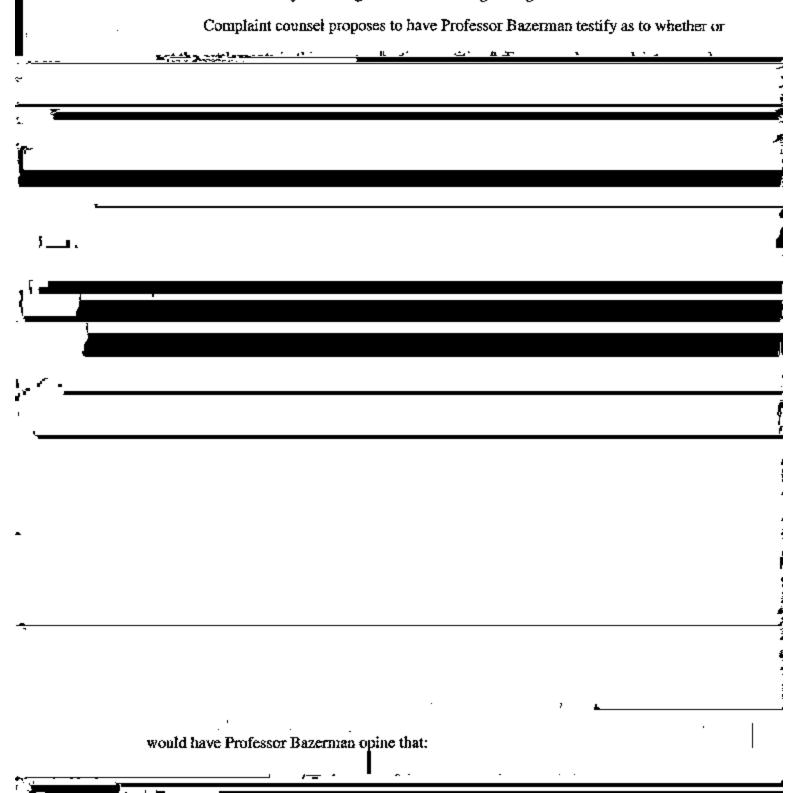
areas of aromased testimony are far bounné Professor Revermon's exportise, and in fact

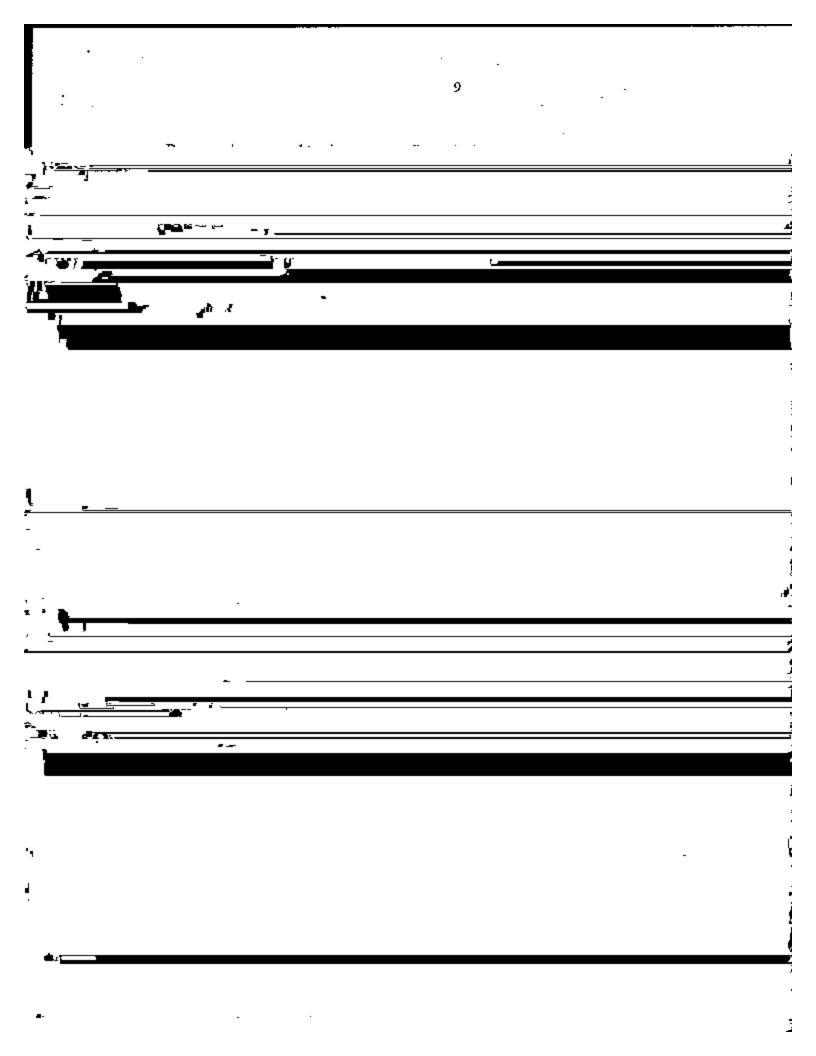


B. Complaint Counsel Improperly Seeks To Have Professor Bazerman Weigh The "Persuasiveness" Of The Parties' Economists

Complaint counsel also propose to have Professor Bazerman advise the Court as to the weight it should give to the testimony of the different economists who will testify in this matter. Not surprisingly, complaint counsel would like Professor Bazerman to

C. Complaint Counsel Improperly Seeks To Have Professor Bazerman Testify to A Legal Conclusion Regarding Antitrust Law





counsel. In fact, although Professor Bazerman was retained to opine as to whether the Upsher-Smith/Schering settlement agreement was "anticompetitive," he cannot recall ever ever ugina the mords "anticompetitive" to "acompetitive" or "accommetitive" or "accommetitive " in product, 2) the fact that the license involved mainly non-contingent payments, 3) the fact that the settlement and license were done as part of the same transaction, and 4) the allegedly "excessive" payment for the Niacor-SR license. See Bazerman Rpt. at 3. But complaint counsel would have him offer this opinion despite the fact that Professor Bazerman's has not seen any documents in this case, and has not read the testimony of

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	However, his "specific expertise, the research [he is] perhaps most well-known for, is	
	understanding how individuals are systematically biased in the decisions that they make	
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	 He does not have a "general understanding of what would formulate a set of communication dilinercal evaluation." Id. at \$2. 		
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Second, complaint counsel proposes to have Professor Bazerman testify that there is something "suspicious" about the fact that the Niacor-SR license involved mainly non-contingent payments, rather than primarily milestone payments. But Professor Bazerman is no more an expert on pharmaceutical licensing than he is on pharmaceutical due

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subject of the settlement of litigation. *Id.* at 12-16.⁷ In fact, other than the agreements at issue in this case, Professor Bazerman has never read a final settlement agreement between a branded pharmaceutical company and a generic company. *Id* at 156. And, of course, Professor Bazerman has not reviewed any of the documents or testimony related to the settlement negotiations in this case. *Id.* at 285. Thus, once again, his proposed

CONCLUSION 111.

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Exhibit Redacted

Subject to Confidential Protective Order

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CERTIFICATE OF SERVICE

I hereby certify that this 3rd day of January, 2002, I caused an original, one paper copy and an electronic copy of the foregoing Respondents' Joint Motion to Limit the Testimony of Max H. Bazerman and accompanying memorandum, 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
Burcau of Competition
Federal Trade Commission
Washington, D.C.
601 Pennsylvania Ave, N.W.
Washington, D.C. 20580

