

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

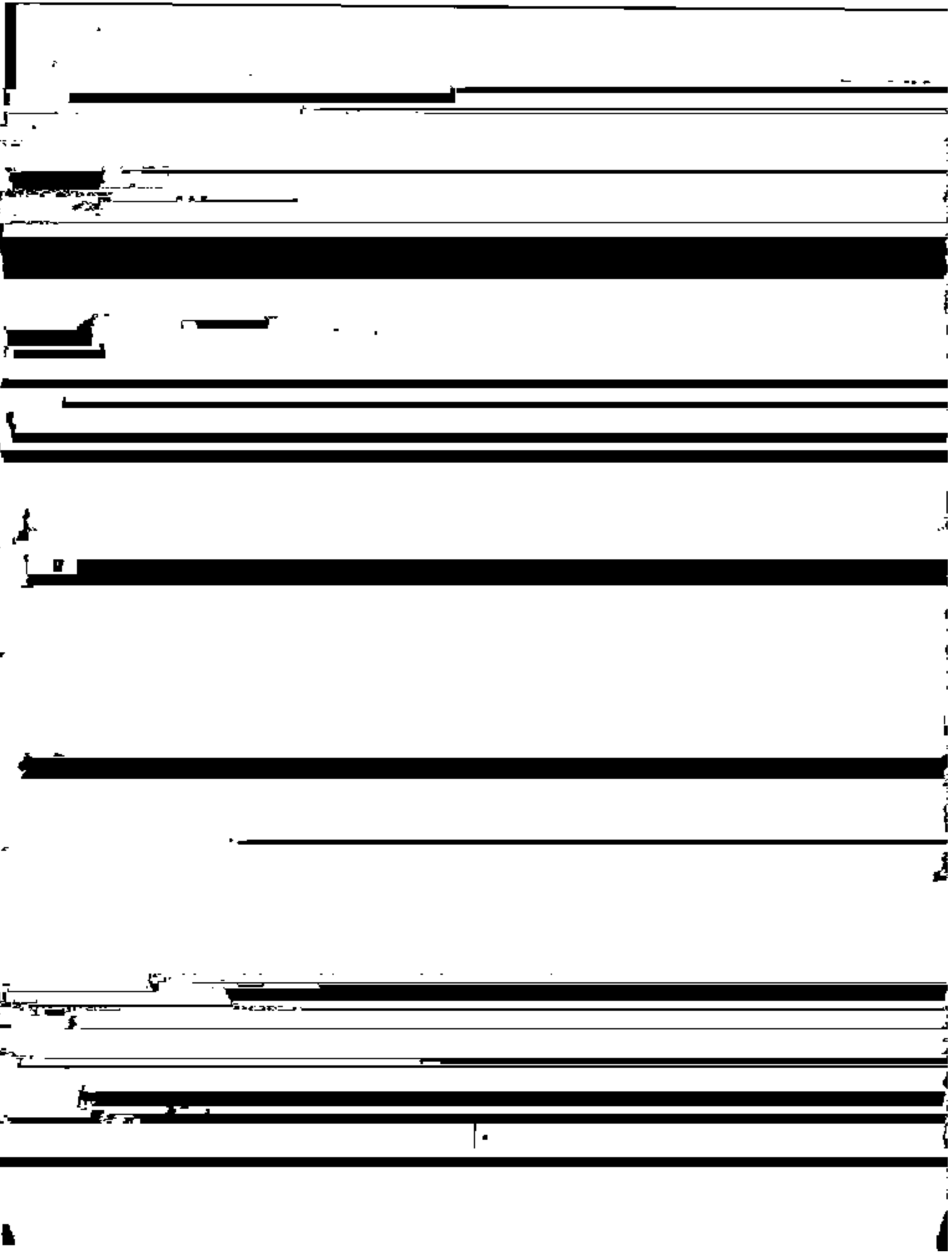
PUBLIC VERSION

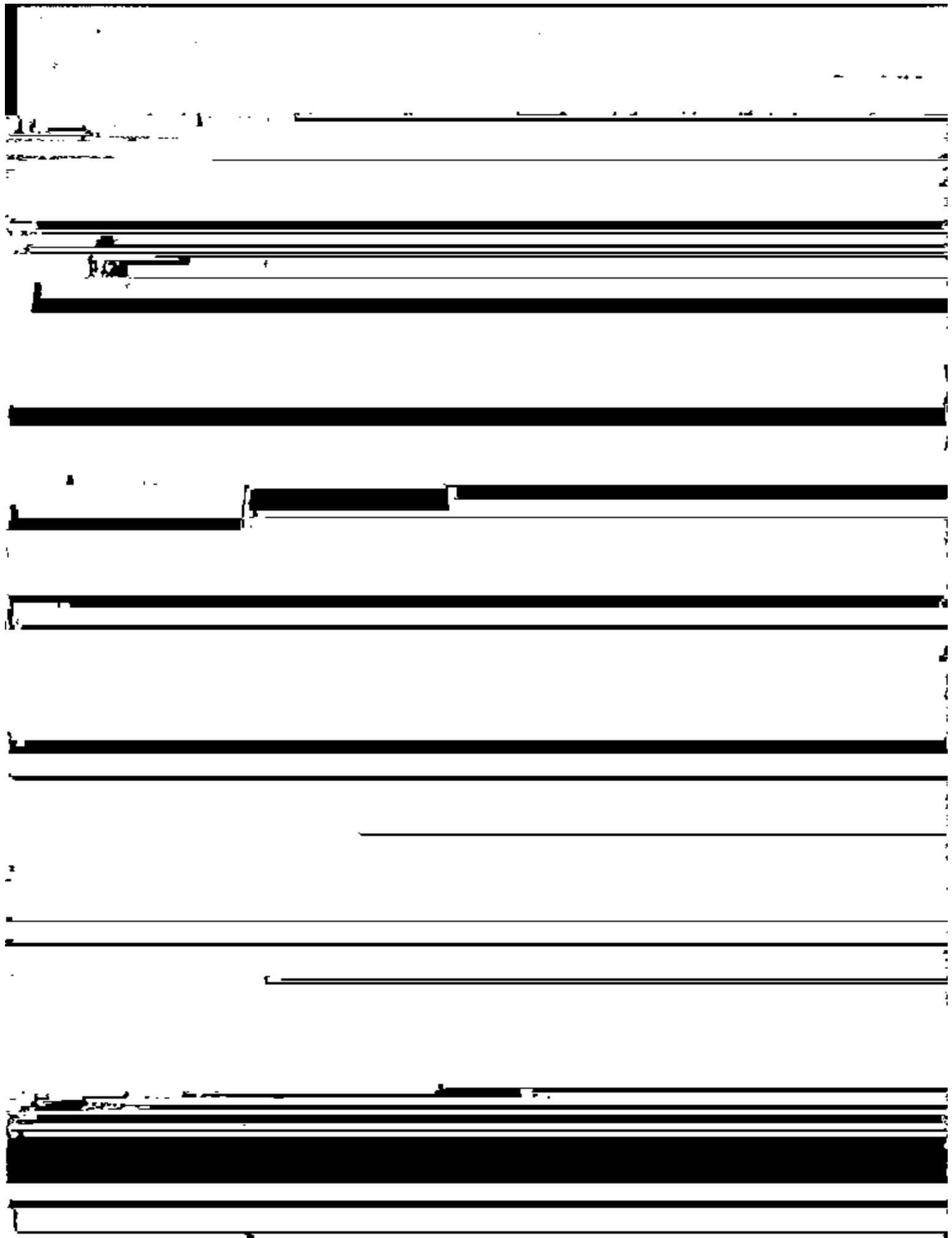
MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S
MOTION TO LIMIT OR EXCLUDE DUPLICATIVE
AND IMPROPER EXPERT WITNESS TESTIMONY

The Commission's complaint charges that Schering-Plough Corporation, UPSHER-SMITH LABORATORIES, INC., and AMERICAN HOME PRODUCTS CORPORATION have engaged in unfair and deceptive practices in violation of Section 5 of the Federal Trade Commission Act.

- Dr. Timothy Bresnahan will testify that, based on his economic analysis, Schering's agreements with Upsher and AHP are anticompetitive and harmed consumers by delaying expected generic entry; and

3/6/1991 [redacted] will provide an exemption of the release of [redacted]





outweighed by the time, cost and confusion caused by allowing it.¹⁰ Following these principles, expert testimony may be subject to exclusion anytime multiple witnesses are expected to testify with respect to the same general issue and as to similar conclusions.¹¹ In these situations, the expert testimony – even where it differs in certain respects – relates to the same essential point and thus would play the same role in the disposition of the relevant issue.¹²

As demonstrated below, respondents' attempt to introduce multiple experts to testify on the same issue will not assist this Court in assessing factual issues, but will merely burden the record with duplicative testimony, delay and protract the trial, and obscure important aspects of the case. Reviewing the reports and depositions of respondents' named experts will clearly show

¹⁰ *Elwood v. Pina*, 815 F.2d 173, 178 (1st Cir. 1987).

¹¹ See, e.g., *Merrill Lynch Bus. Fin. Servs. v. Gray Supply Co.*, 1991 WL 278305 at *3 (S.D. Ill. Dec. 27, 1991) (defining relevant subject area as industry standards for law enforcement).

the repetitive and cumulative nature of the proposed testimony.¹³ Consistent with the Fifth

Circuit's rationale in *Loftis v. American Int'l Ins. Co.*, this Court should exclude respondents'

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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cumulative and should be limited.

**A. Respondents' Four Proffered Licensing Experts
Will Provide Unduly Cumulative Evidence**

Dependants have named four witnesses to testify to what the defendant did to

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Even Dr. Horovitz recognizes the repetition in his work with that of Mr. McVey's. He

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The testimony of these four expert witnesses will be unduly cumulative and will "merely burden the record and delay" the proceedings.¹⁶ Accordingly, complaint counsel respectfully

requests that the Commission take the following actions:

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The proposed testimony of the two medical experts is virtually redundant, even down to some of the smallest details.

.....¹⁸ Allowing both

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Despite the limited relevance, if any, of this entire line of proposed expert testimony,

~~Substantive~~ ~~material~~ ~~offer~~ ~~was~~ ~~witnesses~~ ~~who~~ ~~are~~ ~~expected~~ ~~to~~ ~~con~~ ~~tradict~~ ~~the~~ ~~same~~ ~~thing~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

understanding the specific issues from the patent litigation, the proper mode for that assistance is through attorney argument, not the testimony of patent attorneys posing as unbiased "experts."

Attorneys' testimony on the legal issues of a particular case is generally prohibited

removing the procedure of prosecuting a patent before the Patent and Trademark Office. 34 1

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Approved for release by NSA on 05-08-2014 pursuant to E.O. 13526

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**2. Schering's Proffered Patent Experts
will Provide Unduly Cumulative Testimony**

Even if this Court does not exclude the testimony of Mr. Miller and Mr. Bjorge as

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Reference to the annual report of the Department of Education, 1911, p. 10.

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(den. at 119-20). Mr. Bjorge's of Dr. Banker's opinion is unduly cumulative and

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[REDACTED]

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[REDACTED]

[REDACTED]

economic expert.

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Both of Schapiro's experts, Dr. Addonki and Dr. Willig, perform a similar analysis:



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..... Although the proposed experts may employ slightly different methodologies or emphasize slightly different points, the

..... methodology be similar to that of 50. In the end, each addresses the same

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[REDACTED]

CONCLUSION

To prevent the presentation of unduly cumulative and improper evidence that would cloud

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L. D. [Redacted] Use header config that on January 10, 2002 covered [Redacted] [Redacted]

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