

OSCAR DOCUMENT NUMBER: 491068

Matter: D99297. Schering-Plough Corp. et al

**ORIGINAL**

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



In the Matter of

**SCHERING-PLOUGH CORPORATION,**  
a corporation,

**UPSHIER-SMITH LABORATORIES, INC.,**  
a corporation,

and

**AT THE HEARING ON**

Docket No. 9297

**PUBLIC VERSION**

**COMPLAINT COUNSEL'S RESPONSE TO RESPONDENTS' JOINT MOTION**

Professor Bazerman has written or co-authored over 125 research articles, and authored, co-authored, or edited ten books. Professor Robert Mnookin, Schering's expert witness on

## II. Respondents' Arguments

In the face of Professor Bazerman's overwhelming and unassailable expertise regarding

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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settlement agreements. Respondents also attempt to apply an overly-restrictive standard as to the

admissible subjects of testimony in Commission proceedings that is inconsistent with the

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the Commission can itself more knowledgeably determine whether or not such agreements are problematic and violate the law.

**IV. The Legal Standard for Admission of Expert Evidence in Federal Trade Commission Proceedings**

Respondents argue that expert testimony in this case "must comply" with Rule 702 of the

Federal Rules of Evidence.<sup>4</sup> Respondents specifically assert that testimony regarding "testimony

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

Putting aside the question of the accuracy of Respondents' characterization of Professor Bazerman's testimony, as discussed above, the legal standard that Respondents seek to apply to limit the scope of Professor Bazerman's testimony simply does not apply in Federal Trade Commission proceedings. The Commission's own Rules define the scope of admissible evidence in Commission adjudicative proceedings. Section 3.43(b) of the Commission's Rules

[REDACTED]

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evidence includes within its scope Professor Bazerman's expert testimony regarding public policy issues within his nationally-recognized areas of expertise, his views about the persuasiveness of other expert testimony, including economic expert testimony, insofar as it is within his carefully delineated areas of economic expertise and bears on his expert opinions

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[REDACTED]

Motion at 5) that because Professor Bazerman "is not an expert in pharmaceutical licensing – nor is he an economist," he is not qualified to provide testimony "that the due diligence done on Niacor-SR and the terms of the Niacor-SR license suggest that the settlement delayed generic

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[REDACTED]

Professor Bazerman has been very careful in his use of information from these related areas either to assure that the information does not exceed his expert ability to evaluate and properly use the information, and that he only uses such information insofar as it bears on the subject of

his expert analysis of the terms of settlement agreements that are of the type of the

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**Professor Bazerman's Testimony in Response to Respondents' Economic Experts is Proper Rebuttal to Their Opinions Relating to Settlement Agreements**

Respondents proffer four experts to testify about the economic aspects of the challenged settlement agreements. However, all four economists opine on whether settlement agreements of the type at issue in the present proceeding should be considered illegal *per se*, and whether a

VIII. Conclusion

As an expert in negotiations and settlement agreements, Professor Bazerman's testimony, both in his rebuttal expert report and in his expected testimony at trial, is directly in rebuttal to

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Respectfully Submitted,



[REDACTED]

**CERTIFICATE OF SERVICE**

I hereby certify that this 22nd day of January, 2002, I caused a copy of the foregoing  
Public Version of Complaint Counsel's Response to Respondents' Joint Motion to Limit the  
Testimony of Mr. H. [REDACTED] to be served upon the following person by hand delivery:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# ATTACHMENT A

[REDACTED]

[REDACTED]

[REDACTED]

UNITED STATES OF AMERICA  
BEFORE THE 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

REBUTTAL EXPERT REPORT OF  
PROFESSOR MAX BAZERMAN

The remaining pages of the expert report have been redacted.

# ATTACHMENT B



**In The Matter Of:**

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

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*MAY H BAZERMAN*

The remaining items of the transcript have been updated

# ATTACHMENT C



This document has been redacted.

# ATTACHMENT D

Report of  
Robert H. Mnookin  
On Behalf of  
Schering-Plough Corporation

To The  
Federal Trade Commission

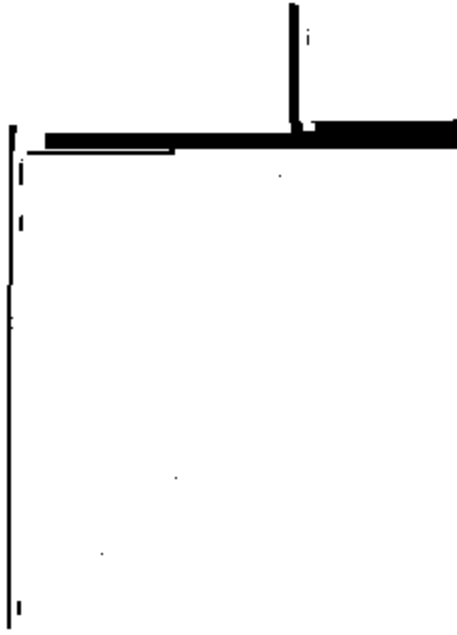
Concerning  
File No. 9910256

October 4, 2001

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# ATTACHMENT E



H ———

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of )  
)

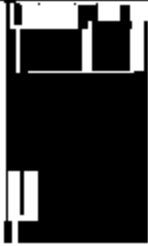
Schering-Plough Corporation, )  
a corporation, )

Upsher-Smith Laboratories, )

) Docket No. 9297

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# ATTACHMENT F



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UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of )  
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# ATTACHMENT G

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of )

Schering-Plough Corporation, )  
a corporation, )

Upsher-Smith Laboratories, )  
a corporation, )

) Docket No. 9297  
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# ATTACHMENT H

**United States of America  
Federal Trade Commission**

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# ATTACHMENT I

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