

SNF (AUSTRALIA) PTY LTD
Applicant

COMMISSIONER OF TAXATION
Respondent

AFFIDAVIT OF BRIAN C. BECKER

On 18 May 2009, I, Brian C. Becker of 1901 Pennsylvania Avenue NW, Washington, DC 20006, USA, affirm as follows:

1. I am the President and CEO of Precision Economics, LLC, an economic research and consulting firm based in Washington, DC in the United States of America.
2. I refer to my first and second reports, dated 2 March 2009 and 23 March 2009 respectively. By letter dated 20 April 2009, I was asked by the Australian Government Solicitor to prepare a third report. I have prepared a further report dated 15 May 2009.
3. Exhibited to this affidavit and marked "BCB-3" is a true copy of my third report.



.....
Brian C. Becker
18 May 2009

DISTRICT OF COLUMBIA) SS: 220-56-4694

On this the 18th day of May 2009, before me personally appeared Brian C. Becker known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.




.....
Notary Public

My Commission Expires: Pushpa S. Basnyake
Notary Public, District of Columbia
My Commission Expires 2-28-2010

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

SNF (AUSTRALIA) PTY LTD

Applicant

COMMISSIONER OF TAXATION

Respondent

CERTIFICATE OF EXHIBIT BCB-3

I certify that the document to which this certificate is attached is the exhibit BCB-3 referred to in the affidavit of Brian C. Becker affirmed on 15 May 2009:



.....
Brian C. Becker

18 May 2009

DISTRICT OF COLUMBIA) SS: 220-56-4694

On this the 18th day of May 2009, before me personally appeared Brian C. Becker known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.



.....
Notary Public

My Commission Expires: Pushpa S. Basnayake
Notary Public, District of Columbia
My Commission Expires 2-28-2010



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Third Statement of Brian C. Becker

In the Federal Court of Australia
Victoria District Registry

Between:

SNF (Australia) PTY Limited, Applicant

The Commissioner of Taxation of the Commonwealth of Australia, Respondent

NO: VID 132 of 2008

15 May 2009

Prepared on instructions of:

Australian Government Solicitor

Third Statement of Brian C. Becker

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Third Statement of Brian C. Becker

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Third Statement of Brian C. Becker

FINDINGS

A. Assignment and Valuation Issues

1. SPCM SA (formerly known as SNF SA) (“SNF FRANCE”)¹ is the French parent of the multinational chemicals company known as the SNF Floerger Group. SNF operates through a related entity, SNF (Australia) Pty. Ltd. (“SNF AUSTRALIA”) in Australia that has imported and distributed polyacrylamide products since beginning its operations in 1990.²

2. SNF AUSTRALIA purchased most of its product from related parties during the 1997-2003 audit period. SNF AUSTRALIA proposed that it record \$77.6 million for its costs of sales on products (*i.e.*, its “transfer prices”) principally sourced through the SNF “family”—SNF FRANCE, SNF USA, SNF CHINA, and SNF KOREA.³

3. The taxpayer’s evidence (Affidavits) opines that its transfer prices were at levels consistent with arm’s length expectations, focusing on two general areas:

- certain comparisons of SNF’s proposed transfer prices to the polyacrylamide prices paid by unrelated parties (otherwise known as the taxpayer’s “CUP” analysis);⁴ and
- a list of business reasons for the losses SNF AUSTRALIA has proposed over the 1997-2003 period.

4. The Australian Government Solicitor (“AGS”) engaged me in 2008 to economically analyze these transfer prices and the taxpayer’s evidence thereon, among other tasks. On 2 March 2009, I completed that assignment in “Statement of Brian C. Becker” (“FIRST BECKER

¹ In this report, SNF FRANCE refers generally to the French parent and any other SNF entities located in France, unless otherwise specified. SNF refers to the company when no particular country/entity designation (*e.g.*, French parent, Australian subsidiary, etc.) or when multiple country/entity designations are intended—including the consolidated company.

² In 2003, SNF AUSTRALIA opened its first manufacturing plant, which accounted for a small portion of products sold by SNF AUSTRALIA in that year. Schroeter, Russell H. (11 July 2008). “Affidavit of Russell Henry Schroeter,” pp. 27-28; and Pich, Rene. (22 July 2008). “Affidavit of Pich,” p. 2.

³ Chemtall Corporation and Pearl River Polymers, Inc. represent the two U.S. entities at issue. SNF (China) Flocculant Co. Ltd. is the formal name of SNF CHINA. SNF KOREA’s legal name is Eyang Chemical Co. Ltd.

⁴ My references to the CUP analysis throughout the report are to the taxpayer’s evidence that compares the proposed prices to SNF AUSTRALIA to the prices paid by certain unrelated parties.

STATEMENT”).⁵ In that statement, I did not find the SNF AUSTRALIA proposed transfer prices to be consistent with arm’s length expectations. Rather, I found that SNF AUSTRALIA would have expected to pay approximately \$12.3 million *less* at arm’s length. That is, instead of consistently reporting losses, SNF AUSTRALIA would have reported earning an operating margin of 1.7 percent. See the table below from the FIRST BECKER STATEMENT.

Statistical Ranges for SNF AUSTRALIA's Operating Margins: 1997-2003

Statistical Range of Operating Margins for SNF AUSTRALIA Based on:	Low End of Range	High End of Range
Interquartile Range		
OECD Benchmark Companies	1.2%	2.7%
Australian Benchmark Companies	1.3%	2.3%
Total Range: Minimum to Maximum		
OECD Benchmark Companies	0.7%	4.4%
Australian Benchmark Companies	1.1%	2.6%
95 Percent Confidence Interval		
OECD Benchmark Companies	0.9%	3.2%
Australian Benchmark Companies	0.8%	2.8%
Regression Predicted Operating Margin for SNF AUSTRALIA		
Based on Growth		7.6%
Proposed Operating Margins for SNF AUSTRALIA		
Proposed by Taxpayer		-11.5%
Proposed by BECKER REPORT		1.7%

5. My opinion in the FIRST BECKER STATEMENT was premised on several factors. First, if the prices were consistent with arm’s length/market expectations, one would expect SNF AUSTRALIA to behave/“look” like other firms engaging in market transactions. As detailed in the FIRST BECKER STATEMENT and in the table above, SNF AUSTRALIA’s proposed prices would have placed it in an outlier position among independent companies. See **Table 5**. That is, it witnessed healthier growth/expansion than other firms, but proposed lower profits (higher losses) than these firms.

⁵ Becker, Brian C. (2 March 2009). “Statement of Brian C. Becker.”

6. The taxpayer's exclusive use of an indirect/inexact CUP ("ORIGINAL CUP")⁶ approach without any test of reasonableness or application of another approach also influenced my opinion. In particular, the taxpayer's ORIGINAL CUP analyses included a number of adjustments that required subjective assumptions and/or have not been thoroughly verified by the taxpayer evidence. Second, the ORIGINAL CUP analysis covered wide ranges of prices across product groupings and customers, rendering any such evidence less meaningful. Finally, the ORIGINAL CUP transactions did not typically occur in the Australian *geographic* market and included evidence that they occurred at a *level* of the market that was different from that of the SNF AUSTRALIA purchases.

7. The FIRST BECKER STATEMENT did *not* opine that the transactions proposed by the taxpayer were not CUPs at all. Rather, my opinion is that all arm's length transactions can be described as CUPs, to one degree or another. The relevant issue in a potential CUP analysis is whether the chosen CUPs provide a more direct/reliable/superior valuation metric than other available approaches.

8. Most CUPs are clearly unreliable—for example, the price for my purchase of a Whopper at Hungry Jack's or a coffee at Starbucks would not realistically provide much valuation relevance to the sale of polyacrylamide. The foreign sales of polyacrylamide were not this simple to classify as being inferior to other valuation approaches (*e.g.*, arm's length profitability or the Transactional Net Margin Method ("TNMM")). Rather, the examination undertaken in the FIRST BECKER STATEMENT found that the multiple levels of potential inaccuracies and biases in the taxpayer's ORIGINAL CUP analysis/adjustments rendered it *less reliable* than *other available valuation approaches*. That is, CUPs from different countries (where market conditions and pricing levels vary) at potentially different levels of the market with differences in transportation costs and other terms of sale/market conditions would not be as reliable of a valuation indicator as the overall profitability of SNF AUSTRALIA (*i.e.*, a TNMM approach). In addition, this inexact ORIGINAL CUP analysis would not provide reliable enough evidence to explain the resulting outlier financial returns for SNF AUSTRALIA. See **Table 5**.

9. The AGS continued my engagement in 2009 by requesting that I provide further detail on the level of the market finding and to report on my additional examination of the copies of the invoices in my possession. On 23 March 2009, I completed that assignment in "Statement of Brian C. Becker" ("SECOND BECKER STATEMENT").⁷

⁶ The ORIGINAL CUPs proposed by the taxpayer consisted of five companies: (1) Akzo-Nobel N.V.; (2) Ashland Inc.; (3) Betz Laboratories Inc.; (4) Buckman Laboratories International Inc.; and (5) Hercules, Inc. Karoudjian, David. (22 July 2008). "Affidavit of David Karoudjian," p. 2; and Schroeter, Russell H. (14 August 2008). "Affidavit of Russell Henry Schroeter," p. 2.

⁷ Becker, Brian C. (23 March 2009). "Second Statement of Brian C. Becker."

10. In writing the SECOND BECKER STATEMENT, I did not change my initial opinions, but I included further data and analysis to supplement the FIRST BECKER STATEMENT. In particular, the SECOND BECKER STATEMENT found that there were almost no ORIGINAL CUPS in Australia, as SNF AUSTRALIA purchased nearly all of the SNF products destined for the Australian market. That is, the *proposed ORIGINAL CUPS were nearly all foreign*.

11. Following the SECOND BECKER STATEMENT, I received two additional Affidavits written by the taxpayer's representatives:

- 1) Seve, Anthony Oscar. (9 April 2009). "Affidavit of Anthony Oscar Seve."
- 2) Schroeter, Russell Henry. (9 April 2009). "Affidavit of Russell Henry Schroeter."

12. Both of these Affidavits provided new CUP analyses:

- The Affidavit of Anthony Seve analyzed potential CUPS ("SEVE CUPS") utilizing SNF's "code art" classification of products.
- The Affidavit of Russell Schroeter examined potential New Zealand and Australia CUPS ("SCHROETER CUPS").

13. On 20 April 2009, the AGS provided me with additional Instructions as part of this engagement related to the two taxpayer Affidavits. From these Instructions, I have drafted this statement, which:⁸

- 1) Determines whether the Affidavits⁹ caused me to change my opinions from the FIRST BECKER STATEMENT and the SECOND BECKER STATEMENT.
- 2) Summarizes any new data and/or conclusions included in the Affidavits.
- 3) Describes any evidence/discussion in the Affidavits which provides or would benefit from further clarification.

⁸ Appendix C contains the 20 April 2009 Instructions as well the transmittal letter from AGS with regard to the Supplementary Affidavit of Anthony Seve.

⁹ Anthony Seve submitted a supplemental Affidavit in May 2009. My comments in this statement are inclusive of my review of the Supplementary Affidavit of Anthony Seve. Seve, Anthony Oscar. (6 May 2009). "Supplementary Affidavit of Anthony Oscar Seve."

- 4) Critically analyzes the taxpayer Affidavit methodologies/calculations.

B. Summary of Findings

14. I summarize my findings below. As of the date on the cover of this statement, I have made all the inquiries which I believe are desirable and appropriate and no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.¹⁰

Section 1: Change of Opinions from the Taxpayer Affidavits

15. The two BECKER STATEMENTS opined that SNF AUSTRALIA would have paid lower transfer prices at arm's length based largely on two points: (a) at arm's length, a company would typically not pay a price that consistently left it in a loss position; and (b) there was only limited/subjective potential inexact ORIGINAL CUP evidence justifying the unit prices recorded by SNF AUSTRALIA. That is, the ORIGINAL CUP data within the taxpayer evidence represented a less reliable, inferior valuation method than the profitability approach in the FIRST BECKER STATEMENT.

16. The new taxpayer Affidavits did not comment on the consistent losses proposed for SNF AUSTRALIA. It is rare to see a transfer pricing report that fails to show/analyze the resulting profits (or losses) earned by the party under examination—if not, additional profitability information. This would be especially true in situations like this where: (a) the schedules are part of the case records (see **Table 6**); (b) such schedules would show consistent losses that would only exist in extenuating circumstances or render the taxpayer an outlier among independent companies (see **Table 5**); and (c) the local taxpayer (SNF AUSTRALIA) reports significantly lower profit margins than its multinational parent (see **Table 7**). Put more directly, none of the Affidavits commented on the fact that SNF is proposing that SNF AUSTRALIA essentially choose to enter into *and* expand a business in which it would consistently pay transfer prices that exceed the (net) resale prices it receives in the Australian market.

¹⁰ As part of my consideration for this opinion, I have reviewed the Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia. I have attempted to follow these guidelines—including the statement above—in drafting this opinion.

Summary of SNF AUSTRALIA's Proposed Financial Results: 1997-2003

SNF AUSTRALIA Income Statement	Amount (Million)	Normalized \$100 Sale Price	Formula
Sales	\$93.6	\$100.00	A
Selling Expenses Incurred	\$26.8	\$28.57	B
Net Sale Price (After Selling Expense)	\$66.9	\$71.43	C = A-B
Proposed Cost of Sales	\$77.6	\$82.88	D
Proposed Operating Profit (Loss)	(\$10.7)	(\$11.45)	E = C-D

17. The above proposed transfer prices suggest that even the most exact and complete CUP analysis (*e.g.*, same geography, same level of the market, full product coverage, known transportation costs, etc.) would still need to quantify and explain the extenuating circumstances leading to such outlier financial results.¹¹ However, the taxpayer Affidavits—combined with the original taxpayer evidence—only made inexact CUP comparisons over a minority of SNF AUSTRALIA transactions. That is, the Affidavits:

- Verified that the taxpayer is comparing *overseas* transactions with *Australian* purchases by SNF AUSTRALIA, despite the fact that economic/market similarities across different geographies had not been established. For example, as described below, the Affidavit of Anthony Seve only analyzed geographical differences for 1 of SNF AUSTRALIA's top 20 selling products. That comparison revealed significant price *differences* across countries. See **Tables 2 & 9**.
- *Concluded* that the ORIGINAL CUP transactions were at the same level of the market as the SNF AUSTRALIA purchases while submitting evidence that the ORIGINAL CUP companies in Australia typically purchased product not from SNF manufacturers, but from *SNF AUSTRALIA* (see **Table 3**). The modest level of remaining ORIGINAL CUP purchases that could potentially be at a similar level of the market would not represent enough transactions to provide substantial comparison “coverage” over most of the SNF AUSTRALIA purchases.
- Confirmed that the SEVE CUP analysis required a transportation adjustment that applied a figure based on instructions from the taxpayer.¹²

¹¹ The Affidavit of Anthony Seve does not describe reasons (extenuating circumstances) for the proposed losses for SNF AUSTRALIA, although earlier taxpayer evidence included a discussion on this point. The FIRST BECKER STATEMENT found fault with these discussions in its critical analysis thereof. See, Becker, Brian C. (2 March 2009). “Statement of Brian C. Becker,” pp. 32-36.

¹² Seve, Anthony Oscar. (9 April 2009). “Affidavit of Anthony Oscar Seve,” p. 11.

- Used foreign CUP data for the SEVE CUP analysis that appeared to only cover no more than approximately 25 percent of the SNF AUSTRALIA purchases.¹³

18. I have, therefore, not changed my initial opinion that SNF AUSTRALIA would expect to pay lower prices at arm's length under similar circumstances in Australia.

Section 2: Summarize New Data and Information in the Affidavits

19. The taxpayer Affidavits included various schedules of new data as well as additional factual/economic statements in their texts. The Affidavit of Anthony Seve provided an overall discussion of transfer pricing, including certain rationale for the use of potential CUPs. As discussed above, it located additional foreign companies for CUP comparisons, SEVE CUPs, but did not analyze Australian CUPs. It was tasked with critically analyzing the first two BECKER STATEMENTS as well, although it did not make any significant reference to either of the first two BECKER STATEMENTS.

20. The Affidavit of Russell Schroeter largely added to the evidence by providing data clarifications and adding additional analyses of potential CUP data, the SCHROETER CUPs. With regard to the latter, in particular, it provided new schedules involving a small number of sales in New Zealand and Australia, and more detailed invoice data from SNF FRANCE.

21. Much of the analysis in the new Affidavits stemmed from information that had been provided in conjunction with submission of the earlier Affidavits. However, the data analyzed by the Affidavit of Anthony Seve in its SEVE CUP analysis, and referenced in the Affidavit of Russell Schroeter, appeared to include some more information that had not been made available to me in drafting the first two BECKER STATEMENTS.¹⁴

22. The AGS provided me with additional taxpayer evidence in conjunction with the two Affidavits, including documents from the taxpayer's attorneys and KPMG. The taxpayer's attorneys drafted a 6 April 2009 letter to KPMG, stating that the ORIGINAL CUP companies

¹³ Seve, Anthony Oscar. (9 April 2009). "Affidavit of Anthony Oscar Seve," p. 23.

¹⁴ Based upon my understanding of the Affidavit of Russell Schroeter's descriptions, I have received some form of the data described in bullet points "a" through "e". However, the number of line items/invoices and/or the description of the data (e.g., years covered) described in these bullet points may not directly match the data that I have received. See **Table 11**. Schroeter, Russell Henry. (9 April 2009). "Affidavit of Russell Henry Schroeter," p. 2.

typically acted as resellers—as opposed to importers/regional distributors or end users.¹⁵ See **Table 8**.

Section 3: *Clarifications from the Taxpayer Affidavits and Additional Evidence*

23. The Affidavit of Russell Schroeter offered a number of comments which provides or requires further clarification:

- 1) It interpreted the initial BECKER STATEMENTS as having implied that the taxpayer did not make all of the data available to me. That implication was not intended in the BECKER STATEMENTS, which were simply listing the documents/data that I had reviewed.
- 2) It clarified that the SNF AUSTRALIA purchases from unrelated parties *were not* for polyacrylamide. That clarification does not impact my analysis or conclusion, but it does affirmatively rule out using such purchases as potential CUPs, as their prices would have limited relevance to the arm's length prices for polyacrylamide products.
- 3) It provided evidence that clarified that the ORIGINAL CUP companies typically operated at a different level of the market in Australia than did SNF AUSTRALIA. That is, the ORIGINAL CUP companies in Australia purchased most of their SNF product *from SNF AUSTRALIA*. See **Table 1**.

24. The Supplementary Affidavit of Anthony Seve clarified a number of points and corrected certain data inputs. In particular, it included a number of updated graphs comparing arm's length prices in Australia and other countries. While this comparison covered a number of products, the only one of any notable size (*i.e.*, in SNF AUSTRALIA's top 20 purchases) was "AA00A00." The data presented on this product provide an example of the potential significant price *differences* across geographical borders. That is, the highest price among the five countries purchasing this product (France) was nearly *100 percent greater than* the lowest priced country (Germany). See **Table 9**. While this evidence only included this one major product example, it does suggest that price comparisons may not be particularly reliable when crossing geographical boundaries in this industry.¹⁶

¹⁵ Sinn, Peter. (6 April 2009). "SNF (Australia) Pty Ltd v Commissioner of Taxation – CUP Analysis Questionnaire."

¹⁶ **Table 10** makes analogous comparisons for the product that the taxpayer compared across most countries, "B110B00." This product also shows non-trivial price variation across geographic borders.

Section 4: Critical Analysis

25. The taxpayer Affidavits presented certain evidence/analyses with limited support and/or that ran counter to economic/valuation principles:

- 1) The Affidavit of Anthony Seve relied on the opinion of SNF AUSTRALIA personnel in making determinations for the quantum of its transportation cost adjustments, its level of the market comparisons, and pricing differences across customers.¹⁷ In fact, the Affidavit relied on representations from the taxpayer for essentially all of its “detailed comparability analysis”.¹⁸ While the Affidavit admits to relying upon these assumptions, its acceptance of taxpayer representations without independent verification weakens the conclusions on these important points.
- 2) The Affidavit of Anthony Seve did not provide an opinion on the primary issues addressed in the BECKER STATEMENTS: (a) whether the ORIGINAL CUP approach as applied was *the best method* given the data and circumstances; (b) whether the proposed transfer prices were consistent with *arm’s length expectations*; and (c) whether the implied profit level of the taxpayer at the proposed transfer prices allowed the analysis to pass a test of reasonableness. To be clear, the Affidavit *admitted* that it did not respond to the taxpayer’s Instructions in that it did not include a *review of the BECKER STATEMENTS*, and that *its scope was limited* to the CUP analysis.¹⁹ That being said, a typical CUP analysis will often include some type of test of reasonableness in the form of a TNMM, profit split or over approach.²⁰ In that sense, the Affidavit of Anthony Seve does not appear to offer an “apples to apples” alternative to the first two BECKER STATEMENTS’ opinion of the transfer prices that would exist at arm’s length.

¹⁷ Seve, Anthony Oscar. (9 April 2009). “Affidavit of Anthony Oscar Seve,” pp. 11, 18-20.

¹⁸ Seve, Anthony Oscar. (9 April 2009). “Affidavit of Anthony Oscar Seve,” p. 4. I use the term “essentially all” because there exists one exception: an independent analysis of potential differences in geography. However, that analysis only covers a small portion of the SNF AUSTRALIA purchases, as described below and as seen in **Table 2**.

¹⁹ Seve, Anthony Oscar. (9 April 2009). “Affidavit of Anthony Oscar Seve,” pp. 1-2.

²⁰ This is particularly true for an “inexact” CUP analysis with CUPs that: (a) are foreign; (b) have wide price variations; (c) require potentially significant adjustments for transportation; and (d) conduct transactions at potentially different levels of the market .

- 3) Geographic differences between the SEVE CUPs and the Australian purchases of SNF AUSTRALIA were analyzed to a degree in the Affidavit of Anthony Seve but further discussion is warranted. It makes a quantitative analysis of prices across countries, but its analysis only includes 1 of the top 20 products sold by SNF AUSTRALIA—representing less than 3 percent of sales. See **Table 2**. As described above, however, the data presented do not show the necessary point required to compare prices across geographical borders—*i.e.*, that prices are unaffected by geography. Rather, the presented data show non-trivial *differences* in prices across countries. See **Table 9**.
- 4) The Instructions to the Affidavit of Anthony Seve also includes certain inaccuracies. First, it claims that the BECKER STATEMENTS dismissed the ORIGINAL CUPs *because of* SNF AUSTRALIA’s sales to two of the ORIGINAL CUP companies. In point of fact, those sales only provided some of the evidence with regard to one comparability issue (level of the market). The ORIGINAL CUP approach was shown to be inferior to other methods for a number of reasons (besides level of the market), as detailed above.
- 5) The Affidavit of Russell Schroeter focused on its New Zealand and Australian proposed CUPs. However, these SCHROETER CUPs had almost no product overlap with the purchases made by SNF AUSTRALIA. As seen in **Table 4**, for example, the Australian SCHROETER CUPs have no overlap at all (*i.e.*, the Australian SCHROETER CUPs *did not purchase any of the same product codes* as SNF AUSTRALIA) in 1997, 1998, 2000, and 2001. The results were only moderately different in the other years where the proposed Australian SCHROETER CUPs and SNF AUSTRALIA overlapped on less than one percent of the product codes. In this sense, this analysis provides no price to price comparison for nearly all of the SNF AUSTRALIA purchases.²¹
- 6) There are additional economic/comparison issues with regard to the Affidavit of Russell Schroeter’s analysis of potential New Zealand SCHROETER CUPs. First, there is no quantitative analysis of whether the SCHROETER CUPs are at different levels of the market. Second, geographic differences in supply, demand, etc. between Australia and New Zealand are not analyzed or adjusted for. Related to the first point, the Affidavit of Russell Schroeter did not analyze or account for any

²¹ As seen in **Table 4**, there exists slightly more coverage for the potential New Zealand CUPs.

additional role in the New Zealand sales (*e.g.*, sales agent, etc.) that SNF AUSTRALIA may have taken on that could potentially provide value to an arm's length purchaser.²² Thus, this modest level of New Zealand SCHROETER CUPS provides little direct, reliable information that could be used to assess the prices of products to SNF AUSTRALIA.

- 7) The Affidavit of Russell Schroeter questioned the factual accuracy of the illustrative supply chain diagram in the FIRST BECKER STATEMENT. However, as is clear in **Table 3**, the diagram exhibited to the Affidavit of Russell Schroeter confirmed that the ORIGINAL CUP companies in Australia: (a) made most of their purchases from SNF AUSTRALIA; and (b) SNF AUSTRALIA purchased more than 50 times as much product from the SNF manufacturers as did these ORIGINAL CUP companies in Australia.²³

26. In summary, the ORIGINAL CUPS proposed by the taxpayer had economic/comparison issues (*e.g.*, level of the market) that were reinforced by the taxpayer in its latest submissions. For instance, most of the *Australian* purchases of the ORIGINAL CUP companies do not come from SNF manufacturers, but rather from SNF AUSTRALIA. See **Table 3**. Similarly, the SCHROETER CUPS in Australia provided almost no coverage across the hundreds of product codes purchased by SNF AUSTRALIA. See **Table 4**.

27. The two new Affidavits also demonstrate further comparability and “coverage” issues regarding the *foreign* CUPS (*e.g.* SEVE CUPS). For example, the Affidavit of Anthony Seve only used 1 of the top 20 SNF AUSTRALIA products to attempt to prove that polyacrylamide sold at similar prices throughout the world. See **Table 2**. This modest demonstration, however, showed the opposite—SNF witnessed significant price variance across different countries. See **Tables 9 & 10**.

²² Fax Transmission from Dennis Crowley to R. Pich. (13 November 2001). “October Monthly Report,” p. 2.

²³ Schroeter, Russell Henry. (9 April 2009). “Affidavit of Russell Henry Schroeter,” p. 5.

Third Statement of Brian C. Becker

TABLES

Table 1:**SNF Australia Sales to Third Parties Relative to Australian Third Party Purchases from SNF Manufacturers**

1997-2003 (\$ Thousand)	Amount	Formula	Source
Net Sales by SNF AUSTRALIA	93,640	a	(1)
Percent of Sales to Multinational Resellers (ORIGINAL CUP Companies)	6%	b	(2)
Total Sales to Proposed Australian ORIGINAL CUP Companies by SNF Australia	5,618	c = a*b	Calculation
Total Sales to Proposed Australian ORIGINAL CUP Companies by SNF Manufacturers /1/ /2/	1,216	d	(3), (4), (5) & (6)

Notes:

/1/: I converted the sales data from Euros to Australian dollars using taxpayer provided exchange rates when possible. Otherwise, I used yearly exchange rates found in SNF's annual reports.

/2/: The "CUP companies" in this table refer to the five companies originally identified by the taxpayer.

Sources:

(1) Becker, Brian C. (2 March 2009). "Statement of Brian C. Becker," Table 1A.

(2) Schroeter, Russell Henry. (9 April 2009). "Affidavit of Russell Henry Schroeter," Exhibit 31.

(3) SNF Public Limited Company. (14 May 2002). "Auditor's Report: Consolidated Statements Financial Year Ended 31 December 2001," p. 7.

(4) SNF Public Limited Company. (6 June 2003). "Auditor's Report: Consolidated Statements Financial Year Ended 31 December 2002," p. 7.

(5) SPCM SA Public Company. (4 June 2004). "Auditor's General Report: Consolidated Accounts Financial Year Ended 31 December 2003," p. 9.

(6) Karoudjian, David. (22 July 2008). "Affidavit of David Karoudjian," Exhibit 1.

Table 2:

Coverage of Geographic Comparison of Prices in the Affidavit of Anthony Seve

Rank	Product (Code Art)	Percent of Total SNF AUSTRALIA Transactions	Product Included in Geographical Analysis
1	CH30B50	11.5%	--
2	AA30A00	8.3%	--
3	CB30B40	6.1%	--
4	AA05A00	5.8%	--
5	BI25B00	4.3%	--
6	AR99S00 P	3.9%	--
7	BI35A00	3.7%	--
8	AA20A00	3.3%	--
9	AA30C00	3.1%	--
10	AA00A00	2.7%	YES /1/
11	AA50A00	2.0%	--
12	MY00Z61	1.9%	--
13	BI10H00	1.9%	--
14	BI55A00	1.8%	--
15	AR99S00 C	1.7%	--
16	BI25A00	1.7%	--
17	AA30B00	1.7%	--
18	BI15B00	1.4%	--
19	DJ60B47	1.4%	--
20	BI45A00	1.3%	--

Note:

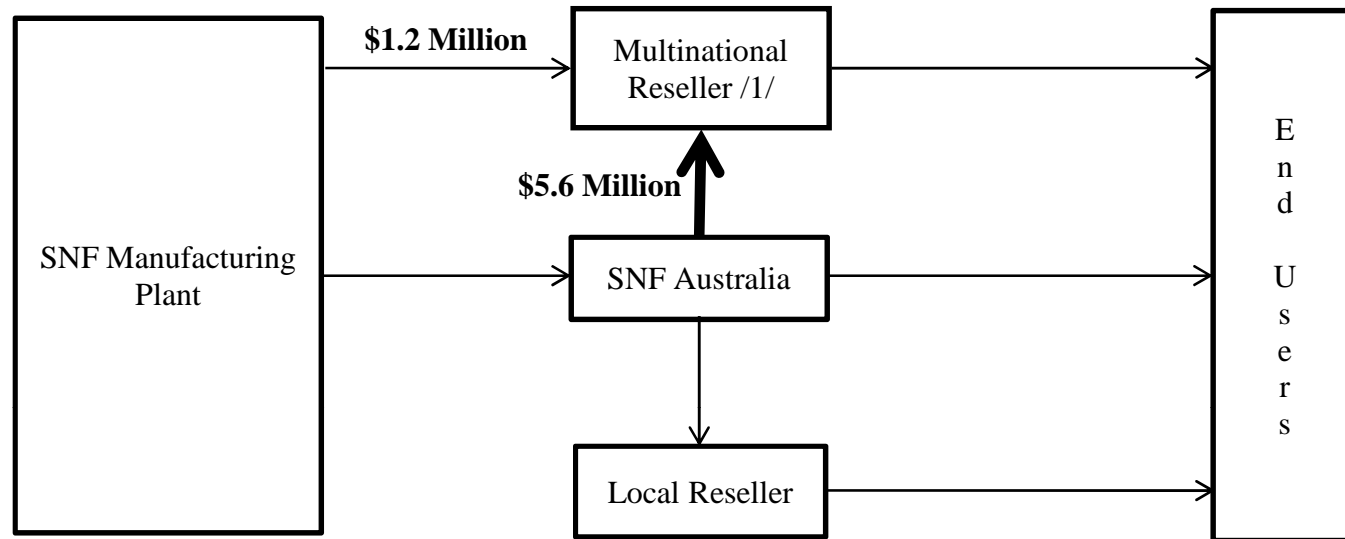
/1/: The Affidavit of Anthony Seve also analyzed eight other "minor" products not in the top 20.

Source:

(1) Seve, Anthony Oscar. (9 April 2009). "Affidavit of Anthony Oscar Seve," Appendices 3 & 5.

Table 3:

SNF Australia Position in Value Chain in Australia



Notes:

/1/: The amounts of purchases shown to the multinational resellers focus only on the original CUP companies, as seen in **Table 1**.

Sources:

- (1) Schroeter, Russell Henry. (9 April 2009). "Affidavit of Russell Henry Schroeter," Exhibit 31.
- (2) Seve, Anthony Oscar. (9 April 2009). "Affidavit of Anthony Oscar Seve," p. 18.

Table 4:**Coverage of Proposed CUPs in the Affidavit of Russell Schroeter**

Product	Product Codes with Price to Price Comparison Made /1/	Total Number of Product Codes Purchased by SNF AUSTRALIA	Percentage Product Code Coverage in the Proposed CUP Analysis
Australian CUPs			
1997	0	451	0.0%
1998	0	451	0.0%
1999	1	451	0.2%
2000	0	451	0.0%
2001	0	451	0.0%
2002	1	451	0.2%
2003	1	451	0.2%
New Zealand CUPs			
1997	2	451	0.4%
1998	1	451	0.2%
1999	1	451	0.2%
2000	8	451	1.8%
2001	6	451	1.3%
2002	6	451	1.3%
2003	12	451	2.7%

Notes:

/1/: Product codes between the proposed CUPs and SNF AUSTRALIA that exactly matched.

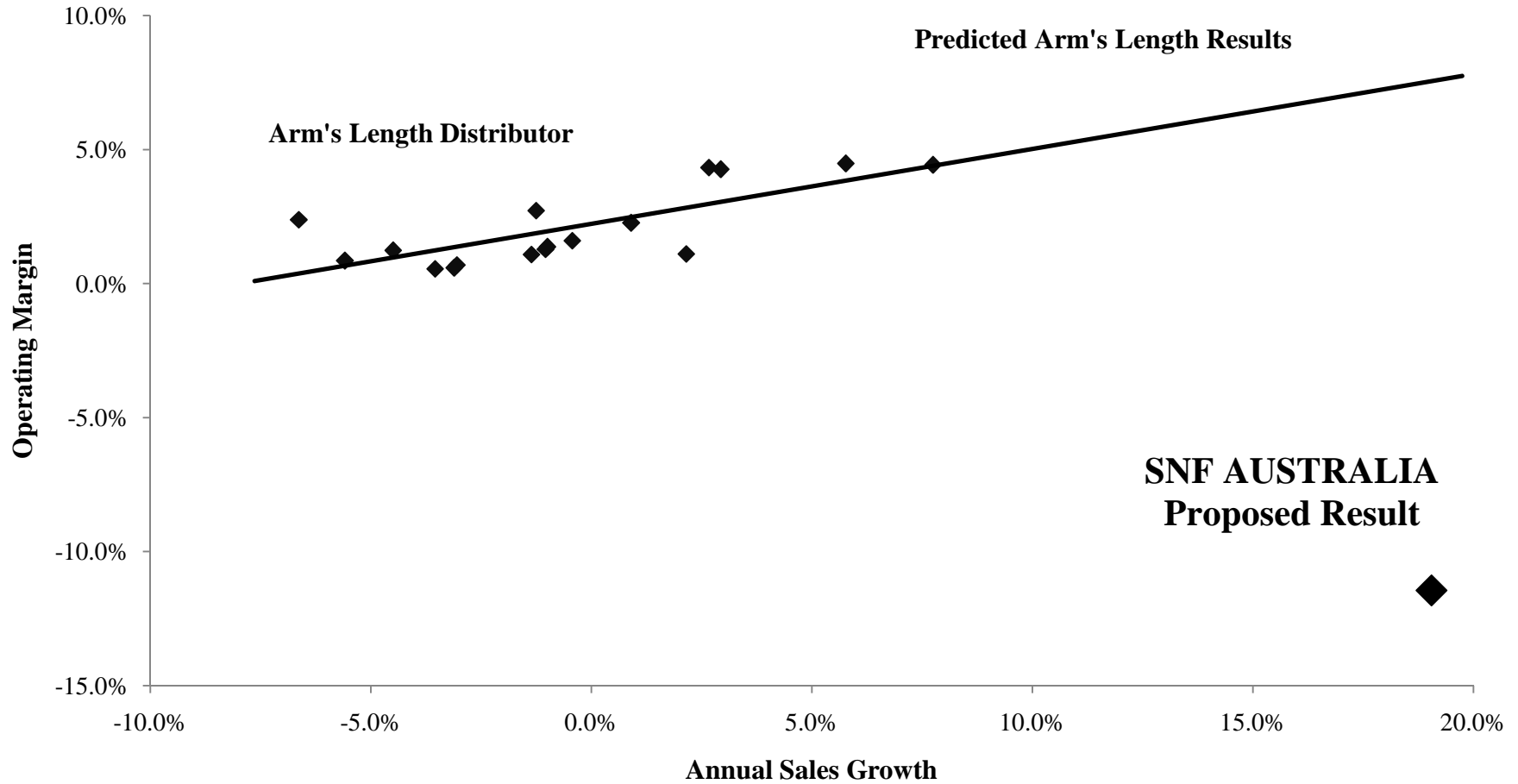
/2/: Exhibit 1 of Affidavit of David Karoudjian lists 559 unique product codes sold to SNF AUSTRALIA from SNF FRANCE. However, some of these codes appear to be typos or non-chemical products (*e.g.*, "BROCHURES," "DIGITAL INDICATOR," "EMULSION HANDBOOK," "#NAME?", etc.). As such, I removed those product codes that appeared to be typos/inappropriate, resulting in 451 product codes.

Sources:

- (1) Schroeter, Russell Henry. (9 April 2009). "Affidavit of Russell Henry Schroeter," Exhibits 33, 35, and 38.
- (2) Karoudjian, David. (22 July 2008). "Affidavit of David Karoudjian," Exhibit 1.

Table 5:

SNF AUSTRALIA Proposed Results Compared to Analogous OECD Country Distributors: 1997-2003



Source:

(1) Becker, Brian C. (2 March 2009.) "Statement of Brian C. Becker," Table 10.

Table 6:**SNF AUSTRALIA's Income Statement Per Financial Statements: 1997-2003**

Period Ending 31 December (000)	1997	1998	1999	2000	2001	2002	2003 /1/	Total	Growth Rate /2/	Formula
Net Sales /2/	\$7,342	\$9,737	\$10,762	\$14,033	\$16,056	\$16,905	\$18,805	\$93,640	19.1%	a
Selling/Operating Expenses /2/	\$2,874	\$2,691	\$4,151	\$2,681	\$4,012	\$4,762	\$5,581	\$26,753		b
Sales Net of Selling Expense	\$4,469	\$7,045	\$6,610	\$11,351	\$12,044	\$12,143	\$13,223	\$66,887		c = a-b
Proposed Transfer Prices /3/	\$6,742	\$7,027	\$8,821	\$9,763	\$13,338	\$12,850	\$14,014	\$72,553		d
Third Party Cost of Sales	-\$255	\$449	\$19	\$1,955	\$104	\$1,332	\$1,452	\$5,055		e
Total Proposed Cost of Sales	\$6,487	\$7,475	\$8,839	\$11,717	\$13,442	\$14,182	\$15,466	\$77,609		f = d+e
Operating Income	(\$2,018)	(\$430)	(\$2,229)	(\$366)	(\$1,397)	(\$2,038)	(\$2,243)	(\$10,722)		g = c-f
Operating Margin	-27.5%	-4.4%	-20.7%	-2.6%	-8.7%	-12.1%	-11.9%	-11.5%		h = g/a

Notes:

/1/: The total growth rate represents the compounded annual growth rate from 1996-2003.

/2/: For 1997-2003, I do not include: (a) other income in net sales; or (b) interest expenses in selling/operating expenses. Additionally, I did not make adjustments for SNF AUSTRALIA's manufacturing sales and expenses in 2003, as I was provided insufficient information to make this adjustment.

/3/: As the proposed transfer prices for 2003 were not in the taxpayer's evidence, I estimated these prices using the ratio of proposed transfer prices to total proposed cost of sales in 2002 multiplied by the 2003 total proposed cost of sales.

Sources:

- (1) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 6: SNF (AUSTRALIA) PTY LIMITED. (26 May 1998). "Financial Statements and Reports for the Year Ended 31 December 1997," p. 8.
- (2) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 7: SNF (AUSTRALIA) PTY LIMITED. (31 December 1998). "Income," Schedule 3.
- (3) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 8: SNF (AUSTRALIA) PTY LIMITED. (Undated). "Financial Statements and Reports for the Year Ended 31st December 1999."
- (4) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 9: SNF (AUSTRALIA) PTY LIMITED. (24 April 2001). "Special Purpose Financial Report for the Year Ended 31st December 2000," pp. 16-18.
- (5) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 10: SNF (AUSTRALIA) PTY LIMITED. (3 May 2002). "Special Purpose Financial Report for the Year Ended 31 December 2001," pp. 5 & 21-23.
- (6) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 11: SNF (AUSTRALIA) PTY LIMITED. (27 October 2003). "Special Purpose Financial Report for the Year Ended 31 December 2002," pp. 5 & 23-25.
- (7) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 12: SNF (AUSTRALIA) PTY LIMITED. (19 April 2004). "Special Purpose Financial Report for the Year Ended 31 December 2003," p. 5.

Table 7:

Growth and Profit Comparison Between SNF AUSTRALIA and SNF Consolidated

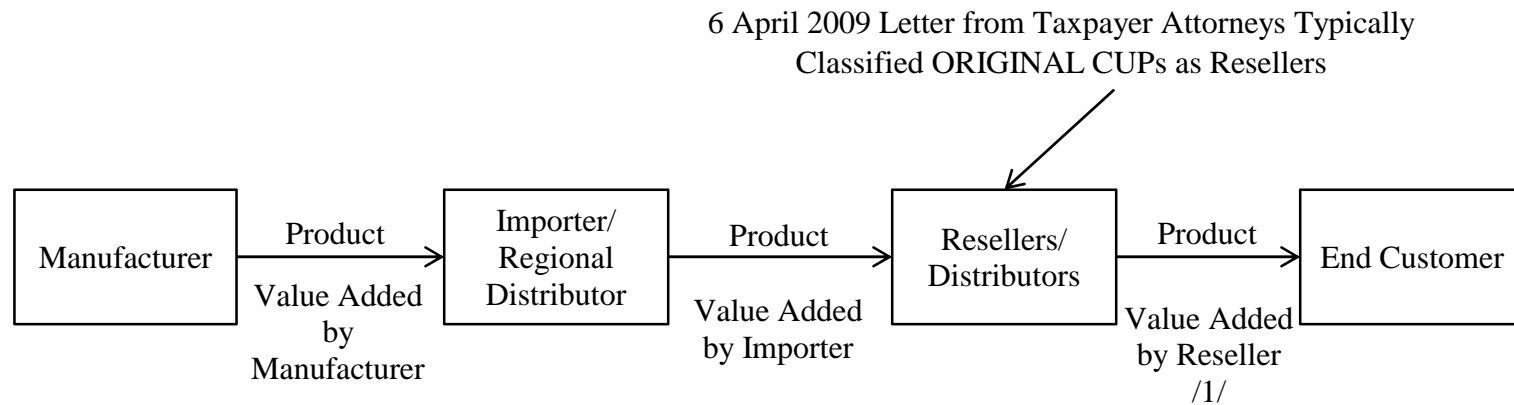
Entity	Annualized Growth Rate	Operating Profit: 1997-2003	Source
SNF AUSTRALIA Proposed	19.1%	-11.9%	Table 6
SNF Consolidated Actual	9.2%	7.5%	(1)

Source:

(1) Becker, Brian C. (2 March 2009). "Statement of Brian C. Becker," Table 2A.

Table 8:

Levels of the Market in the Polyacrylamide Supply Chain



Note:

/1/: The value added services provided by the importer/regional distributor and resellers/distributors generally include access to product range, reliability, customer service, storage and handling, etc.

Sources:

- (1) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," p. 6.
- (2) Pich, Rene. (22 July 2008). "Affidavit of Rene Pich," Exhibit 13: SNF Australia Pty Ltd. "Strategic Plan: SNF (Australia) 2002-2005," p. 5.
- (3) Johnston, et al. (October 2000). "Productivity in Australia's Wholesale and Retail Trade." Productivity Commission. Staff Research Paper, pp. 99-102.
- (4) Sinn, Peter. (6 April 2009). "SNF (Australia) Pty Ltd v Commissioner of Taxation – CUP Analysis Questionnaire."

Table 9:

Product Pricing Across Different Countries: Product AA00A00

Country	Price	Premium over Lowest Price	Source
France	3.10	97.5%	(1)
Australia	2.54	61.8%	(1)
Spain	2.07	31.8%	(1)
Italy	1.65	5.1%	(2)
Germany	1.57	--	(1)

Sources:

(1) Seve, Anthony Oscar. (6 May 2009). "Supplementary Affidavit of Anthony Oscar Seve," Exhibits 3-5.

(2) Seve, Anthony Oscar. (9 April 2009). "Affidavit of Anthony Oscar Seve," p. 43.

Table 10:

Product Pricing Across Different Countries: Product BI10B00

Country	Price	Premium over Lowest Price	Source
Germany	2.91	32.9%	(1)
Belgium	2.74	25.1%	(2)
Italy	2.59	18.3%	(2)
Spain	2.57	17.4%	(1)
Great Britain	2.38	8.7%	(2)
Netherlands	2.38	8.7%	(2)
Australia	2.31	5.5%	(1)
Finland	2.27	3.7%	(2)
Sweden	2.19	--	(1)

Sources:

(1) Seve, Anthony Oscar. (6 May 2009). "Supplementary Affidavit of Anthony Oscar Seve," Exhibits 2-4.

(2) Seve, Anthony Oscar. (9 April 2009). "Affidavit of Anthony Oscar Seve," pp. 40, 41, 43, & 44.

Table 11:**Potential Deficiencies in Data Received by BECKER and Data Described by the Taxpayer**

Data Description	BECKER Received Data	Taxpayer Described Data /1/	Data Not Received	Source
SNF FRANCE Sales to SNF AUSTRALIA	4,299 line items of sales from SNF FRANCE to SNF AUSTRALIA for the period 1997-2003, each line item representing an individual product sale.	4,299 line items of sales from SNF FRANCE to SNF AUSTRALIA for the period 1997-2003, each line item representing an individual product sale.	--	(1) & (2)
SNF FRANCE Sales to Proposed CUP Companies	3,618 line items of sales from SNF FRANCE to proposed CUP companies for the period 1997-2003, each line item representing an individual product sale /2/.	3,569 line items of sales from SNF FRANCE to proposed CUP companies for the period 1997-2003, each line item representing an individual product sale	--	(1), (2), & (3)
All SNF France Invoices	300,000 line items of sales from SNF FRANCE to related and unrelated parties for the period 1997-2003, each line item representing an individual product sale.	85,472 line items of sales from SNF FRANCE to related and unrelated parties for the period 1997-2003, each line item representing an individual product sale.	--	(1)
SNF USA Sales to Proposed CUP Companies	Chemtall Inc and Pearl River Polymers Inc sales records for all Customers for years 1997-2003 amounting to 31,809 line items, with each line item representing an entry for each sale of a specific product.	Chemtall Inc and Pearl River Polymers Inc sales records for all Customers for years 2000-2003 amounting to 50,831 line items, with each line item representing an entry for each sale of a specific product.	Appears to be a discrepancy of approximately 19,000 line items and different years.	(1) & (4)
SNF USA Invoices	51,990 pages of invoices of sales (in pdf form) from SNF USA for the period 1997-1999.	An estimated 138,000 Chemtall Inc invoices for sales to all customers for years 1997-1999.	Potential discrepancy based on counting of "invoices" vs. pages.	(1)

Notes:

/1/: The description of data provided by the taxpayer was detailed in the 9 April 2009 Affidavit of Russell Henry Schroeter.

/2/: An update to this list was provided, decreasing the line items to 3,569.

Sources:

- (1) Schroeter, Russell Henry. (9 April 2009). "Affidavit of Russell Henry Schroeter," p. 2 & Exhibit 39.
- (2) Karoudjian, David. (22 July 2008). "Affidavit of David Karoudjian," Exhibits 1, 5, 6, & 7.
- (3) Karoudjian, David. (13 November 2008). "Affidavit of David Karoudjian," Exhibits 13 & 14.
- (4) Schlag, Mark Steven. (19 August 2008). "Affidavit of Mark Steven Schlag," p. 3.

Third Statement of Brian C. Becker

APPENDICES

Third Statement of Brian C. Becker

APPENDIX A



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EDUCATION

The Wharton School of the University of Pennsylvania, Philadelphia, PA

- Ph.D., Applied Economics (1993)
- M.A., Applied Economics (1991)

The Johns Hopkins University, Baltimore, MD

- B.A., Applied Mathematics and Economics (1988)

PRESENT POSITION

PRECISION ECONOMICS, LLC, Washington, DC, 2001 - present

President and CEO

- Prepared more than 250 transfer pricing reports for taxpayers, the IRS, the Australian Taxation Office, and other tax authorities on a variety of issues, including tangible property, cost sharing, intangible property, intercompany loans, guarantee fees, and service fees.
- Served as a lead transfer pricing economic expert for the IRS in the largest transfer pricing dispute and settlement on record, GlaxoSmithKline Holdings (Americas) v. Commissioner of Internal Revenue, in which Glaxo paid \$3.4 billion.
- Served as an economic expert witness in the first major transfer pricing litigation in Australia--providing direct and cross examination testimony in support of a written expert report in Roche Products Pty. Ltd. vs. Federal Commissioner of Taxation.
- Provided testimony and economic reports involving catfish, various steel products, and pineapples in hearings before the U.S. International Trade Commission.
- Determined lost sales and profits to a retailer damaged by the 9/11 disaster, in an expert report and in oral testimony before an arbitration panel.
- Provided written and oral expert valuation testimony in U.S. Tax Court involving minority interests in a privately held publishing business.
- Submitted an economic expert report and provided testimony in an intellectual property and business valuation dispute before Delaware Chancery Court.
- Submitted economic expert witness affidavits in investor class action litigation involving the specialists of the New York Stock Exchange.

EXPERT TESTIMONY, SUBMISSIONS AND HEARINGS

"Damages Rebuttal Expert Report," United States District Court, Southern District of Florida, Case No. 07-80826, June 16, 2008, Deposition Testimony, Washington, DC, June 27, 2008.

"Statement of Brian C. Becker," Roche Products Pty. Ltd. vs. Federal Commissioner of Taxation, Administrative Appeals Tribunal, Taxation Appeals Division, New South Wales District Registry,



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NO NT7 AND NT56-65 OF 2005, August 30, 2007, Direct and Cross Examination Testimony, Sydney, Australia, February 20-21, 2008.

“Leslie J. Leff et. al., v. Morgan Lewis & Bockius, LLP: Valuation Expert Report”, JAMS Arbitration Hearing, March 15, 2007, Direct and Cross Examination Testimony, Philadelphia, PA, April 19, 2007.

“Assessing the Impact of Revoking Antidumping Orders on Canned Pineapple Fruit from Thailand on the Domestic Industry,” in Canned Pineapple Fruit from Thailand, Investigations No. 731-TA-706 (Second Review), United States International Trade Commission, with A. Parsons, January 5, 2007.

“Affidavit of Brian C. Becker, Ph.D. in Support of Plaintiffs’ Initial Discovery Plan,” in CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM, On Behalf of Itself and All Others Similarly Situated vs. THE NEW YORK STOCK EXCHANGE, INC., et. al., United States District Court, Southern District of New York, Civil Action No. 03-CV-9968-UA, May 23, 2006.

“Affidavit of Brian C. Becker” and “Economic Analysis of Sales Dispersion And “Make-Up” Sales,” in Re Appraisal Between, DUANE READE, INC., and ST. PAUL FIRE AND MARINE INSURANCE COMPANY, December 16, 2004, Appraisal Panel Hearing, Direct and Cross Examination Testimony, April 27, 2005.

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“Fair Market Value Estimate of the But-For Commissions Earned by Maitake Products, Inc. from August 17, 2001 Through April 10, 2006,” in MAITAKE PRODUCTS, INC., AND SUN MEDICA CO., LTD., v. TRANS-HERBE, INC., Superior Court of New Jersey Law Division – Bergen County, Docket No: L-9476-02, December 10, 2004, Deposition Testimony, January 28, 2005.

“Economic Analysis of Colortyme’s Lost Profits,” in DL KING, LLC D/B/A COLORTYME, v. KEVIN COLEMAN AND ABC TELEVISION & APPLICANCE RENTAL, INC., D/B/A PRIME TIME RENTALS, Circuit Court of Halifax County, Virginia, Case No. CH02000102-00, August 18, 2004.

“Affidavit of Brian C. Becker,” in KEITH PARKS, et. al., Individually, and on Behalf of Others Similarly Situated, v. GOLD KIST, INC., et. al., Superior Court of Dekalb County, Georgia, Civil Action Case No. 04-CV-7263-4, August 10, 2004, Deposition Testimony, August 24, 2004.

“Punitive Damages Report,” in KATHLEEN McCORMACK et al. v. WYETH et al., Superior Court of the District of Columbia, Civil Case No. 02-CA-6082, Deposition Testimony, May 20, 2004.



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“Third Affidavit of Brian C. Becker, Ph.D.,” in CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM, On Behalf of Itself and All Others Similarly Situated vs. THE NEW YORK STOCK EXCHANGE, INC., et. al., United States District Court, Southern District of New York, Civil Action No. 03-CV-9968-UA, April 6, 2004.

“Second Affidavit of Brian C. Becker, Ph.D.,” in CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM, On Behalf of Itself and All Others Similarly Situated vs. THE NEW YORK STOCK EXCHANGE, INC., et. al., United States District Court, Southern District of New York, Civil Action No. 03-CV-9968-UA, January 16, 2004.

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“Assessing the Impact of Imported Frozen Basa and Tra Fillets from Vietnam on the U.S. Frozen Catfish Fillet Industry,” United States International Trade Commission, Inv. No. 731-TA-1012 (Final, with A. Salzberg), submitted June 11, 2003, Testimony at Hearing, June 17, 2003.

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“Economic Testimony,” United States International Trade Commission, Inv. Nos. 731-TA-986 and 987 (Final), Testimony at Hearing, November 22, 2002.

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Commission, Inv. No. TA-201-73, Pre-hearing report filed October 29, 2001, Testimony at Hearing, November 8, 2001, Post-hearing report filed November 14, 2001.

“Expert Report of Brian C. Becker, Ph.D.,” *In: Muze, Inc. vs. Alliance Entertainment Corp; Matrix Software, Inc., and Eric Weisman; and Michael Erlewine; and Does 1 through 10, inclusive*, March 2, 2001, United States District Court, Central District of California, Western Division, Case No. 00 – 00620 RSWL (CWx), Deposition Testimony, April 3, 2001.

“Economic Expert Report *In: William A. Clutter d/b/a BC Transportation Consultants, Petitioner v. Transportation Services Authority of Nevada, Respondent*,” December 11, 2000, District Court, Clark County, Nevada, Case No. A387827, Dept. No. VII, Docket No. P. (written report and affidavit).

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- 1) “Projected and Actual Profits’ Impact on Licensees,” *Tax Management Transfer Pricing Report*, Vol. 17, No. 11, October 9, 2008, pp. 461-466.
- 2) “The Economics of Cost Sharing Buy-Ins: Questions and Answers,” *Tax Management Transfer Pricing Report*, Vol. 16, No. 24, April 24, 2008, pp. 950-953.
- 3) “Benchmarking Manufacturing or Distribution Entities Against the Profits of Consolidated Companies,” *Tax Management Transfer Pricing Report*, Vol. 13, No. 5, July 7, 2004, pp. 236-237.



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- 4) "An Examination of Goodwill Valuation Methodologies," *Corporate Governance Advisor*, Vol. 10, No. 4, July/August 2002, pp. 35-40 (with M. Riedy and K. Sperduto).
- 5) "Comparable Profits Method: Accounting for Margin and Volume Effects of Intangibles," *Tax Management Transfer Pricing Report*, Vol. 10, No. 19, February 6, 2002, pp. 831-833.
- 6) "Cost Sharing Buy-Ins" Chapter in *Transfer Pricing Handbook*, 3rd Edition, and *Transfer Pricing International*, edited by Robert Feinschreiber, John Wiley & Sons, 2002, pp. A-3 - A-16.
- 7) "Cost Sharing Buy-Ins," *Corporate Business Taxation Monthly*, Vol. 3, No. 3, December 2001, pp. 26-35.
- 8) "Further Thoughts on Cost Sharing Buy-Ins: A Review of the Market Capitalization and Declining Royalty Methods," *Tax Management Transfer Pricing Report*, Vol. 10, No. 6, July 11, 2001, pp. 195-197.
- 9) "Valuing In-Process R&D for Acquisitions: Economic Principles Applied to Accounting Definitions," *Tax Management Transfer Pricing Report*, Vol. 9, No. 10, September 20, 2000, pp. 323-326.
- 10) "Should a Blockage Discount Apply? Perspectives of Both A Hypothetical Willing Buyer and A Hypothetical Willing Seller," *Business Valuation Review*, Vol. 19, No. 1, March 2000, pp. 3-9 (with G. Gutzler).
- 11) "Does a Small Firm Effect Exist when Using the CAPM? Not Since 1980 and Not when Using Geometric Means of Historical Returns," *Business Valuation Review*, Vol. 18, No. 3, September 1999, pp. 104-111 (with I. Gray).
- 12) "Transfer Pricing and Foreign Exchange Risk," *Tax Management Transfer Pricing Report*, Vol. 8, No. 6, July 14, 1999, pp. 251-256 (with M. Bajaj and J. Neuberger).
- 13) "The Control Premium: An Initial Look Into a Strict Monetary Value Approach," *Business Valuation Digest*, Vol. 5, No. 1, July 1999, pp. 12-15.
- 14) "Using Average Historical Data for Risk Premium Estimates: Arithmetic Mean, Geometric Mean, or Something Else?," *Business Valuation Review*, December 1998, Vol. 17, No. 4, pp. 136-140 (with I. Gray).
- 15) "The Cost of Carry: An Inflation Adjustment to Assure Consistent Real Profit Margins," *Tax Management Transfer Pricing Report*, Vol. 7, No. 17, December 23, 1998, pp. 639-643 (with B. Brooks).
- 16) "The Peculiar Market for Commercial Property: The Economics of 'Improving' a Rental Property," *The Southwestern Journal of Economics*, July 1998, Vol. II, No. 2, pp. 104-121.
- 17) "The Effects of Inflation on Cross-Country Profit Comparisons," *Tax Management Transfer Pricing Report*, Vol. 7, No. 3, June 3, 1998, pp. 77-82 (with B. Brooks).
- 18) "Quantifying Comparability for Applications in Economic Analysis: The Weighted Distance Method," *The Southwestern Journal of Economics*, Volume 2, Number 1, April 1997, pp. 128-141 (with K. Button).
- 19) "Minority Interests in Market Valuation: An Adjustment Procedure," *Business Valuation Review*, Volume 16, Number 1, March 1997, pp. 27-31.



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- 20) "Capital Adjustments: A Short Overview," *Tax Management Transfer Pricing Report*, Vol. 5, No. 19, January 29, 1997, pp. 613-619.
- 21) "Multiple Approaches to Valuation: The Use of Sensitivity Analysis," *Business Valuation Review*, Volume 15, Number 4, December 1996, pp. 157-160.
- 22) "The Robin Hood Bias: A Study of Biased Damage Awards," *The Journal of Forensic Economics*, Volume 9, No. 3, Fall 1996, pp. 249-259.
- 23) "Three Technical Aspects of Transfer Pricing Practice: Distinguishing Methods, Using Statistical Ranges, and Developing Data Sets," *Tax Management Transfer Pricing Report*, Vol. 5, No. 4, June 19, 1996, pp. 97-103.
- 24) "The Final Transfer Pricing Regulations: The More Things Change, the More they Stay the Same," *Tax Notes*, Volume 64, #4, pp. 507-523, 1994 (with G. Carlson, et. al.).
- 25) "Philadelphia's Luxury Hotels: Boom or Bust?," *The Cornell Hotel and Restaurant Administration Quarterly*, Volume 33, #2, pp. 33-42, 1992.

PROFESSIONAL SEMINARS

- "Economic Aspects of Transfer Pricing Principles," Speaker, CITE Conference on U.S. Transfer Pricing Planning and Controversies, Chicago, Illinois, November 2-3, 2009 (forthcoming).
- "Economic Aspects of Transfer Pricing Principles," Speaker, CITE Conference on U.S. Transfer Pricing Planning and Controversies, Houston, Texas, June 8-9, 2009 (forthcoming).
- "Fundamentals of Transfer Pricing," Conference Chair, IIR Seminar, London, UK, October 29, 2008.
- "Fundamentals of Transfer Pricing," Speaker on Transfer Pricing Methods, IIR Seminar, London, UK, June 11, 2008.
- "Transfer Pricing," Guest Lecturer at The George Washington University Law School, March 26, 2008.
- "Economics of Private Student Loans," Speaker on the 2008 National Council of Higher Education Loan Programs Leadership Conference: As the Dust Settles, Sarasota, FL, January 9, 2008.
- "Economists in Transfer Pricing: Intangibles, Audits, and APAs," Council for International Tax Education, Inc.: U.S. Transfer Pricing Planning and Controversies, Houston, TX, October 15, 2007.
- "New IRS Rules for Transfer Pricing of Services," Strafford Publications Teleconference Speaker on Methods and Services Sharing Agreements, July 10, 2007.
- "New IRS Rules for Transfer Pricing of Services," Strafford Publications Teleconference Speaker on Methods and Services Sharing Agreements, May 8, 2007.
- "Economists in Transfer Pricing: Intangibles, Audits, and APAs," Council for International Tax Education, Inc.: U.S. Transfer Pricing Planning and Controversies, Washington, DC, April 23, 2007.



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BRIAN C. BECKER, Ph.D.

“Profitability and R&D for PhRMA,” Pharmaceutical Research and Manufacturers of America Conference, Charlottesville, VA, January 26, 2007.

“Economics of Mass Tort: Lead Paint,” Gerson Lehrman Group Seminar, New York, NY, November 16, 2005.

“Understanding the Issues Involved in the Valuation of Intangibles,” Transfer Pricing: Best Practices for Managing the Corporate Transfer Pricing Function, Infonex Seminar, San Francisco, CA, October 27, 2005.

“Maximizing Revenue, Minimizing Taxpayer Burden,” Emcee and Speaker for Discussion of “Revenue Matters,” National Press Club, Washington, DC, June 7, 2005.

“Intangible Valuation in Transfer Pricing,” Transfer Pricing Roundtable: Best in Class Practices for Companies, Infonex Seminar, New York, NY, May 25, 2005.

“Transfer Pricing Workshop,” Workshop Chair and Speaker, IIR Ltd., London, UK, April 25, 2005.

“The Steel Industry: An Automotive Supplier Perspective,” National Press Club, Washington, DC, February 16, 2005 (with Kevin Hassett.)

“Probability and Statistics,” Digital Sandbox Risk Analysis Seminar Series, Reston, Virginia, October 14, 2004.

“The Economics of Transfer Pricing: Independent Arm’s Length Analysis,” Council for International Tax Education: U.S. Transfer Pricing Planning & Controversies, New York, NY, August 16, 2004.

“Transfer Pricing Workshop,” Workshop Chair and Speaker, IIR Ltd., London, UK, April 21, 2004.

“Economists in Transfer Pricing: Independence, Methodologies, and Case Study,” Council for International Tax Education: U.S. Transfer Pricing 101, New York, NY, February 23, 2004.

“Profitability Analysis of NYSE Trading Specialists,” American Enterprise Institute Seminar Series, Washington, DC, October 8, 2003.

“Economists in Transfer Pricing: Independence, Cost Sharing, and CPM Volume Effects,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, New York, NY, August 18, 2003.

“Economists in Transfer Pricing: Profit Splits, Volume Effects, Cost Sharing, and Real Options,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, Washington, DC, May 6, 2003.

“Economists in Transfer Pricing: Profit Splits, Volume Effects, Cost Sharing, and Real Options,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, Dallas, TX, March 24, 2003.

“Topics in Transfer Pricing and Valuation,” Conference Chair, Discussion Topics “Cost Sharing Buy-In Valuations” and “Volume Effects of Intangibles,” Internal Revenue Service, Washington, DC, December 9-10, 2002.

“Economists in Transfer Pricing: Cost Sharing and Real Options,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, New York, NY, September 23, 2002.



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BRIAN C. BECKER, Ph.D.

- “Valuation of Intangible Property and Cost Sharing Arrangements,” Economist Group of the Internal Revenue Service, San Francisco, CA, June 25, 2002.
- “Valuation of Intangible Property and Cost Sharing Arrangements,” Southeast Region of Internal Revenue Service, Atlanta, GA, May 10, 2002.
- “Economists in Transfer Pricing: CPM and Cost Sharing,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, Washington, DC, May 6-7, 2002.
- “Pricing Cost Sharing Buy-Ins and Other Intercompany Transfers,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, New York, NY, November 15-16, 2001.
- “Pricing Cost Sharing Buy-Ins and Other Intercompany Transfers,” ATLAS Intermediate U.S. International Tax Update, Cleveland, Ohio, November 5, 2001.
- “Cost Sharing Buy-Ins: Market Capitalization, Declining Royalty, and Other Methods,” Internal Revenue Service Annual Economist Convention, Washington, DC, July 25, 2001.
- “The Relative Values of Early and Late Stage Research & Development,” presentation to Shaw Pittman, McLean, Virginia, March 28, 2001.
- “Valuation Concepts in Family Limited Partnerships,” two hour presentation to Internal Revenue Service Northeast Engineers, Fort Monmouth, New Jersey, August 30, 2000.
- “The Discounted Cash Flow Method and Other Valuation Concepts,” two hour presentation to IRS Kansas and Missouri District Estate & Gift Tax attorneys and managers, Kansas City, Kansas, October 4, 1999.
- “The Discounted Cash Flow Method and Other Valuation Concepts,” presentation to IRS New York District Estate & Gift Tax attorneys and managers, New York, NY, August 16, 1999.
- “Business Valuation,” national closed circuit televised broadcast for Internal Revenue Service Estate Tax Agents, September 23, 1997 (with J. Murphy).
- “Valuation and Finance Principles Applied to Transfer Pricing,” a presentation to IRS and Treasury Department economists, Washington, DC, September 11, 1997 (with T. Reichert).
- “The Peculiar Market for Commercial Property: An Economically Irrational Situation,” Southwestern Economics Association Annual Meeting, Houston, Texas, March 23, 1996.
- “The Robin Hood Bias: A Study of Biased Damage Awards,” Southwestern Economics Association Annual Meeting, Houston, Texas, March 22, 1996.
- “Quantifying Comparability for Applications in International Trade and Intercompany Transfer Pricing: The Weighted Distance Method of Analyzing Comparability,” Southwestern Economics Association Annual Meeting, Houston, Texas, March 21, 1996.
- “Some Economic Issues in Transfer Pricing,” World Trade Institute: Tax Aspects of Intercompany Transfer Pricing, New York, NY, November 9-10, 1995.

MEDIA AND POPULAR PRESS

Bloomberg Television Interview, New York Stock Exchange Trading Specialists, October 8, 2003.



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BRIAN C. BECKER, Ph.D.

“Valuation Evaluation: How to Determine the Size of Interest in an LLC,” CFO.com, [Ask the Experts](#), August 31, 2001.

CONSULTING EXPERIENCE

CRITERION FINANCE, L.L.C., Washington, DC, 2001 - 2001

Partner and Senior Vice President

- Authored expert reports and articles on various transfer pricing topics, including cost sharing buy-ins.
- Wrote an expert report and provided deposition testimony estimating damages to a music database corporation from the anti-competitive acts of a competitor.

LECG, LLC, Washington, DC, 1999 - 2001

Senior Managing Economist

- Served as an economic expert in a pharmaceutical patent dispute regarding the relative values of early and late stage compounds.
- Submitted expert report on the process used to determine financial viability for state certified transportation services.

ECONOMIC CONSULTING SERVICES INC., Washington, DC, 1995 - 1999

Senior Economist (promoted from Economist)

- Analyzed transfer prices for corporations in a number of industries, including oil products, pharmaceuticals, consumer products, and software.
- Testified as an economic expert in international trade matters before the Canadian International Trade Tribunal and the U.S. International Trade Commission.

ARTHUR ANDERSEN, L.L.P., Washington, DC, 1994 - 1995

Manager, Economics Group

- Directed more than 20 transfer pricing studies.
- Submitted an expert witness report on executive compensation in Tax Court.

DELOITTE & TOUCHE NATIONAL TAX OFFICE, Washington, DC, 1992 - 1994

Senior Consultant, Economics Group

- Performed numerous tax economic analyses, primarily transfer pricing.
- Participated in seminars regarding transfer pricing and international taxation.



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PROFESSORIAL EXPERIENCE

THE JOHNS HOPKINS UNIVERSITY, Washington, DC, 1997 - 2002
Visiting Professor of Finance

- MBA level Corporate Finance and Derivative Security courses.

MARYMOUNT UNIVERSITY, School of Business, Arlington, VA, 1993 - 1995
Visiting Professor of Statistics

- MBA and undergraduate level Statistics courses.

THE GEORGE WASHINGTON UNIVERSITY, School of Business and Policy Management,
Washington, DC, 1992-1993
Visiting Professor of Management Science

- MBA level Productions and Operations Management course.

UNIVERSITY OF PENNSYLVANIA, The Wharton School, Decision Sciences Department,
Philadelphia, PA, 1988 - 1990
Instructor

- Undergraduate level Computer Applications courses.

May 2009

Third Statement of Brian C. Becker

APPENDIX B

Third Statement of Brian C. Becker

Appendix B: List of Documents Relied Upon

1. Becker, Brian C. (2 March 2009). "Statement of Brian C. Becker."
2. Becker, Brian C. (23 March 2009). "Second Statement of Brian C. Becker."
3. Fax Transmission from Dennis Crowley to R. Pich. (13 November 2001). "October Monthly Report."
4. Johnston, et al. (October 2000). "Productivity in Australia's Wholesale and Retail Trade." Productivity Commission. Staff Research Paper.
5. Karoudjian, David. (22 July 2008). "Affidavit of David Karoudjian."
6. Karoudjian, David. (13 November 2008). "Affidavit of David Karoudjian."
7. Pich, Rene. (22 July 2008). "Affidavit of Pich."
8. Schlag, Mark Steven. (19 August 2008). "Affidavit of Mark Steven Schlag."
9. Schroeter, Russell H. (11 July 2008). "Affidavit of Russell Henry Schroeter."
10. Schroeter, Russell H. (14 August 2008). "Affidavit of Russell Henry Schroeter."
11. Schroeter, Russell Henry. (9 April 2009). "Affidavit of Russell Henry Schroeter."
12. Seve, Anthony Oscar. (9 April 2009). "Affidavit of Anthony Oscar Seve."
13. Seve, Anthony Oscar. (6 May 2009). "Supplementary Affidavit of Anthony Oscar Seve."
14. Sinn, Peter. (6 April 2009). "SNF (Australia) Pty Ltd v Commissioner of Taxation – CUP Analysis Questionnaire."
15. Sinn, Peter. (21 November 2008). "Suffix Price Information Produced Pursuant to the Order of Justice Gordon Made on 31 October 2008." Middletons.
16. SNF Public Limited Company. (14 May 2002). "Auditor's Report: Consolidated Statements Financial Year Ended 31 December 2001."

Third Statement of Brian C. Becker

17. SNF Public Limited Company. (6 June 2003). "Auditor's Report: Consolidated Statements Financial Year Ended 31 December 2002."
18. SPCM SA Public Company. (4 June 2004). "Auditor's General Report: Consolidated Accounts Financial Year Ended 31 December 2003."

Third Statement of Brian C. Becker

APPENDIX C



Our ref. 08021392

20 April 2009

Dr Brian C. Becker
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By courier

Dear Dr Becker

**SNF (Australia) Pty Limited v Commissioner of Taxation, Federal Court of
Australia proceeding No. VID 132 of 2008**

1. We enclose copies of the affidavits of Russell Henry Schroeter and Anthony Oscar Seve (each sworn 9 April 2009) served on us by the Applicant's solicitors.
2. We would be grateful if you could review the affidavits and prepare a report setting out whether they cause you to change the views expressed in your reports of 2 and 23 March 2009. Consistent with the Federal Court of Australia's Guidelines for Expert Witnesses (previously provided to you) please provide in full the reasons for your conclusions. Please also identify the sources of any information upon which you rely.
3. We note the references in Mr Seve's report to information and representations provided to him by SNF Australia. We will request from the Applicant's solicitors details of same and will provide to you soon as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Evan Evagorou', written in a cursive style.

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Enc.



Our ref. 08021392

7 May 2009

Dr Brian C. Becker
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By courier

Dear Dr Becker

**SNF (Australia) Pty Ltd v Commissioner of Taxation
Federal Court of Australia No VID 132 of 2008**

Please find enclosed supplementary affidavit of Anthony Oscar Seve sworn
6 May 2009.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Evan Evagorou'.

Evan Evagorou
Senior Executive Lawyer
T 03 9242 1246 F 03 9242 1215
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Encl.