

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 07-2431, 07-2432

IN RE: MERCK & CO., INC. SECURITIES,
DERIVATIVE & "ERISA" LITIGATION
(MDL No. 1658)

CONSOLIDATED SECURITIES LITIGATION

Richard Reynolds, Steven LeVan, Jerome Haber and
The Public Employees' Retirement System of Mississippi,
the Court-Appointed Lead Plaintiffs and Plaintiffs Union
Asset Management Holding AG, Loren Arnoff,
Robert Edwin Burns, Jan Charles Finance S.A.,
Martin Mason, Frank H. Saccone, Charlotte Savarese,
Joe Savarese, Joseph Goldman, Sherrie B. Knuth,
Joseph S. Fisher, M.D., Naomi Raphael,
Rhoda Kanter, Park East, Inc. and Marc Nathanson, on behalf
of themselves and the proposed class of purchasers of Merck
securities during the period between
May 21, 1999 and October 29, 2004,
Appellants

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, RENDELL, BARRY, AMBRO,
FUENTES, SMITH, FISHER, CHAGARES, JORDAN, and ROTH,*
Circuit Judges

The petition for rehearing filed by Appellees In Re: Merck & Co., Inc., in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service,

* Hon. Jane R. Roth, Senior Circuit Judge, as to panel rehearing only.

and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied. Judge Roth would grant panel rehearing, Judge Rendell, Judge Ambro, Judge Fuentes, and Judge Jordan would grant rehearing en banc.

By the Court,

/s/ Dolores K. Sloviter
Circuit Judge

Dated: October 17, 2008
CMD/cc: All Counsel of Record