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2005 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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9-15-2005

## In Re: Schering

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 04-3073

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IN RE: SCHERING-PLOUGH CORPORATION ERISA LITIGATION,  
JINGDONG ZHU, on behalf of himself and all other similarly situated; ADRIAN  
FIELDS, on behalf of himself and all others similarly situated,

Appellants

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**Present:** SCIRICA, Chief Judge, SLOVITER, ALITO,  
McKEE, RENDELL, BARRY, AMBRO, FUENTES,  
SMITH, FISHER, STAPLETON\*, and ALARCON\* Circuit Judges

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**SUR PETITION FOR PANEL REHEARING  
WITH AMENDING ORDER**

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The petition for panel rehearing filed by Appellee in the above entitled case having been submitted to the judges who participated in the decision of this Court, the petition is granted for the limited purpose to add a footnote to the Court's precedential opinion. As such, the Court's opinion, filed August 19, 2005, is hereby amended as follows:

On page 22, insert a footnote at the end of the paragraph immediately after "presented in this matter." as follows (and renumber the footnotes that follow accordingly):

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\*The Honorable Walter K. Stapleton, Senior Judge, and the Honorable Arthur L. Alarcón, Senior Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation are both limited to panel rehearing only.

<sup>5</sup> We find our *Meonech* decision inapposite because the fiduciaries here were “simply permitted to make . . . investments” in “employer securities.” 62 F.3d at 571. In so concluding, we express no opinion on the significance, if any, of 29 U.S.C. § 1104(a)(2) in the context of this case.

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: September 15, 2005