

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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NUTRACEUTICAL CORPORATION;  
SOLARAY, INC.,

Plaintiffs-Appellees,

v.

No. 05-4151

ANDREW VON ESCHENBACH, Acting  
Commissioner, U.S. Food and Drug  
Administration; UNITED STATES  
FOOD AND DRUG  
ADMINISTRATION; MICHAEL O.  
LEAVITT, Secretary of the Department of  
Health and Human Services;  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; UNITED STATES  
OF AMERICA,

Defendants-Appellants.

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ORDER

Filed October 16, 2006

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Before **KELLY, TYMKOVICH**, Circuit Judges and **EAGAN**,\* District Judge.

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Appellees' petition for rehearing is denied.

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\* The Honorable Claire V. Eagan, District Judge, United States District Court for the Northern District of Oklahoma, sitting by designation.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

by:   
Deputy Clerk