

Alan M. HARRIS, Yitzchok Wolpin, Fausto Pombar, Plaintiffs-Appellants,

v.

IVAX CORPORATION, Phillip Frost, Michael W. Fipps, Defendants-Appellees.

No. 98-4818.

United States Court of Appeals,

Eleventh Circuit.

April 20, 2000.

Appeal from the United States District Court for the Southern District of Florida (No. 97-559-CV-FAM);
Federico A. Moreno, Judge.

ON PETITION FOR REHEARING AND SUGGESTION OF REHEARING EN BANC

Before COX and HULL, Circuit Judges, and COHILL*, Senior District Judge.

PER CURIAM:

The Securities and Exchange Commission, permitted to file a brief in partial support of a petition for rehearing and suggestion for rehearing en banc filed by the plaintiffs, has argued that our opinion in this case erroneously implies that a "cautionary statement[]" could still be "meaningful," and thus shield a company from liability for a false forward-looking statement, even if the cautionary statement knowingly omits a fact that is such a market-driver that it dwarfs the listed "factors that could cause actual results to differ." 15 U.S.C. § 78u-5(c)(1)(A)(i). We write only to confirm that this argument was not made to the panel, and that we have therefore not considered it.

The petition for rehearing is otherwise DENIED, and no member of this panel nor other judge in regular active service on the court having requested that the court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion of Rehearing En Banc is DENIED.

*Honorable Maurice B. Cohill, Jr., Senior U.S. District Judge for the Western District of Pennsylvania, sitting by designation.