

PRECEDENTIAL

Filed November 18, 2002

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-3805

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF CYBERGENICS CORPORATION, ON
BEHALF OF CYBERGENICS CORPORATION, DEBTOR
IN POSSESSION,

Appellant

v.

*KATHLEEN CHINERY, Executrix of the Estate of Scott
Chinery; L&S RESEARCH CORPORATION; LINCOLNSHIRE
MANAGEMENT, INC.; LINCOLNSHIRE EQUITY FUND, L.P.

(*Amended per order dated 11/19/01)
(Amended per order dated 3/21/02)

On Appeal from the United States District Court
for the District of New Jersey

District Court Judge: The Honorable Garrett E. Brown, Jr.
(D.C. Civil No. 98-CV-03109)

Argued on July 15, 2002

Before: SCIRICA, ALITO, and FUENTES, Circuit Judges

(Opinion Filed: September 20, 2002)

Present: BECKER, Chief Judge, SLOVITER, SCIRICA,
ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO,
FUENTES, and SMITH, Circuit Judges.

O R D E R

A majority of the active judges, who are not recused,
having voted for rehearing en banc in the above appeal, it
is ORDERED that the Clerk of this Court vacate the opinion
and judgment filed September 20, 2002, and list the above
for rehearing en banc at the convenience of the Court.
Judges Alito and Fuentes would allow the panel opinion to
stand pending en banc review.

BY THE COURT:

/s/ Edward R. Becker
Chief Judge

DATED: November 18, 2002

A True Copy:

Teste:

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