

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

KARI KILIAN,	)	
	)	
Plaintiff,	)	CIV 02-1272-PHX-FJM
	)	
vs.	)	Phoenix, Arizona
	)	June 22, 2004
EQUITY RESIDENTIAL TRUST,	)	1:33 p.m.
et al.,	)	
	)	
Defendants.	)	

BEFORE: THE HONORABLE FREDERICK J. MARTONE, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL TO THE COURT

TESTIMONY OF BRUCE J. KELMAN

APPEARANCES:

For the Plaintiff:

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For the Defendants:

Shorall McGoldrick Brinkmann  
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Court's Ex. 5

Case # \_\_\_\_\_

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Dept \_\_\_\_\_ Clk \_\_\_\_\_

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1 MR. SHORALL: Thank you, Your Honor. At this time  
2 the defense would call Dr. Bruce Kelman.

3 Dr. Kelman, will you please come up and be sworn by  
4 Kelly.

5 THE CLERK: Could you please state your full name and  
6 give the spelling for the record.

7 THE WITNESS: Bruce J. Kelman, K-e-l-m-a-n.

8 BRUCE J. KELMAN, DEFENDANTS' WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. SHORALL:

11 Q. Good afternoon, Dr. Kelman. Will you just introduce  
12 yourself to His Honor and tell him what you do for a living.

13 A. My name is Bruce Kelman, and I'm a toxicologist.

14 Q. Can you tell us where you received your formal training.

15 A. I have a bachelor's degree in physiology and biophysics  
16 from the University of Illinois and then a master's and Ph.D.  
17 from the University of Illinois. I did my graduate research  
18 within the College of Veterinary Medicine. I don't have a  
19 veterinary degree.

20 My research was on the -- on animal models of human  
21 disease. And it just happened that at the time period I was  
22 at the University of Illinois, the College of Veterinary  
23 Medicine was the institution that could handle animals the  
24 best.

25 Q. Do you have any post-doctorate work?

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1 Q. And on the right side talks about the effects, correct?

2 A. Yes.

3 Q. And if you look down the producing molds, column number  
4 two, almost all of those molds, at least in the top  
5 two-thirds, are Aspergillus or Penicillium species, correct?

6 A. Yes, a number of them are Aspergillus and Penicillium.

7 Q. And then there are two types of mycotoxins that are  
8 produced by Stachybotrys that are also identified as  
9 immunosuppressive, correct?

10 A. The designation is immunosuppressive all the way up and  
11 down and immunomodulating.

12 Q. So the answer is, according to the National Academy of  
13 Science report, Stachybotrys produces immunosuppressive  
14 mycotoxins, correct?

15 A. Well, actually, the answer to that is of course.

16 Q. You mentioned that after the American College of  
17 Occupational and Environmental Medicine published the position  
18 paper, that you were approached by the Manhattan Institute to  
19 rework or reword your research, correct?

20 A. I would characterize it -- I mean, they literally asked  
21 for a lay translation of that article.

22 Q. But -- Which you eventually did, correct?

23 A. Yes.

24 Q. Most of it is almost word for word the same, correct?

25 A. I -- The translation is the same as the original article?

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1 Q. Well, translation is an interesting word. They're both in  
2 English, correct?

3 A. Yes.

4 Q. So shall we call it the Manhattan Institute version versus  
5 the ACOEM version rather than the translation? The words are  
6 substantially similar, correct?

7 A. Well, the meaning certainly is.

8 Q. And the words are substantially similar, correct?

9 A. We tried to not include the technical terms in, unless we  
10 absolutely had to, in the Manhattan Institute, so I wouldn't  
11 characterize it as substantially the same.

12 Q. In fact, some of the language from the Manhattan Institute  
13 version was the more argumentative language that was rejected  
14 during the peer review process at ACOEM, correct?

15 A. No.

16 Q. Are you sure of that, sir?

17 A. Yes.

18 Q. So if we held the drafts from ACOEM up to the Manhattan  
19 Institute, we wouldn't find any sentences that had been  
20 removed from ACOEM that now appear in the Manhattan Institute  
21 version?

22 A. There may have been some. If there were, there certainly  
23 weren't very many.

24 Q. And that new version that you did for the Manhattan  
25 Institute, your company, GlobalTox, got paid \$40,000, correct?

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1 A. Yes. The company was paid \$40,000 for it.

2 Q. In the toxicity section of the ACOEM paper, you reviewed  
3 animal studies and attempted to identify a  
4 no-observable-adverse-effect level that appeared in certain  
5 animal studies, correct?

6 A. Yes.

7 Q. And then you attempted to use that to model what an  
8 equivalent dose of human exposure would be, correct?

9 A. Well, we modeled the doses that were used in the animal  
10 study, yes. It's not exactly the same.

11 Q. Do you have a copy of the ACOEM paper in front of you?  
12 Because we're going to talk about it for a little while.

13 Do you have it?

14 A. I have the web-based version from it.

15 Q. The no-effect level that you used came from a study that  
16 was authored by Rao and her associates, correct?

17 A. That was one that we used, yes.

18 Q. That's the one that had the no-effect level that you were  
19 using, correct?

20 A. That's the one that we modeled for the single-dose study,  
21 yes.

22 Q. And I believe the amount was 3.0 times 10 to the 6th  
23 spores per kilogram; is that correct?

24 A. Yes.

25 Q. And in your paper you indicate that that is the level

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