

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,) 9:32 a.m.
 et al.,)
)
 Defendants.)

BEFORE: THE HONORABLE FREDERICK J. MARTONE, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL TO THE COURT

VOLUME V

(Pages 749 through 950, inclusive.)

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1 points than neurotoxicity.

2 Q. The discussion on the animal studies is limited to
3 respiratory effects, correct?

4 A. That was the most sensitive end point we could find, so
5 yes, that's what we picked.

6 Q. So the answer is yes?

7 A. Yes.

8 Q. Many of these questions are going to be yes and no, and
9 we'll get done today if you can actually say the words yes or
10 no. So sometimes you won't be able to, but that one you could
11 say yes, correct?

12 A. That's correct, and I think I started off by saying yes.

13 Q. But then you added a bunch of other stuff.

14 Now, the National Academy of Science report that came
15 out recently, at least in its pre-publication version, is --
16 states that there are mycotoxins which produce neurotoxic
17 effects, and you agree with that, correct?

18 A. Yes, at an appropriate dose, yes.

19 Q. And the issue you have in this case is not whether there
20 can be neurotoxic effects. It's whether there was sufficient
21 dose to cause neurotoxic effects. Correct?

22 A. Yes. The central issue is dose.

23 Q. And the neurotoxins that are produced by molds are
24 produced, some of them, by species in the Penicillium genus,
25 correct?

1 A. Some, yes.

2 Q. And some of the neurotoxic mycotoxins are produced by
3 species in the Aspergillus species -- in the Aspergillus
4 genus, correct?

5 A. Sometimes, yes.

6 Q. And some of the neurotoxins are produced by Stachybotrys,
7 correct?

8 A. Sometimes, yes.

9 Q. There are also molds which produce mycotoxins that have
10 immunosuppressive effects, correct?

11 A. At sufficient dose, yes.

12 Q. And, again, the species that produce neuro -- pardon me --
13 immunosuppressive effects, some of them come from the
14 Aspergillus genus, correct?

15 A. You're getting pretty remote, but it's possible.

16 Q. Do you have -- Can you turn to Page 130. It's of the NAS
17 report. You said you had a full copy of it.

18 Can you turn to Page 130. Are you looking at Table
19 4-3 entitled "Immunoactive Mycotoxins and Effects"?

20 A. Yes.

21 Q. In the left-hand column we have mycotoxins, correct?

22 A. That's correct.

23 Q. The second column is the molds from which those mycotoxins
24 come, correct?

25 A. Yes.

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?

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?

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