

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA,	:
EX REL. DR. HELENE Z. HILL,	:
	:
	: CIVIL ACTION NO. 03-4837(DMC).
Plaintiff,	:
	:
- against -	:
	:
UNIVERSITY OF MEDICINE & DENTISTRY	:
OF NEW JERSEY, DR. ROGER W. HOWELL	:
and DR. ANUPAM BISHAYEE,	:
	:
Defendants.	:
	:
-----X	:

**REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF NON-PARTY TOM
K. HEI'S MOTION TO QUASH DEPOSITION
SUBPOENA**

Paul J. Fishman
 FRIEDMAN KAPLAN SEILER &
 ADELMAN LLP
 One Gateway Center, 25th Floor
 Newark, NJ 07102-5311
 (973) 877-6400

August 11, 2008

Attorneys for Non-Party Tom K. Hei

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**MEMORANDUM OF LAW IN SUPPORT OF
NON-PARTY TOM K. HEI'S MOTION TO
QUASH DEPOSITION SUBPOENA**

Non-Party Tom K. Hei, PhD. ("Dr. Hei") respectfully submits this reply memorandum of law in further support of his motion to quash the subpoena (the "Subpoena") served on him by plaintiff, Dr. Helene Z. Hill.

ARGUMENT

Dr. Hill's opposition to Dr. Hei's motion to quash is utterly devoid of any hint as to why Dr. Hei's testimony would be remotely relevant to this lawsuit. Although she offers two rationales to support the need for his testimony as a fact witness, neither rationale makes any sense.

First, Dr. Hill argues that she is not seeking Dr. Hei's testimony as an expert because she merely intends to ask him factual questions about his "recollections of

experiments done in his laboratory.” Br. at 6. But Dr. Hill has not even attempted to explain how or why Dr. Hei’s own experiments, done in his own laboratory, are remotely relevant to her lawsuit, which is about experiments performed by Defendants at their laboratory years earlier.

On this point, Dr. Hill suggests that Dr. Hei’s experiments and studies are relevant because *Defendants* have placed those experiments at issue. Specifically, according to Dr. Hill, “Defendants have asserted that, because other researchers have been able to replicate the bystander effect using tritiated thymidine, my claim should necessarily fail.” Certification of Dr. Helene Z. Hill in Opposition to Motion to Quash Subpoena Issued to Dr. Thomas Hei, dated Aug. 1, 2008 (“Hill Cert.”) at ¶ 12. In other words, plaintiff argues that she needs Dr. Hei’s testimony as a purely defensive matter, to respond to the arguments supposedly being advanced by Defendants.

As a threshold matter, Dr. Hill does not say when or where Defendants supposedly took this position, or how such a position, even if actually asserted by Defendants, would constitute a defense that would defeat her claim. In any event, even if Defendants had taken such a position at some point in the past, they are plainly not taking that same position today. In Defendants’ own submission on this motion, they confirm that Defendants are *not* relying on Dr. Hei’s study or his experiments to defeat Dr. Hill’s claims. *See* Letter Brief of John P. Leonard, dated Aug. 7, 2008, at 3-4. According to Defendants, they intend to defeat Dr. Hill’s claims by relying on “the substantial and thorough prior investigations that have been conducted on Plaintiff’s claims and that have consistently vindicated Defendants.” *Id.* at 2. As Defendants acknowledge, neither Dr. Hei nor any of his Columbia University colleagues “has any relevant first hand

knowledge of the facts and circumstances of these prior investigations or the facts at the heart of both those investigations and Plaintiff's Complaint." *Id.* at 4. Since the Defendants are not in fact raising anything Dr. Hei has said or done as a defense to Dr. Hill's claims, there is certainly no need for Dr. Hei to testify about such "absolutely irrelevant" information under oath. *Id.*

Finally, in an effort to tie Dr. Hei to the experiments that *are* at issue in this case, Dr. Hill suggests that she seeks Dr. Hei's testimony because Dr. Hei "has intimate knowledge of the procedures and protocols that were followed by the Howell lab." Letter Brief of Sheldon H. Pincus, dated Aug. 4, 2008 ("Br.") at 5. But in the same breath, Dr. Hill admits that these same protocols "were clearly defined in papers and published well before the Columbia studies took place." *Id.* Thus, by plaintiff's own admission, she does not need Dr. Hei to testify about Dr. Howell's protocols because those protocols were published by Dr. Howell and thus are available to anyone. That Dr. Hei may have read Dr. Howell's studies does not make him a fact witness competent to testify from personal knowledge about Dr. Howell's studies. Accordingly, nothing in Dr. Hill's submission contradicts Dr. Hei's sworn statement that he has no personal knowledge of, and did not participate in, the research, experiments, or grant applications referred to in plaintiff's Complaint. *See* Hei Decl. ¶ 9.

CONCLUSION

For these reasons, and the reasons set forth in Dr. Hei's opening brief, the Court should quash the subpoena served on Dr. Hei.

Dated: Newark, New Jersey
August 11, 2008

Respectfully submitted,

FRIEDMAN KAPLAN SEILER &
ADELMAN LLP

/s/ Paul J. Fishman

Paul J. Fishman
One Gateway Center, 25th Floor
Newark, NJ 07102-5311
(973) 877-6400
pfishman@fklaw.com

Attorneys for Non-Party Tom K. Hei, PhD