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**NO#23-5552**

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**In The Supreme Court of the United States**

LEI YIN -PETITIONER Vs.Hartford Underwriters Insurance, -  
RESPONDENT

**On Petition For A Writ Of Certiorari To Appeals Court of Massechusett**

**PETITION FOR REHEARING**

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## **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS:**

I am still living solely with my SSDI, everything in finance is the same as my previous Motion for leave in Forma Pauperis in my filling docketed on July 19, 2023.

## **PETITION OF REHEARING (RULE 44):**

Pursuant to Rule 44, Petitioner Lei Yin, Pro Se with disability (SSDI), requests rehearing and reconsideration of the Court's Nov 6th, 2023 order denying the Petition for a Writ of Certiorari, on the grounds of substantial intervening circumstances and substantial grounds not previously presented.

### **I. Biogen Susan Kalled's and Kevin Otipoby's soft testimony to courts that been accepted and cited that are proved to be false and wrong in II :**

**FROM Susan Kalled:** Lei Yin was only working well in Biogen for the first one or two weeks of April 2011, then he became insubordinate and did not follow instruction, Lei Yin was unable to finish one simple lab task well –antibody titration, only example was given dated on June 11, 2011 in Susan Kalled reply message to my request about how to start a new antibody titration (antibody titration is NOT even an experiment, just a very low level preparation step to do a real experiment), as the performance reason to terminate Lei Yin's position in Biogen. In Susan Kalled's note, there is one sentence "DONOT DO.....", That sentence had been the only evidence that I cannot do a simple task-antibody titration, as Susan Kalled Claimed and cited by Courts.

**From Kevin Otipoby:** Lei Yin had only work for Kevin for a very short of period when Susan Kalled was on her vacation leave, for up to 2 weeks around June 16, 2011. And Kevin find out Lei Yin cannot do a simple task well-antibody titration which even an intern can do it well.

Both Susan and Kevin further testified that antibody titration is a very low level task, not even an experiment, even an intern could do it well, but Lei Yin can not do it well after the first one or two week of April 2011.

### **II. 10 Years Neglection in Court: Hard evidence of 101 Pages Original Email Records in year 2011, between myself and Susan Kalled, and Biogen Time Card Told a Total Different Story.**

APPENDIX H (101 pages) is Emails Chains Record Between Lei Yin and Susan Kalled from private emails covering two days of every week regarding 3 parts of my works in Biogen, as requested by Susan Kalled (a part-time employee of Biogen, who stayed at her home without pay on those two days each week) covering April 2011 to July 7, 2011. These Emails Chains proved I had finished Three Parts of Works with Good Quality of Data, together with Susan Kalled's Agreement and Satisfaction in her total fourteen emails of April 28 (Appendix H2), of May 3 (Appendix H6), of May 11 @7:38am (Appendix H14), of May 19 @9:01PM (Appendix H22), of May 20 (Appendix H31), of May 23 (Appendix H33), of May 25 (Appendix H32), of May

26 (Appendix H35), of June 2 @9:42PM (Appendix H42), of June 3rd @2:58pm (Appendix H55), of June 7 (Appendix H70), of June 10 @10:23PM (Appendix H80), of June 28 (Appendix H98), of June 30 (Appendix H96).

APPENDIX H Part One is antibody titration for both Susan Kalled and Kevin Optibody :

Antibody Titration For Susan Kalled was recorded in my following emails to Susan Kalled: email of April 29, 2011 (see appendix H1, H3), email May 18, 2011 (appendix H14, H18); email of June 21 (appendix H81); email of June 28, 2011 (appendix H91); *(as comparision to Susan Kalled's testimony to courts that Lei Yin was only working well in Biogen for the first one or two weeks of April 2011, and Lei Yin was unable to finish one simple lab task –antibody titration, as the performance reason to terminate Lei Yin's position in Biogen);*

Antibody titration for Kevin Optibody: I had email records of May 13, 2011 (appendix H18) , email of June 2<sup>nd</sup>, 2011 (appendix H38); email of June 28, 2011 (appendix H99). *(as comparision to Kevin Otipoby's testimony to court that I had only work for him for a very short of period when Susan Kalled was on her vacation leave, for up to 2 weeks around June 16, 2011. And he find out I cannot do a simple task well-antibody titration that even an intern can do it well.)*

So it is clear Susan Kalled had lied about my performance. Susan Kalled's testimony about final last day I had perform well that was first one or two week of early April 2011. But after the first one or two weeks of April, in late April, in May and June 2011, I had finished Antibody Titration works at least 8 times in May and June 2011 with good results, there was no hint of disaffection or concern ever been raised in all 14 emails Susan Kalled wrote (Appendix of April 28 (Appendix H2), of May 3 (Appendix H6), of May 11 @7:38am (Appendix H14), of May 19 @9:01PM (Appendix H22), of May 20 (Appendix H31), of May 23 (Appendix H33), of May 25 (Appendix H32), of May 26 (Appendix H35), of June 2 @9:42PM (Appendix H42), of June 3rd @2:58pm (Appendix H55), of June 7 (Appendix H70), of June 10 @10:23PM (Appendix H80), of June 28 (Appendix H98), of June 30 (Appendix H96).)

So it is clear Kevin Otipoby had lied in his testimony. His testimony was that *I had only work for him for a very short of period when Susan Kalled was on her vacation leave, for up to 2 weeks around June 16, 2011*. Hard Data showed I had done antibody titration for him in my email records of May 13, 2011 (appendix H18) , email of June 2<sup>nd</sup>, 2011 (appendix H38); email of June 28, 2011 (appendix H99).

The question we can ask now is that if Susan Kalled had found out that I was unable to do the antibody titration after the first one or two week of April 2011, why both Susan and Kevin had not dismissed my service in April, 2011? Why they both kept using me to do the very simple task in Late April, in May and in June for 10 more times on different antibodies and had paid me each every week with double-paid bonus in May and June 2011? On June 28<sup>th</sup>, 2011, I had

finished multiple antibody titrations for both Susan and Keven in a one single day (appendix H91, H99). Both of them never write a word in their emails on which antibody titration I had done gone wrong, especially for Susan Kalled's all emails to me, total number is 14 emails from Susan Kalled? **Biogen Time Card** showed that same Susan Kalled had issued double-paid bonus in each every week of May 2011, and each every week of June 2011. This proves Biogen Susan Kalled's and Kevin Otipoby's testimony to courts were indeed false and wrong.

APPEDIX H Part Two was to build- up a new experimental system in Biogen that B cell activation by CpG is an early event, happened in hours in both human B cell lines and primary human B cell collected from blood sample, as comparing Biogen 's believing that this B cell activations happened in multiple days (4-5 days) see Susan Kalled email on May 20, 2011 (appendix **H31**) This CpG- B Cell Activation System had proved to work in both B cell lines and primary B cells isolated from human blood sample, as early as 1.5 hours, up to 4 days and 5 days with my work in Biogen, then widely accepted by numerous projects in Biogen Immunology department, including Susan Kalled and Kevin Otipoby. *(as comparision to Susan Kalled's and Kevin Otipoby's testimony that I cannot do a simple work –antibody titration , not even an real experiment, but a very low level solution preparation assay that even an intern could do it well)*

For B cell lines, see Emails on May 3 of 2011 showing Day 3 activation (Appendix H4); **May 5**, 2011 of activation at 18 hours (Appendix H6); **May 10**, 2011 showing activation of 5 days (Appendix H10); **May 18**, 2011 showing activation at 18 hours again (Appendix H14); **May 19** 2011 showing activation at 3 Day (Appendix H18); **May 27** 2011 **reproduced** time sequence again **for whole set time points** (Appendix H18) that was set by Susan Kalled as discussed in emails of May 23 (Appendix H37); , and May 26 with Susan Kalled (Appendix H35); , with Susan Kalled's satisfaction and agreement in her emails.

For primary B cells isolated from human blood sample, see emails of June 2<sup>nd</sup> 2011 that activation in primary B cells from human blood was at **1.5 hours** after CpG activation (Appendix H46); ; email of **June 3<sup>rd</sup>**, 2011 showing B Cell activation in human blood B cell at **18 hours** after CpG treatment (Appendix H50), all tested B Cell Activation markers of CD 54, CD 86 and CD 69 are all activated after 18 hours of CpG treatment (Appendix H50); Emails of **June 10** , 2011 (Appendix H75) showing **at Day 4** , all B Cell Activation marker were activation as good as in 18 Hour of CpG treatment (Appendix H50) .

*(as comparision to Susan Kalled's and Kevin Otipoby's testimony to courts that Lei Yin was only working well in Biogen for the first one or two weeks of April 2011 and Lei Yin was unable to finish one simple lab task well –antibody titration, as the performance reason to terminate Lei Yin's position in Biogen.)*

APPEDIX H Part Three is Susan Kalled's patented BCMA Antibody's treatment effect in Neurological Disease (see Susan Kalled's patent in 2015: US Patent 9034324B2, see Appendix H7 as example). In both emails of June 3<sup>rd</sup>, 2011 ( See Appendix H55) and July 1<sup>st</sup> 2011 (see Appendix H96) , I had sounded alarms twice in writing to Susan Kalled and Immunology Director of Biogen about Susan Kalled's bypassing Gate step in flow cytometry in her BCMA study. In June 3<sup>rd</sup> email (Appendix H55), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in her flow cytometry. In July 1<sup>st</sup> email (see Appendix H96), I had sounded alarms to Biogen Immunology Director that QA/QC needed in Susan Kalled's research (see Appendix H96). Two working days later, I was fired at night by a phone call. *(as comparision to Susan Kalled's and Kevin Otipoby's testimony that I cannot do a simple work – antibody titration , not even an real experiment, but a very low level solution preparation assay that even an intern could do it well)*

**III. Confound Right and Wrong, Make Black White: How Appeals Court of Massachusetts's Decision dated Dec 21, 2021, based solely upon Biogen Susan Kalled's Soft/Subjective Testimony were all wrong once Put My Hard/Quantitative Evidence Into Consideration: Point-to-Piont Analysis: (Total Six Points were compared and discussed).**

**Point 1.** Appeals Court of MA states in Background " *he was tasked with replicating certain research testing under the supervision of Dr. Susan Kalled. When the employee's test results differed from Dr. Kalled's, it became clear that the employee was using a different protocol than the one he had been instructed to use. The employee conceded the use of a different protocol, contrary to Dr. Kalled's instructions, based on his disagreement with her methodology.* "

### VS

The Flow cytometry is a fundamental research tool for Immunology study In my Biogen work and in Susan Kalled's 2015 patent, entiled "Anti-BCMA antibodies US9034324B2", <https://patents.google.com/patent/US9034324B2/en>, nearly all data were collected by flow cytometry. In her 2015 patent, 14 of total 16 DATA Figures are all flow cytometry figures. There is only one universal gold protocol of flow cytometry , worldlywide used by all users, that is flow cytometry with Gate. Google "Flow Cytometry" and "Gate" will show following statement: "One of the **most basic principles of FCM analysis is "gating"**, which is the sequential identification and refinement of a cellular population of interest using a panel of molecules (also known as markers) that are visualized by fluroescence in a unique emission spectrum." And "Forward and side scatter gating is one of the most common gating startegies

used in flow cytometry analysis. The goal is to identify the cells of interest based on the relative size and complexity of the cells, while removing debris and other events that are not of interest." (compare with the relative same word mentioned in my first alert email of June 3<sup>rd</sup> email (Appendix H55), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in her flow cytometry)

Court had downplayed this worldwide used Gold protocol as some "new test method in developing", "his protocol", and "her protocol". Susan Kalled had intentionally bypassed the gate step in her flow cytometry to get false positive data, and then in her 2015 patent, she had **NOT** made any necessary declaration that she had collected those 14 sets of data by flow cytometry without a Gate step. (see Patent of 2015 "Anti-BCMA antibodies US9034324B2", <https://patents.google.com/patent/US9034324B2/en>).

In two of my emails to Susan Kalled of June 3<sup>rd</sup>, 2011 ( See Appendix H55 of Petition for Writ of Certiorari) and July 1<sup>st</sup> 2011 (see Appendix H96 of Petition for Writ of Certiorari) , I had sounded alarms twice in writing to Susan Kalled and Immunology Director of Biogen about Susan Kalled's bypassing Gate step in her flow cytometry. In June 3<sup>rd</sup> email (see Appendix H55), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in her flow cytometry. In July 1<sup>st</sup> email (see Appendix H96), I had sounded alarms to Biogen Immunology Director that QA/QC needed in Susan Kalled's research (see Appendix H96 of Petition for Writ of Certiorari). All Court cited evidence were Susan Kalled's SOFT/SUBJECTIVE Testimony statement, Susan Kalled had failed to identify one lab work in my lab book that violates the gold protocol. In 2011 DIA hearing , both protocols Susan and Kevin raised to court as evidence against me, were two new antibody titration assays they let me do (Page 110 dated June 11 , wrote by Susan, and Page 119 written by Kevin), they wrote these two message upon my own requests (actually they ONLY forwarded the immunology department protocols from database to me). They gave the message upon my requests, after they orally assign me to do antibody titration for them. As these antibodies are new to me in Biogen, I requested a plan from them, like which antibody concentration to start the dilution (I am pretty sure once the antibody was in Biogen Antibody stocks, someone else had already done the titration , that is a standard common practice before a lab order a new antibody and put it in the antibody stock bank. So they forwarded to me the necessary procedure for antibody titration. Once I finished those antibody

titration for them, I will finized my lab book and forward my data to them as reporta. If both of them found I had made BIG mistakes as they described in lenthly in DIA hearing 2018, they will be sure to be able to point out my real data to the court, but both of them had failed to point out any my real data to court, all they had done were talking and talking about a plan for a new antibody titration as evidence that I cannot do an antibody titration, without an accurate curser pointed to an actual antibody titration work I had done. I had done antibody titration work more than 10 times for them since April, 2011 (Antibody Titration For Susan Kalled was recorded in my following emails to Susan Kalled: email of **April** 29, 2011 (see appendix H1, H3), email **May** 18, 2011 (appendix H14, H18); email of **June** 21 (appendix H81); email of **June** 28, 2011 (appendix H91); antibody titration for Kevin Optibody were recorded in my email to Susan Kalled of **May** 13, 2011 (appendix H18) , email of **June** 2<sup>nd</sup>, 2011 (appendix H38); email of **June** 28, 2011 (appendix H99).) Which one from the above listed 10 assays of antibody titration on 10 different antibodies I had done for both Susan Kalled and Kevin Optibody was wrong ? Or they would like to claim all of the 10 assays were all wrong? Why not never mentioned in one word in all the 14 emails Susan Kalled had wrote to me? For Kevin, I had only 3 antibody titration assays in my email, they were done of **May** 13, of **June** 2<sup>nd</sup>, and of **June** 28, 2011. Kevin had already testified that I had only work for him for up to 2 weeks around June 16, so the antibody titration plan he wrote and raised as evidence (on my lab book , page 119), could be the one dated on June 28, 2011? Why had Kevin not be able to point out it was my June 28 work went wrong? Or he will try to say the antibody titration assay dated on May 13, and June 2<sup>nd</sup>, and on June 28, 2011 are NOT for him? The obvious fact is that after they claimed they had known I cannot do antibody titration in the first week of April of 2011, why hadn't they fired me? And kept asking me do the antibody titration in late April, whole month of May and whole month of June for another 10 more times on 10 more different antibodies, and at same time they had issued double-paid bonus in each every week of May 2011 and June 2011?

**Which Evidence should Court admit and trust?** The soft/subjective testimony from Biogen Susan and Kevin, or the Hard/Quantitative evidence of my 101pages -original email records between me and Susan, with 14 emails replied from Susan in 2011, together with Biogen Time Card which showed Susan Kalled had issued double-pay bonus for me for each every week in May and June 2011, after she told court that I was worked well only for the first one or two weeks of April 2011?



**Point 2.** Appeals Court of MA states “*The administrative judge credited the **testimony** of Dr. Kalled that on multiple occasions she conveyed to the employee that he must follow her protocol, see Pilon's Case, 69 Mass. App. Ct. at 169, and the employee conceded that he refused to do so.*”

VS:

First thing first, I want to point out my mental status in hearing held in 2018 in DIA had met total disability by all medical examiners, including social security and MediCare, also by medical specialists appointed by DIA, and by Insurance. One example provided here is that when Insurance attorney asked me “Do you remember the date roughly?(filling worker compensation)”, I had answered “NO”. “Do you remember the year?”, I had answered; “I donot remember”. see HEARING DE NOVO page 50. Also labeled as 000138.

There is only one universal gold protocol of flow cytometry , worldlywide used by all users , that is flow cytometry with Gate. Susan Kalled had intentionally bypassed the gate step in her flow cytometry to get false positive data. In two of my emails to Susan Kalled of June 3<sup>rd</sup>, 2011 ( See Appendix H55 Petition for Writ of Certiorari) and July 1<sup>st</sup> 2011 (see Appendix H96 of Petition for Writ of Certiorari) , I had sounded alarms twice in writing to Susan Kalled and then to Immunology Director of Biogen about Susan Kalled’s bypassing Gate step in her flow cytometry. In June 3<sup>rd</sup> email (see Appendix H55), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in her flow cytometry. In July 1<sup>st</sup> email (see Appendix H96 of Petition for Writ of Certiorari), I had sounded alarms to Biogen Immunology Director that QA/QC needed in Susan Kalled’s research (see Appendix H96).

All Court cited “evidence” were Susan Kalled’s SOFT/SUBJECTIVE Testimony statement, Susan Kalled had failed to identify one lab work in my lab book (with date, title, experimental design, and procedure, data collected and analyzed, and Conclusion, with my signoff signature) that violates any gold protocol. All court cited is “Susan Kalled said”, “Kevin Optibody said”, ”He said”, “she said”.... Everything in speaking!!!!BTW, Kevin Optibody is NOT Immunology Department Director as Court cited, he is a junior scientist in Biogen. Kevin’s testimony to court that I had worked with him only for two weeks in June 2011, and I could not do antibody titration well. However, I had worked with him after I joined Biogen in April, for antibody titration for Kevin, I had email records of May 13, 2011 (appendix H18) , email of

June 2<sup>nd</sup>, 2011 (appendix H38); email of June 28, 2011 (appendix H99). Kevin Optibody had failed to identify one lab work of antibody titration that was not good (for example, which antibody titration done of May 13, 2011 (appendix H18) , of June 2<sup>nd</sup>, 2011 (appendix H38); of June 28, 2011 (appendix H99) was NOT good? Kevin was unable to name ONE!!). All Court cited was “he said”, “she said”.....without any piece of HARD/ Quantitative evidence! And Court had neglected for 10 years all my HARD/ Quantitative evidence presented! What an unfair trial!!!!

In late of June 2011, Susan Kalled had admitted to me once she added the proper “Gating” step in her flow cytometry, she was able to get the same result as mine and I had written done in my lab book in late June 2011. IN DIA process, I had requested 4 copies of Biogen lab books for review (see Appendix J Petition for Writ of Certiorari), but DIA judge only ruled Biogen to bring my own lab book ONLY, without Susan Kalled’s book for necessary comparison. (see Subponea Appendix J of Petition for Writ of Certiorari). Even with reviewing my lab book only, I was able to find out Biogen had intentionally tampered my lab book after I left Biogen. On the same time of hearing on June 15, 2018, I had raised the tampering evidence issue to both of my then attorney and DIA judge , both orally and in written (see my email to Judge Bean and Attorney Barry at 9:42pm, and 10:15 PM of June 15, 2018, entiled “BCMA Acid Wash data the original data set of May 6<sup>th</sup>, 2011 had been found, prove my lab note book had been manipulated by Biogen”) (see Appendix F65 of Petition for Writ of Certiorari). DIA had received my formal filling with Received Date Stamp as June 18, 2018 (see Appendix I-1, I-2 and I-3 of Petition for Writ of Certiorari, each page has DIA Received Stamp of June 18, 2018). However, this Received filling was disappeared in DIA system, DIA Judge, Review Board, and then Appeals Court of MA pretended it never happened, even worse, in Appeal Courts of MA, it further stated “*Second, the employee argues that the administrative judge never ruled on his emergency motion to obtain access to his work notebook, which was held as proprietary information by Biogen. The administrative judge did, however, explicitly rule on this motion and allowed the employee to review the notebook*” (see Appendix C of Petition for Writ of Certiorari). My emergency motion of June 16<sup>th</sup>, 2011 (Appendix I of Petition for Writ of Certiorari) is not the same motion that Appeals Court of MA had mistakenly claimed, but in DIA hearing when I found out Biogen had covered up 4 pages of my own lab book, I had filed Emergency Motion to ask Court take necessary action after knowing my lab book had been tampered by Biogen (DIA Receiving

Stamp of June 18<sup>th</sup>, 2018) (see Appendix I of Petition for Writ of Certiorari). **Where is my Emergency Motion dated on June 16, 2018, Received by DIA on June 18<sup>th</sup>, 2018 (see Appendix I of Petition for Writ of Certiorari)?**

**Point 3.** Appeals Court of MA states” *“Second, the employee argues that the administrative judge never ruled on his emergency motion to obtain access to his work notebook, which was held as proprietary information by Biogen. The administrative judge did, however, explicitly rule on this motion and allowed the employee to review the notebook”.*

VS:

My emergency motion is not for what had happened before hearing, but after hearing when I found out Biogen had covered up 4 pages of my own lab book on June 15, 2015, I had filed Emergency Motion to ask Court take necessary action after knowing my lab book had been tampered by Biogen (DIA Receiving Stamp of June 18<sup>th</sup>, 2018). Where is my Emergency Motion dated on June 16, 2018, Received by DIA on June 18<sup>th</sup>, 2018 (Appendix I of Petition for Writ of Certiorari)? I had kept raising this Tampering Evidence Issue and my missing June 18, 2018 Emergency Motion that Received by DIA on June 18, 2018 in multiple filings (see Appendix B, D, F1-F24 of Petition for Writ of Certiorari) to MA Court system , but no response so far from June 18<sup>th</sup>, 2018, to this date November 16, 2023.

**Point 4.** Appeals Court of MA states”*The employee first claims that the administrative judge limited his ability to present his case. The record does not support this argument; at the hearing the employee was represented by counsel, testified on his own behalf, submitted documentary evidence and witnesses, and cross-examined witnesses from Biogen. “*

VS:

Subpoena ordered **4 copies** of Biogen Lab books (see Appendix J of Petition for Writ of Certiorari), DIA judge only ordered **one copy**, which is my own lab book, made it impossible for me to prove the conflict information testified by Biogen witness Susan Kalled and Kevin Optibody without their labbooks. Especially after DIA judge had already denied my requests to get documents from Biogen as listed in Appendix F42, F42, F44, F45, my written deposition questions to Biogen witness as listed F46-F51, including request a copy of Biogen witness statements (see F52) . More importantly , in and after hearing of June 15<sup>th</sup>, 2018, when I reported to DIA judge that my lab book had been tampered by Biogen by covering 4 pages up, orally, by **emails** at night of June 15, 2018 ( see Appendix F65 of Petition for Writ of Certiorari). , and by formal filing (received by DIA with stamp of June 18<sup>th</sup>, 2018, see Appendix I of Petition for Writ of Certiorari), this DIA judge had instructed DIA staff not docketing my filing about Tampering Evidence by Biogen, And this June 18 2018 Filing is then missing in court system till today (**Appendix I of Petition for Writ of Certiorari**). It is also obviously clear that DIA Judge had not cited any evidence I had presented to him, including Biogen Time Card, My email record with Susan Kalled, and my exwife testimony co-signed by both side representatives, medical professionals’ statements.

**Point 5.** Appeals Court of MA states” *Finally, the employee alleges that the administrative judge made false statements in his November 20, 2018 decision. The employee's claim is vague and does not refer to any specific statement; in any event, the employee has not shown that there were any false statements.*”

VS.

“Seven major mistakes DIA judge had made” were listed in detail of total 17 pages in my Brief of the Appellant to Review Board dated on Nov 8<sup>th</sup>, 2019 (see **Appendix F3-F20** Petition for Writ of Certiorari), in detail in my Brief Of The Appellant to Appeal Court of MA dated Feb 20, 2021 (see Appendix D3-D18 of Petition for Writ of Certiorari). Why lie after lie by Appeals Court of MA??

**Point 6.** Appeals Court of MA states in FOOTNOTES:” The administrative judge did not make an explicit finding that the employee's symptoms only manifested after he was terminated. For the purposes of this analysis, we assume without deciding that they did so.”

VS:

My symptoms had manifested in May 2011 and June of 2011, when I was working in Biogen. The administrative judge had made an explicit finding that the employee’s symptoms had already manifested when he worked for Biogen in May and June 2011, as recorded by “Agreed upon testimony of Yan Lin, a witness called on behalf of the employee”, cosigned by Robert Barry, for the employee and Donna Gully, for Insuer. (see Appendix **L2 of** Petition for Writ of Certiorari). In Appendix L2, my then- wife had testified that what I looked well and functioned well before I joined Biogen, and what she had experienced after I joined Biogen, and she had separated from me in June 2011, and what I looked bad and functioned bad since then. **This testimony by my exwife was both agreed by both sides** (see Appendix L2 of Petition for Writ of Certiorari). **The Biogen Time Card (Appendix O of Petition for Writ of Certiorari)** also showed that I had taken 5 days NO-Pay leave to rest in late May, and June of 2011.

#### **REASON for REHEARING:**

**I. My Hard/Quantitative Evidence had proven Susan Kalled’s and Kevin Otipody’s SOFT /SUBJECTIVE TESTIMONIAL EVIDENCE were all FALSE. Courts’ Dismissal Decisions based solely upon Susan Kalled’s and Kevin Otipody’s soft/ subjective testimonial statements shall be corrected, after six Point-to-Piont Analysis.**

As Courts Dockets shows, my case was dismissed after courts had accepted weak testimonial evidence by Biogen witness (mainly Susan Kalled) that I had worked well in Biogen only for the first one or two weeks after I joined Biogen in April 2011, and I was unable to do a simple task of antibody titration well as poor performance review). The Courts had decided based on Biogen’s weak testimonial statements that my termination was bona fide personnel action (see Appendix G5 with my Petition FOR WRIT OF CERTIORARI, as example). Courts had totally neglected my Hard/Quantitative evidence I had presented to courts, including the original emails

between myself and Biogen key witness, Susan Kalled (See Appendix H, 101 pages total of Petition for Writ of Certiorari). (Susan Kalled was a part-time employee of Biogen, she only worked 3 days each week. When she supposedly NOT working for those two days each week at her home, she had contacted me by calls and emails to push her projects (BCMA antibody effect in human disease) forward in order to survive the ongoing layoff. These 101 pages of original Emails record (Appendix H of Petition for Writ of Certiorari) had shown that I had come in to the Biogen lab in 7am in the morning, left Biogen lab late at 9 pm, and 10 PM at nights (see Appendix H42). In order to be in the Biogen lab at 7am, I had to **get up at 5am** in the morning, as I had pretty long commute from home to Biogen (Commuter Rail first, then 2 collar train of T in Boston). When I worked till late night at 10 PM in Biogen lab, I came **back to home at 12PM midnight.**

**Another piece of Hard and Quantitative evidence-Biogen Time Card** (Appendix O of Petition FOR WRIT OF CERTIORARI) had also shown that same Susan Kalled had issued doubled-paid bonus each every week after I joined in Biogen, including May 2011, June of 2011 (vs Susan Kalled's weak testimony to court that I was only working well for the first one or two weeks of April 2011). On June 3<sup>rd</sup>, 2011, there were at least 5 emails I had written in one day to answer Susan Kalled's many phone calls, (see Appendix H60, H61 @11:06 AM, @11:46 AM, @ 2:58 PM, @3:28 PM, and @ 4:03 PM), besides many phone communications with Susan Kalled who was staying at her home and got no-pay from Biogen (see Appendix H60, H61). Please note Susan Kalled had her own Biogen associate, Robin, who had named me "slave" and had complained that she had nothing to do. If Susan Kalled knew my work was good ONLY in the first one or two weeks of April 2011, why Susan Kalled had called me and emailed me about 10 times a day when she supposed to rest in her home in May 2011 and June 2011? Why not contact her own associate Robin to do all the work for her? In all Susan Kalled's fourteen emails (Appendix H2, H6, H14, H22, H31, H32, H33, H35, H42, H55, H70, H80, H98), Susan Kalled had never shown any doubt or dissatisfaction on my work, including antibody titration. It proves Susan Kalled had made false testimony to the courts (Susan Kalled's weak testimony to court that I was only working well for the first one or two weeks of April 2011).

Both Susan Kalled and the second Biogen witness Kevin Optidy had told courts that I was unable to finish one lab task well –antibody titration, as the performance reason to terminate my position. However, in all her 14 emails she had written to me, Susan Kalled had only showed her conferment and satisfaction in all her total 14 emails (see Appendix H, as of April 28 (Appendix H2), of May 3 (Appendix H6), of May 11 @7:38am (Appendix H14), of May 19 @9:01PM (Appendix H22), of May 20 (Appendix H31), of May 23 (Appendix H33), of May 25 (Appendix H32), of May 26 (Appendix H35), of June 2 @9:42PM (Appendix H42), of June 3<sup>rd</sup> @2:58pm (Appendix H55), of June 7 (Appendix H70), of June 10 @10:23PM (Appendix H80), of June 28 (Appendix H98), of June 30 (Appendix H96). There is zero hints in all her 14 emails Susan Kalled had shown her dissatisfaction in my antibody titration work. Please note that Susan Kalled had written her emails in early morning, as early as 7:38am, and in late night at @9:01PM,

@9:42PM, and @10:23PM (Appendix H80). At the same time, I had submitted my antibody titration assays seven times to Susan Kalled from April to end of June 2011, dates were on April 29, 2011 (see Appendix H1, H3), May 13, 2011 (Appendix H18), email May 18, 2011 (Appendix H14, H18); email of June 2<sup>nd</sup>, 2011 (Appendix H38); email of June 21 (Appendix H81); email of June 28, 2011 (Appendix H91, H99) and of June 30 (Appendix H96). On June 28, 2011, I had submitted multiple antibody titrations for multiple projects in one single day for both Susan Kalled and Kevin Optidy (see Appendix H91, H99). It proves both Biogen Susan Kalled and Biogen Kevin Optidy had made false testimony to the courts (that I was unable to finish one lab task –antibody titration).

## **II. Biogen's Violation of Research Integrity Public Policy:**

As for Susan Kalled's research misconduct/violation of research integrity of public policy, I had sounded alarms at least twice to Biogen in written in my emails: In my emails of June 3<sup>rd</sup>, 2011@3:28 PM ( See Appendix H55) and July 1<sup>st</sup> 2011 @10:01AM(see Appendix H96), I had sounded alarms to Susan Kalled and Immunology Director of Biogen about Susan Kalled's bypassing Gate step in flow cytometry analysis to get false positive data of her BCMA antibody effect in human disease (patented in 2015). In my June 3<sup>rd</sup> email (Appendix H55), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in flow cytometry analyzer. In my July 1<sup>st</sup> email (see Appendix H96), I had sounded alarms to Immunology Director of Biogen that QA/QC needed in Susan Kalled's research. Then I was fired at night by a phone call days later.

The Flow cytometry is a fundamental research tool for Immunology study In Susan Kalled's 2015 patent, entitled "Anti-BCMA antibodies US9034324B2", <https://patents.google.com/patent/US9034324B2/en>, nearly all data were collected by flow cytometry. In her 2015 patent, 14 of total 16 DATA Figures are all flow cytometry figures (see Appendix Q of Petition FOR WRIT OF CERTIORARI).

There is only one universal gold protocol of flow cytometry, worldwide used by all users, that is flow cytometry with gating (Appendix P of Petition FOR WRIT OF CERTIORARI). Susan Kalled had intentionally bypassed the gate step in her flow cytometry to get false positive data, and then in her 2015 patent, she had NOT made any necessary declaration that she had collected those 14 sets of data by flow cytometry without Gating (Appendix Q of

Petition FOR WRIT OF CERTIORARI). (see Patent of 2015 “Anti-BCMA antibodies US9034324B2”, <https://patents.google.com/patent/US9034324B2/en>).

Appeals Court of MA had downplayed its statement that the violation of a worldwide used gold protocol into “lei’s protocol”, “susan’s protocol”. **Research Integrity policy** defines research misconduct as fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in report research results. Susan Kalled is a well-trained immunologist, she should know very well the outcome when she decided to bypass the Gate step in flow cytometry. In order to survive her employment in Biogen as she had changed to part-time in 2011, Susan Kalled had intended to bypass the Gate Step in her flow cytometry, and she had instructed me to do the same thing, even promise a permanent position as a lure. I felt it is my civic duty to say NO to her wrongdoings. I had first discussed with Susan Kalled the mistakes and pitfalls when she shown me she had bypassed gate step in May 2011 and June 2011 (see Appendix H55 of Petition FOR WRIT OF CERTIORARI for example), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in flow cytometry analyzer (Appendix H55 of Petition FOR WRIT OF CERTIORARI), even though she had pushed me deadly hard to cook my own data by following her dirty trick, the physical and psychological pressure were so high that I had to take 5 days NO-PAY leave in May 2011 and June 2011 (see Biogen Time card of 2011, Appendix O of Petition FOR WRIT OF CERTIORARI). When I was very sure Susan Kalled’s willingful intention and her purposed wrongdoings (Susan told me once she added the proper Gating step, her own result were the same as mine in late June 2011), I had further sounded alarms to Department Director of Biogen Immunology in writing *that Susan Kalled’s research need QA/QC in my formal complain dated on July 1, 2011* (see Appendix H96 of Petition FOR WRIT OF CERTIORARI). Two days later, I was fired at night via a phone call.

\* “See something say something” is a protected civic activity. After I sounded alarms to Biogen at least twice in writing in June and July 2011 that Susan Kalled had cooked her research book (as recorded in Appendix H55 and H96 of Petition FOR WRIT OF CERTIORARI), the abrupt termination at night via a phone without any sign-off procedure had clearly violated Research Integrity public policy, and that is clearly wrongful termination.

**III. Critical Evidence had been intentionally tampered: There were 4 pages of my own Lab Book of Biogen had been COVERED Up by Susan Kalled and Biogen (Appendix I, I1-I3, of Petition FOR WRIT OF CERTIORARI):**

Biogen had rejected all my motions to collect needed documents from Biogen for eleven times in District Court of MA, and also denied my motions to get access the necessary documents from Biogen in DIA process (see Appendix J , K of Petition for Writ of Certiorari), including **4 copies** of Biogen labbooks (Appendix J). DIA Judge only ordered **one copy** lab book of my own for inspection. in DIA hearing in June 15<sup>th</sup>, 2018, I was able to identify those "BCMA Ab treatment effect " are recorded in my lab book of May 6, 9, 10, June 6, 14, and 15 of 2011, contradictory to District Court's In-camera Review result of "nothing relevant found" but without my presence. I had also found out there were 4 pages of lab record in my own lab book had been covered up by Susan Kalled and Biogen. And an emergency report to DIA had been filed on June 16<sup>th</sup>, 2018, with DIA Receiving Seal dated of June 18, 2018 (Appendix I of my Petition FOR WRIT OF CERTIORARI). There were also phone communications and emails about this Tampering Evidence Issue on the same day of hearing to my then-attorney and to DIA on June 15, 2011 (see Appendix F65 of Petition for Writ of Certiorari). Tampering evidence used in DIA, Appeals Court of MA and District Court of MA by covering four pages of my Biogen Lab Book is further prove Susan Kalled/Biogen had violated Research Integrity public policy.

**REQUEST:**

I have used **HARD/ Quantitative EVIDENCE** that had been neglected by MA courts to prove to Supreme Court of US that Biogen witness's SOFT/SUBJECTIVE TESTIMONIAL EVIDENCE are all FALSE. Therefore, the previous decisions made by Courts based upon Biogen witness's soft/subjective testimonial evidence shall be summary reversed (see SIX Point-to-Point Analysis). Or Petition for Writ of Certiorari should be reconsidered and granted.

"EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the



Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.

Here I ask this court consider "right to Counsel" extend to certain civil sphere, starting from those might only a handful thousands a year in federal district court, to ensuring the American people the promise of equal justice under law, as you can see that those handful thousands pro se, are really cannot represent them well, even to a minimum standard, in my case, for more than ten years, I cannot get Biogen-listed witness contact info and witness statements, I cannot enforce the Subpoena District Court Clerk Issued, and I cannot get my hard evidence be heard and admitted, and I cannot get my complaint be heard by MA Courts System for ten years. Can you imagine the difficulties for one, who typed lengthy petition with a more than 15 years old computer with software were all out of license, by living in a van about half of his time now, taking more than 10 pills each day for keeping his thought and mind sleeping? I cannot tell how much I am grateful to FDR, without FDR's Social Security Act in 1939, I couldn't imagine how could I still survive at present high-cost living and extreme painful legal process with Biogen for that long more than 10 years.

### **CONCLUSION**

The Court should summary reversed the Appeals Court of MA's decision, grant my Petition for Rehearing, and grant certiorari in this case.

**CERTIFICATE** : Pursuant to Rule 44, Lei Yin, Pro Se living with SSDI, certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. I also certify that this Petition is presented in good faith and not for delay. And the email records between Lei Yin and Biogen Susan Kalled, and DIA Judge Bean, presented here as Appendix are from Original Record, and I am ready to be inspected by court about its authenticity.

Dated: November 28th, 2023 Respectfully submitted,

Lei Yin, Pro Se with SSDI, 3 Blackberry Lane, S2, Andover, MA 01810, 508-404-3588

**Certificate of Service** (I, Lei Yin, certify that I have this day, November 28th, 2023, served copy of the foregoing by first class mail to :

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TO: Robert S. Martin, Esquire Tentindo, Kendall, Canniff & Keefe LLP 75 Hood Park Drive  
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