

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

San Diego County Superior Court - Main
P.O. Box 120128
San Diego, CA 92112

RE: BRUCE KIELMAN et al.,
Plaintiffs and Respondents,
v.
SHARON KRAMER,
Defendant and Appellant.
D054496
San Diego County No. GIN044539

*** REMITTITUR ***

I, Stephen M. Kelly, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on September 14, 2010, and that this opinion or decision has now become final.

- Appellant Respondent to recover costs.
- Each party to bear own costs.
- Costs are not awarded in this proceeding.
- Other (See Below)

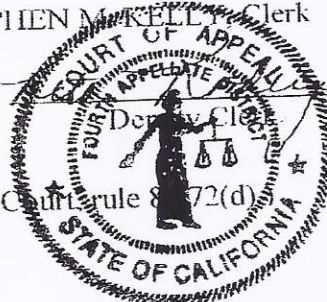
Respondents to recover their costs of appeal.

Witness my hand and the seal of the Court affixed this

DEC 20 2010

STEPHEN M. KELLY, Clerk

*Costs awarded against
Petitioner to undisclosed parties
& concealings McConnell concealed
Haidin in 2006 anti-SHAPD*



cc: All Parties (Copy of remittitur only, Cal. Rules of Court)

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, APPELLATE DISTRICT, DIVISION		Court of Appeal Case Number 4th Civil Case No. D054496
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Keith Scheuer, Esq. Cal. Bar # 082797 Scheuer & Gillett, 4640 Admiralty Way, #402, Marina Del Rey, CA 90292		Superior Court Case Number GIN044539
TELEPHONE NO.: 310 577-1170 FAX NO. (Optional):		FOR COURT USE ONLY
E-MAIL ADDRESS (Optional):		Court of Appeal Fourth District FILED SEP 14 2009 Stephan M. Kelly, Clerk
ATTORNEY FOR (Name): Respondent Bruce J. Kelman		
APPELLANT/PETITIONER: Sharon Kramer		
RESPONDENT/REAL PARTY IN INTEREST: Bruce Kelman		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS		
Check one: <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

This form is being submitted on behalf of the following party (name): Respondent Bruce J. Kelman

- a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
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- (1)
- (2)
- (3)
- (4)
- (5)

Only Kelman disclosed to be a party on appeal for the 2010 Review

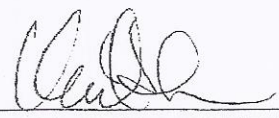
Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: September 10, 2009

Keith Scheuer, Esq.

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

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Kramer's statement was false; that Kelman was clarifying his testimony under oath, rather than altering it; and to show Kramer acted with actual malice.³

DISCUSSION

I

Anti-Slapp Law

"Section 425.16, known as the anti-SLAPP statute, permits a court to dismiss certain types of nonmeritorious claims early in the litigation." (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.)

In determining whether a motion to strike should be granted under the anti-SLAPP statute, "[f]irst, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e).' " (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) Among the categories spelled out in section 425.16, subdivision (e) are: "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest" (§ 425.16, subd. (e)(3)) and an "act in furtherance of a person's right of petition or free

³ Kramer asked us to take judicial notice of additional documents, including the complaint and an excerpt from Kelman's deposition in her lawsuit against her insurance company. We decline to do so as it does not appear these items were presented to the trial court.

McConnell concealing Hardin is a party in the anti-SLAPP opinion in 2006

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(Check One) INITIAL CERTIFICATE	SUPPLEMENTAL CERTIFICATE XX		Nature of interest (Explain)
	Party (Check One)	Non-Party	
Full Name of Interested Person / Entity			
Bruce J. Kelman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ownership interest
Lonie J. Swenson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ownership interest
Robert A. Clark	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ownership interest
Robert R. Scheibe	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ownership interest
Correen A. Robbins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ownership interest
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 14.5(d)(2).

Attorney Submitting Form

Keith Scheuer
 (Name)
4640 Admiralty Way, Suite 402
 (Address)
Marina Del Rey, CA 90292
 (City/State/Zip)
(310) 477-1170 kscheuer@aol.com
 (Telephone Number / E-mail address)
[Signature]
 (Signature of Attorney Submitting Form)

Party Represented

Plaintiffs Bruce J. Kelman
 (Name) and Gibbelfox, Inc.

July 10, 2006
 (Date)

Bryan Hardins name missing on the Certificate - McConnell accepted in 2006

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1 3. The phrase that Kelman and GlobalTox allege is a libelous accusation of perjury on my
2 part is "altered his under oath testimony". The phrase was used within the sentence, "Upon
3 viewing documents presented by the Haynes' attorney of Kelman's prior testimony from a case
4 in Arizona, Dr. Kelman altered his under oath testimony on the witness stand." GlobalTox was
5 not even referenced in the allegedly libelous sentence. Kelman obviously did "alter his under
6 oath statements" as displayed in the attached Exhibit. Attached hereto as Exhibit 5 are pages 53
7 to 59 of the Haynes trial transcript.

8
9 4. During Kelman's testimony, questions turned to money that the Manhattan Institute, a
10 national political think-tank, had paid Kelman's company, GlobalTox, for a broadly marketed
11 version (Manhattan Institute Version) of a paper he had coauthored, along with another principal
12 of GlobalTox, Bryan Hardin (Hardin). The original paper was written for the American College
13 of Occupational and Environment Medicine (ACOEM), a national medical policy-writing body.
14 The third coauthor, Andrew Saxon, also does expert witness testimony for the defense but is not
15 a principal of GlobalTox. The Manhattan Institute Version is an edit of this original paper that is
16 entitled "Adverse Human Health Effects from Mold in an Indoor Environment, Evidence Based
17 Statement" (ACOEM Statement). Attached hereto as Exhibits 6 is a true and correct copy of the
18 ACOEM Statement. Attached as Exhibit 7 is a true and correct copy of the Manhattan Institute
19 Version.

20
21 5. During Kelman's testimony in the Haynes case, when the payment from the Manhattan
22 Institute was brought into question, the interaction between Mr. Vance (Vance), the Haynes'
23 family attorney, and Kelman, took on a more confrontational tone. At one point, Kelman stated,
24 "Sir, that is a complete lie." In response to the question, "...So you participated in writing the
25

July 2005

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