

Just like was done when defeating Appellant's C.C.P. 425.16 motion in 2006, Respondent's Brief knowingly and falsely attributes the actions of Calvin "Kelly" (Vance), the attorney who was questioning Respondent on February 18, 2005 in the Haynes trial in Oregon, to be the words of Appellant's Press Release.

Unlike Vance's confusing the questions of who paid whom for what, Appellant's Press Release is 100% accurate that there were two policy papers involved. It is 100% accurate of who paid whom for what. One would see that IF they read the Press Release to the end. (Opening Brief, P.31-33)

Laid out below in steps 1-3 of the first prong within Respondent's Brief of strategically litigating and misleading this Court, for the second time.

1. This Court found in 2006 when ruling on Appellant's anti-SLAPP Motion while relying on Respondent's false implication that Appellant accused Respondent of perjury because she failed to investigate:

"This testimony supports a conclusion Kelman did not deny he had been paid by the Manhattan Institute to write a paper, but only denied being paid by the Manhattan Institute to make revisions in the paper issued by ACOEM. He admitted being paid by the Manhattan Institute to write a lay translation. The fact that Kelman did not clarify that he received payment from the Manhattan Institute until after being confronted with the Kilian deposition testimony [sic, bench trial] could be viewed by a reasonable jury as resulting from the poor phrasing of the question rather than from an attempt to deny payment. In sum, Kelman and GlobalTox presented sufficient evidence to satisfy a prima facie showing the statement in the press release was false." (Vol.I App.253)

2. From Appellant’s March 2005 Press Release in relevant part showing she correctly stated who paid whom for what; while naming names of those involved in the marketing of a scientific fraud to the courts and in U.S. health policy.

“Jury Finds ‘Toxic Mold’ Harmed Family, Arbitration Clause Not Binding” March 9, 2005 by Sharon Kramer

Oregon City, OR - The case is a first in the Northwest to award personal injury damages to a family exposed to toxic mold in a newly built home. This verdict is significant because it holds construction companies responsible when they negligently build sick buildings....

.....Dr. Bruce Kelman of GlobalTox, Inc, a Washington based environmental risk management company, testified as an expert witness for the defense, as he does in mold cases throughout the country.... He admitted the Manhattan Institute, a national political think-tank, paid GlobalTox \$40,000 to write a position paper....

In 2003, with the involvement of the US Chamber of Commerce and ex-developer, US Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated to the real estate, mortgage and building industries' associations. A version of the Manhattan Institute commissioned piece may also be found as a position statement on the website of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine.

3. Respondent’s Brief builds his case on known false inference and steering this Court’s eyes to imply “altered his under oath statements” was a false accusation of perjury caused by a malicious failure to investigate.

i.) (Respondent’ Brief, Page 7) describing the actions of Vance:

“During the Haynes trial, the Haynes’s counsel, Calvin ‘Kelly’ Vance, insinuated that Dr. Kelman had accepted money from The Manhattan Institute and in return had skewed the content of the ACOEM scientific study.”

ii.) (Respondent’ Brief, Page 6) steering this Court’s eyes to only two sentences in Appellant’ Press Release:

“In her press release, Appellant stated:

‘Upon viewing documents presented by the Haynes [sic] attorney of Kelman’s prior testimony from a case in Arizona, Dr. Kelman altered his under oath statements on the witness stand. He admitted The Manhattan Institute, a national political think-tank, paid GlobalTox \$40,000 to write a position paper regarding the potential health risks of toxic mold exposure.’”

iii.) As taken from Respondent’s testimony of February 18, 2005 in the Haynes¹ trial:

Mr. Vance: All right, And, isn’t it true that the Manhattan Institute paid GlobalTox \$40,000 to make revisions in that statement:

Respondent: That is one of the most ridiculous statements I have ever heard.

.....

Respondent: [reading from the Arizona case trial transcript in the Haynes trial proceeding] “And that new version that you did for the Manhattan Institute, your company, GlobalTox got paid \$40,000, Correct. Yes. The company was paid \$40,000 for it.”

While Vance got it wrong “revisions in that statement” by not being clear for the jury which paper he was discussing, Appellant got it right in her press release “a version of the Manhattan Institute commissioned piece may also be found...American College of Occupational and Environmental Medicine”.

¹ Haynes v Adair Homes, Inc, No. CCv0211573 in the State of Oregon

iv.) (Respondent's Brief, P.7,8) then jumps from Vance's words to Appellant's Press Release to make the false implication that Appellant failed to investigate and therefore got it wrong and accused Respondent of perjury.

“Despite Mr. Vance's best efforts to muddy the waters, the evidence irrefutably showed that Dr. Kelman's testing in the Kilian lawsuit in Arizona and the Haynes lawsuit in Oregon was consistent, and that he did not “alter his testimony” or waver while testifying in the Haynes trial. (Reporter's Transcript, 179:1-192:6; Respondent's Appendix, 037-041, 045-061, 064-065.)

The jury correctly concluded that Appellant's charge that Respondent had altered his sworn testimony on the witness stand was untrue, as was the implication that he was forced to change his testimony because he was confronted with “documents” showing a prior inconsistent testimony.

Appellant's statement that Dr. Kelman had altered his sworn testimony was libelous per se. It falsely accused him of criminal conduct....”

v.) From there, Respondent's Brief builds on its known false conclusion that Appellant accused Respondent of perjury, failed to investigate, had malice, wants to be “Queen of the Chatboards”, etc. Respondent's Brief is all based on inflammatory inferences parlayed from and added to the above evidenced house of cards foundation. (Respondent's Brief, P.6-21):

Part II. Perjury establishing false reason for Appellant's malice.

While falsely establishing that Appellant's Press Release was incorrect about who paid whom for what, the second prong was to establish a false reason for Appellant to harbor personal malice for Respondent.