amer's statement was false; that Kelman was clarifying his testimony under oath, rather n 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 tain types of nonmeritorious claims early in the litigation." (*Chavez v. Mendoza* 01) 94 Cal.App.4th 1083, 1087.)

In determining whether a motion to strike should be granted under the anti-SLAPP tute, "[f]irst, the court decides whether the defendant has made a threshold showing t the challenged cause of action is one arising from protected activity. (§ 425.16, d. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision ' " (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) Among the categories spelled out ection 425.16, subdivision (e) are: "any written or oral statement or writing made in a ce open to the public or a public forum in connection with an issue of public interest" 25.16, subd. (e)(3)) and an " 'act in furtherance of a person's right of petition or free

---

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

15.

The Deposition of Kelman,

December 20, 2007, Page

108 "Do you recall if Miss

Kramer made a claim of

toxicity?" "At this point I

don't remember."

opinions that -- that relate more to a general population versus someone with an underlying condition like cystic fibrosis; correct?

A No.

Q Okay. Do you -- do you recall if Miss Kramer made an allegation of toxicity in her lawsuit?

A At this point I don't remember.

Q Did you evaluate a neuropsychological report done on Miss Kramer prior to your deposition testimony?

A At this point I don't remember.

Q And you don't recall that in -- seeing in a neurological report that Miss Kramer was, in fact, claiming that any health symptoms or conditions were back to normal and resolved?

A I don't remember.

Q Prior to the press release, had you seen other writings regarding the mold issue that had been done by Sharon Kramer?

A I don't remember specifically. I really wasn't paying attention to it.

Q Do you recall Sharon Kramer speaking at mold-related conferences which you also spoke at prior to the press release?

A No.

Q Okay. In the Haynes case, is it correct that

Deposition of Kramer, January 3, 2008 in which she and Plaintiff Counsel were discussing the impact the false testimony repeatedly ratified by Plaintiff Counsel's briefs was having on the case. Page 92 to 94. "...just to the best of your recollection, why you wrote: 'If I have to be back to the lower court, Orfield, I will never get a fair trial." "Because in Dr. Kelman's declaration as to why I would have malice against him he lied under penalty of perjury, he led the lower court and the appellate court, I guess, to believe that he had testified my daughter and I could not have experienced the life-threatening illnesses we claimed....you furthered that lie and you parroted it in a brief ....I'm a marketing person, I understand concepts, the concept set in Judge Orfield's mind was that I was a sour grapes, vindictive little mold woman who did not get my house fixed because Kelman was a great expert who testified, when in fact he didn't testify in our case of anything of relevance, it was a perjurious lie, but once that concept is set in a judge's mind it's difficult to change that."

and gave him the wrong perception that I would have malice based on the fact that Dr. Kelman had testified as some great expert in my underlying case with Mercury.

Actually, I have a -- let me quote verbatim for you why I felt that way.

Q No. I want your testimony.

A Then I'm sorry, I can't -- it's difficult for me to answer your question to the best of my ability without being able to give you exact quotes, which I'm perfectly willing to do if you will allow me to.

Q No. As we sit here I want your best recollection, without notes, without prompting, just your best recollection, why you wrote:

"If I have to be back to the lower court, Orfield, I will never get a fair trial."

A Because in Dr. Kelman's declaration as to why I would have malice against him he lied under penalty of perjury, he led the lower court and the appellate court, I guess, to believe that he had testified my daughter and I could not have experienced the life-threatening illnesses we claimed.

We never claimed that, so he never testified to that.

We actually have documentation of where he said a physician with detailed knowledge of the child should be consulted, and I also have from his deposition in the Mercury Vs. Kramer case where he -- the plaintiff attorney asked him so with regard to ABPA -- that stands for allergic bronchopulmonary aspergillosis, which is what my daughter has -- you would not be qualified to give that testimony, and Dr. Kelman answered yes, that's correct.

So the information that he provided to Orfield was -- it was a lie, it was perjurious as to why I would have malice.

And then you in your -- what is it called -- the brief -- I guess they call them -- you furthered that lie and you parroted it in a brief and you also wrote in there that I was a sour grapes litigant who only wanted to get my house remodeled, which couldn't be any further from the truth, we received a sizeable settlement and we were not concerned about getting our house remodeled, but the concept --

I'm a marketing person, I understand

concepts, the concept set in Judge Orfield's mind was that I was a sour grapes, vindictive, little mold woman who did not get my house fixed because Kelman was a great expert who testified, when in fact he didn't testify in our case of anything of any relevance, it was a perjurious lie, but once that concept is set in a judge's mind it's difficult to change that.

Does that answer your question?

Q So that's why you think you will never get a fair trial?

A With Orfield. At that point I didn't believe I would, I am feeling more confident now that I actually have Mr. Bandlow here, a libel attorney, to assist me.

Q So now you think you may get a fair trial?

A I hope.

Q And then in the top part of Exhibit 102 there is a response from Orlawman1, is it your understanding that that's Kelly Vance?

A Yes.

Q You ever seen this e-mail before?

A I'm sure that I have.

Q Near the bottom of it he says:

17.

Declaration of Kramer in support of the motion for summary judgment, dated January 24, 2008. Page 13, "Earlier in the present case, when Kelman opposed the Anti-SLAPP motion that my former counsel filed, Kelman asserted that I held personal malice for him by falsely stating in his declaration that: .....I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed.....

However, as noted above, Kelman gave no such testimony in my family's case against Mercury Casualty, nor were we sour grapes litigants as portrayed to this court by Kelman's attorney.....

See letter dated July 23, 2002, from Kelman to David Schaffer, a true and correct copy of which is filed herewith as Ex. "P" (emphasis added).

21. Earlier in the present case, when Kelman opposed the Anti-SLAPP motion that my former counsel filed, Kelman asserted that I held personal malice for him by falsely stating in his declaration that:

> I first learned of Defendant Sharon Kramer in mid-2003, when I was retained as an expert in a lawsuit between her, her homeowner's insurer and other parties regarding alleged mold contamination in her house. She apparently felt that the remediation work had been inadequately done, and that she and her daughter had suffered life-threatening diseases as a result. I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed.

See Declaration of Bruce J. Kelman filed herein on 9/16/05, ¶ 8 (emphasis added). However, as noted above, Kelman gave no such testimony in my family's case against Mercury Casualty, nor (having won a very substantial settlement) were we sour grapes litigants as portrayed to this Court by Kelman's attorney, who argued:

> Dr. Kelman testified in a deposition that the type and amount of mold in the Kramer house could not have cause the life-threatening illnesses that Kramer claimed.
>
> Apparently furious that the science conflicted with her dreams of a remodeled house, Kramer launched an obsessive campaign to destroy the reputation of Dr. Kelman and GlobalTox.

See Plaintiff's Opposition to Motion to Strike filed herein on 9/16/05 at 5 (emphasis added). This argument is both incorrect and unsupported, and may well reflect Kelman's outlandish assertion that "attorneys are under no obligation to tell the truth." See Kelman Depo. (Ex. "M") at 136:1-12. In fact, I do not harbor any personal animosity or other thoughts about Kelman. More to the point, I certainly in no way harbor "malice" as a legal matter, as my Press Release was not knowingly or recklessly false; to the contrary, as is described above, the Press Release is true and

18. (repeat of 2.)

Plaintiff Counsel's Opposition To the Motion for Summary Judgment filed with the Court on March 26, 2008 Page 6 and attached Declaration of Bruce J. Kelman Page 6 stating, "She apparently felt that the remediation work had be inadequately done, and that she and her daughter had suffered life-threatening diseas as a result. I testified that the types and amount of mold in the Kramer house could not have cause the life-threatening illnesses she claimed."

of the report we prepared for The Manhattan Institute may be found as a position statement on ACOEM's website.

11. I first learned of Defendant Sharon Kramer in mid-2003, when I was retained as an expert in a lawsuit between her, her homeowner's insurer and other parties regarding alleged mold contamination in her house. She apparently felt that the remediation work had been inadequately done, and that she and her daughter had suffered life-threatening diseases as a result. I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed.

12. Subsequently, I became aware that she had launched a campaign attacking GlobalTox and me through various media, including the Internet. As one example, she sent outraged emails to the American Industrial Hygiene Association ("AIHA") after they had invited GlobalTox to participate in a teleweb conference. In one such email, she wrote, "May your children rot in hell, along with all the other children you are hurting." (A copy of those emails is included in "Plaintiffs' Exhibits in Opposition to Summary Judgment" (hereafter "Plaintiffs' Exhibits") as Exhibit 201.)

13. Furthermore, she blames me, my colleagues at Veritox and thousands of other doctors and physicians who concur with our research for killing innocent human beings;

scientific community. Dr. Kelman declined, because the amount of work that would be involved would be substantial and unjustified unless they were to be compensated. Subsequently, The Manhattan Institute offered to pay GlobalTox if it would prepare a lay manuscript that contained the same concepts as the ACOEM position statement. GlobalTox agreed, and the lay report - much less academic, and more accessible - was published by The Manhattan Institute in July, 2003. (Kelman declaration, Paragraph 8. A copy is included in Defendant's Exhibits as Exhibit F.)

Dr. Kelman first learned of Defendant Sharon Kramer in mid-2003, when he was retained as an expert in a lawsuit between her, her homeowner's insurer and other parties regarding alleged mold contamination in her house. (Kelman declaration, Paragraph 11.)

Kramer subsequently launched a campaign attacking GlobalTox and Dr. Kelman through various media, including the Internet.

As is set forth below, her vicious animosity toward Plaintiffs is well-documented. She says that Dr. Kelman, Veritox and the thousands of scientists and physicians who concur with their research are killing innocent human beings.

19.

Tentative Ruling Denying The Motion For Summary Judgment, published on the morning of Oral Arguments, June 20, 2008. Page 2 "Defendant also argues that she did not publish the article with actual malice. Again, however, the Court of Appeal already found that Plaintiffs made a prima facie showing of malice. The evidence and argument now offered by Defendant does not conclusively negate that showing as a matter of law."

[redacted]

ndant also argues that she did not publish the article with actual malice. Again, however, the Court ppeal already found that Plaintiffs made a prima facie showing of malice. The evidence and nent now offered by Defendant does not conclusively negate that showing as a matter of law.

ndant argues that the press release was not defamatory, because no implication of perjury can be n from the statement in the press release that Plaintiff had "altered his under oath statements on itness stand." She argues that the word "altered" carries "neither an implication nor a denotation of y or wrongdoing." However, in this Court's order denying Defendant's anti-SLAPP motion, the found:

gist of the statement was that Kelman either committed perjury in his 2/18/05 testimony in the case ynes v. Adair [or] that he was lying about a subject related to his profession . . . .

05 Order at p. 2. Defendant offers no sound basis for reconsidering this conclusion. Neither can the agree with Defendant's contention that the use of the word "alter" is a non-actionable statement of n incapable of being proved true or false.

ndant argues that no reasonable person could believe that the press release implied that Plaintiff itted perjury. Again, however, this determination cannot be made as a matter of law. It is for the determine if the statement reasonably implied that Plaintiff perjured himself.

ndant argues that Plaintiff cannot prove the statement was false, because Defendant indeed d his responses at trial. She argues that the Press Release is a fair and true report and is thus ged. The Court of Appeal rejected these arguments. Defendant offers no new evidence which usively negates these determinations by the Court of Appeal as a matter of law.

ndant argues that the statement in the press release that Plaintiff altered his under oath testimony ot directed at Plaintiff's company, Veritox. She argues that no allegedly defamatory statement in ess release is "of and concerning" Veritox. Once again, the Court of Appeal already addressed this See Opinion at p. 9, n.4. Defendant offers no suggestion that she has new evidence that usively negates this determination as a matter of law.

iffs' request for judicial notice is granted.

iffs' Objection Nos. 1, 2, 3, 4, 12, 13, and 17 are sustained on relevance grounds. Objection No. 5 tained on hearsay grounds and on the ground that Plaintiff has not established that she has nal knowledge of the information on which she is testifying. Objection Nos. 6, 7, 8, 9, 10, 11, and sustained on the ground that Defendant has not established that she has personal knowledge of formation on which she is testifying. Objection No. 15 is overruled. Objection No. 16 is sustained evance ground as to all but the last sentence identified in that objection. The objections to the last nce identified in Objection No. 16 are overruled.

dant's Objection Nos. 1, 2, and 35 are sustained on relevance grounds; these statements are not nt to the issues raised by this motion. Objection Nos. 3, 6, 7, 8, 9, and 10 are sustained on ay grounds. Objection Nos. 4, 18, 19, 20, 21, 22, 23, 26, and 29 are overruled on the grounds . Objection Nos. 5, 11, 12, 13, 14, 15, 16, and 17 are sustained on foundation grounds. Objection 24 is overruled as to the first portion of the sentence identified and sustained on f-personal-knowledge grounds as to the second portion of the sentence. Objection No. 25 is

00001041

20. (repeat of 1)

Deposition of Bruce J. Kelman, July 22, 2008, in which he states he cannot remember the testimony he gave in the Mercury case, even though just months prior in March 2008, he wrote under penalty of perjury that "I testified the types and amount of mold in the Kramer house could not have caused the life-threatening illnesses she claimed."

summary motion in this case, it was a declaration filed around March of this year?

MR. SCHEUER: No, it's not.

MR. BANDLOW: Is that not that one?

:24:40 MR. SCHEUER: This is pages 1, 5 and 6 of the declaration.

MR. BANDLOW: I can go get the whole thing. I'll have to go get the whole thing. I thought that was the full copy.

:24:52 MS. KRAMER: Want to go to lunch and do that?

MR. BANDLOW: I'm going to get a full copy. What time is it now?

I'm going to back up, because there's

:25:20 something in that declaration that I don't understand.

BY MR. BANDLOW:

Q You recall that you filed a declaration very early on in this case in which you stated that

2 :25:46 you quote "testified that the type and amount of mold in the Kramer house could not have caused the life threatening illnesses that she claimed;" do you recall saying that in a declaration?

A This case has been going on for three

12 :26:00 years, no. I'm not saying I didn't, but I need it

in front of me.

Q Do you recall that that is what you testified to when you testified in the case involving Ms. Kramer's claim with her insurance provider?

12 :26:14

A I would have to see what was on the declaration, and at this point, now we're talking about a case that was a lot of years ago. I don't remember that specific case hardly at all.

12 :26:28

Q Well, don't you recall that I took your deposition in December of 2007, and in that deposition you said you couldn't remember what testimony you gave in Ms. Kramer's action against her insurance carrier; correct?

12 :26:44

MR. SCHEUER: That's exactly the same testimony he just gave, and you are now admittedly going over stuff you already asked the witness about.

BY MR. BANDLOW:

12 :26:52

Q Here's why I'm asking, because in December of 2007 I asked you these questions and you answered just like you did, you didn't remember anything about it because it was so long ago, and then in March of 2008 I get a signed declaration from you in which you say quote "I testified that

12 :27:04

the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed."

MR. SCHEUER: Why don't you show us that declaration that you're talking about.

MR. BANDLOW: Well, it's there. If you want me to go get the signature page, that's one of the things he says there, that's the page that was copied. Starts out, "I first learned of Defendant Sharon Kramer --

MR. SCHEUER: What paragraph?

MR. BANDLOW: I don't -- says, "I first learned of Defendant Sharon Kramer in mid December 2003."

BY MR. BANDLOW:

Q So what I'm asking is: Was there something that caused you to remember your testimony in Ms. Kramer's action against her insurance carrier better between December and March of 2008?

A At this point, it would have -- I don't remember specifically. I think we have produced -- if we haven't, we should have -- what little case material we've got left from that situation. If we haven't produced that, that was an oversight, but

I'm quite certain that we did produce that.

Q As you sit here today, do you recall if you testified in Ms. Kramer's action against her insurance carrier that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed?

A I have to go back and look at the record that would -- that would certainly be consistent. Since I don't have the material in front of me, I don't know how much I can say about it.

Q Weren't you made aware of documents -- at the time that the lawsuit with Ms. Kramer's insurance carrier was going on, weren't you shown documents that showed that, in fact, she did not make that claim that the mold was causing life-threatening diseases?

MR. SCHEUER: Could I have that read back, please.

(Record read as follows:

"QUESTION: Weren't you made aware of documents -- at the time that the lawsuit with Ms. Kramer's insurance carrier was going on, weren't you shown documents that showed that, in fact, she did not make that claim that the mold was causing life-threatening

diseases?")

MR. SCHEUER: Object as having been asked and answered at the prior session of Dr. Kelman's deposition and goes beyond the scope of today's deposition, but I'll permit the witness to answer.

BY MR. BANDLOW:

Q Weren't you provided with documents at the time you were acting as an expert in the case involving Ms. Kramer against her insurance carrier, weren't you provided with documents that showed that she was not, in fact, claiming a life-threatening illness on the basis of mold in her house?

MR. SCHEUER: Same objection.

You can answer.

THE WITNESS: That's absolutely not true. I might have been showed -- I think Ms. Kramer has revised the history of her suit. So I may have been shown documents to that effect, but there were other documents claiming extensive injury.

BY MR. BANDLOW:

Q Don't you recall that Ms. Kramer's daughter had cystic fibrosis?

A Yes.

Q And that the claim was that mold could

exacerbate that particular condition?

MR. SCHEUER: Objection; irrelevant. That has nothing at all to do with this lawsuit, but if the witness has a recollection, he can testify.

12 :32:20 THE WITNESS: To the best of my recollection, the levels of mold spores indoors were equivalent to the levels outdoors, and what I said was that there was no elevated risk indoors compared to outdoors.

12 :32:44 BY MR. BANDLOW:

Q You said in your declaration "the life-threatening illnesses that she claimed" so wasn't it your statement that she was claiming life threatening illnesses because of her home?

12 :32:58 A Yes.

Q But weren't you shown documents at the time you were acting as an expert in that case that, in fact, she was not making such claims?

A There was a set of documents to that

12 :33:10 effect and a set of documents with all sorts of strange claims that did relate to life-threatening illnesses.

Q But you remember seeing a document in which you believe it indicated that Ms. Kramer was

12 :33:24 asserting the house could cause life-threatening

The Court framing the scope of the trial, August 18, 2008, Page 4, 5 "I think the Fourth did a great job. That's why I like reading their rulings because I know what I'd do. They did a pretty good job of the evidence they considered...which is key because it's the same thing that was adopted in the motion for summary judgment ruling that was made by Judge Orfield.....The spoke to the kinds of things that could give rise to a finding of actual animosity...to start with, is Dr. Kelman was an expert in her own lawsuit...a reasonable jury could infer that Kramer harbored some animosity toward Kelman. Seemed to me the facts surrounding that lawsuit...

PROVIDING FALSE TESTIMONY."

OKAY. AS AN EXPERT, EVEN IF I WERE TO SAY DR. AMMAN CAN COME UP AND PROVE -- POSTULATE SOME OF THOSE THINGS, YOU CAN'T TESTIFY SOMEONE GAVE FALSE TESTIMONY.

MR. BANDLOW: NO, AND THAT WOULDN'T BE HER TESTIMONY.

THE COURT: THANK YOU.

MR. BANDLOW: THAT'S -- THAT'S MISSPOKEN. I APOLOGIZE FOR THAT.

THE COURT: BECAUSE NO ONE CAN GET UP AND SAY SOMEONE LIED. THE JURORS DECIDE WHETHER PEOPLE LIED DURING TESTIMONY. AND IN THIS CASE, THEY'RE GOING TO DECIDE WHETHER THE TERM OF ART ALTERED IN THIS CASE CONSTITUTES OR DOES NOT CONSTITUTE PENALTY OF PERJURY -- OR NOT PENALTY OF PERJURY -- DEFAMATION. THAT'S IT IN A NUTSHELL.

SO ALTHOUGH I THINK THERE IS, REALISTICALLY, THE NEED TO PLAY FOR THE BENEFIT OF THE JURY HOW IT IS, AND I THINK THE FOURTH DID A GREAT JOB. THAT'S WHY I LIKE READING THEIR RULINGS BECAUSE I KNOW WHAT I'D DO. I WON'T UPSET THEM IF I FOLLOW THEIR GUIDANCE TO START WITH.

THEY DID A PRETTY GOOD JOB ON POINTING TO THE KIND OF EVIDENCE THEY CONSIDERED IN THE ANTI-SLAPP, WHICH IS KEY BECAUSE IT'S THE SAME THING THAT WAS ADOPTED IN THE MOTION FOR SUMMARY JUDGMENT RULING THAT WAS MADE BY JUDGE ORFIELD. AND THEY CALLED -- THERE'S LIKE THREE KEY AREAS THAT THEY TALK ABOUT THAT THEY DID NOT SEEM TO BE UPSET WITH JUDGE ORFIELD CONSIDERING IN DENYING THE ANTI-SLAPP. AND THEY TALK ABOUT THOSE THREE AREAS -- JUST GIVING THIS AS AN OVERVIEW SO YOU CAN SEE WHERE I'M COMING FROM. I ALWAYS

LIKED IT WHEN JUDGES GAVE YOU A SENSE OF WHERE THEY'RE COMING FROM. MAKES YOUR JOB A LOT EASIER.

THEY TALKED ABOUT THIS. YOU PROBABLY DON'T HAVE THAT REMITTITUR IN FRONT OF YOU. I AM GOING TO MAKE COPIES FOR ME BECAUSE I'M RETURNING THIS TO APPEALS, AND I'LL MAKE COPIES FOR YOU TOO. THAT WAY, EVERYONE WILL HAVE THE SAME THING.

OKAY. THEY SPOKE TO THE KINDS OF THINGS THAT COULD GIVE RISE TO A FINDING OF ACTUAL ANIMOSITY, AND THEY SPOKE TO A COUPLE OF HISTORICAL EVENTS THAT OCCURRED BETWEEN THE PARTIES. I'M LOOKING AT PAGE 12 OF THE REMITTITUR. THIS, OF COURSE, IS NOT ON PLEADING PAPERS, SO I CAN ONLY REFERENCE IT BY NOTING IT'S THE SECOND FULL PARAGRAPH, AND IT REFERENCES THAT ONE, TO START WITH, IS DR. KELMAN WAS AN EXPERT IN HER OWN LAWSUIT. THEY REFERENCE THAT SHE WAS SEEKING DAMAGES FOR THE PRESENCE OF MOLD IN THE HOME. DR. KELMAN GAVE AN OPINION OF A -- SPEAKING TO -- TO THE EFFECT THAT DID NOT APPEAR TO HAVE GREATLY INCREASED A LEVEL OF RISK OF MOLD INSIDE THE HOME. CASE WAS SETTLED AND, QUOTE, A REASONABLE JURY COULD INFER THAT KRAMER HARBORED SOME ANIMOSITY TOWARD KELMAN. SEEMED TO ME THE FACTS SURROUNDING THAT LAWSUIT THAT WOULD SUPPORT OR CONTRADICT A CLAIM OF ANY REASONABLE ANIMOSITY WOULD BE SOMETHING RELEVANT FOR THIS JURY.

NUMBER TWO, CONTINUING ON THAT SAME PAGE, THE JURY CAN ALSO INFER ANIMOSITY THAT OF CONDUCT TWO MONTHS PRIOR TO THE PRESS RELEASE BEING ISSUED, THAT IN JANUARY OF '05, AFTER LEARNING OF THE AMERICAN INDUSTRIAL HYGIENE

A letter sent to Plaintiff Counsel, Keith Sheuer, dated September 18, 2008, requesting that he fulfill his duty as an officer of the Court and inform all judges of the false testimony on the issue of malice that has repeatedly presented before them. A copy of this letter was also given to the Clerk of the Court, Department 31, Mr. Michael Garland. As of today's date, December 1, 2008, I have received no response on the matter from Mr. Scheuer.

September 18, 2008

Mrs. Sharon Noonan Kramer
2031 Arborwood Place
Escondido, CA 92029

Mr. Keith Scheuer, Esq. Cal. Bar. No 82797
4640 Admiralty Way, Suite 402
Marina Del Rey, California 90292

Dear Mr. Scheuer,

Thank you for your email confirmation that you are in receipt of the supplemental objection to proposal of costs/judgment I submitted to the courts on September 15, 2008, with regard to the case of Bruce J. Kelman and GlobalTox, Inc. vs. Sharon Kramer. Case No. GIN044539 North San Diego County Superior Court.

As you are aware, there was false testimony given in this case on the part of your client that was an untrue reason presented to the courts, several times over, as to why I would harbor personal malice for your clients, Bruce Kelman and GlobalTox, Inc. You client, Bruce Kelman, wrote, "*I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed*" within his declarations. As you are aware, no such testimony was ever given by your client in the case of Mercury vs. Kramer. Yet, the misrepresentation to the courts of this prior testimony in the Mercury case, has had significant impact on several rulings with this case.

This false testimony was offered by you in your brief to the trial court in September of 2005 when defeating the anti-SLAPP motion as to the only reason that I would be, as you wrote in your brief, "*Apparently furious that the science conflicted with her dreams of a remodeled house, Kramer launched into an obsessive campaign to destroy the reputation of Dr. Kelman and GlobalTox.*" The misrepresentation played a key role in defeating the anti-SLAPPP motion, as the trial court wrongfully surmised from this that I would have reason to harbor personal malice for your clients. You wrote the above statement again in May of 2006, in your appellate court brief as to the only reason provided I would harbor personal malice for your clients. You were made aware, knew, or should have known, that this was false testimony and false reason for malice being provided to the courts, no later than June 29, 2006. Yet, you made no effort to correct the error, even when the appellate court determined, six months later in November of 2006, your clients had met their prima facie burden of proof of malice, based largely on the misperception instilled by this false testimony that was ratified within your briefs. The appellate court proceeded to affirm the trial court's denial of the anti-SLAPP motion

while you remained silent regarding the false premise on which they founded their affirmation.

In March of 2008, when defeating the summary judgment motion, you again submitted a declaration on behalf of your client that stated, "*I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed.*" This is after you had been made aware this was false testimony to present to the courts no less than three times, complete with documentation of your client's actual testimony in the Mercury case, proving to you the above was false testimony to present to the courts on the issue of malice. The trial court again determined I *could* have malice for your clients stemming from the Mercury case, based on no evidence whatsoever provided as such. No evidence was ever presented that I had malice for any of the other seven expert witnesses for the defense in the Mercury case. I had no reason to harbor malice for your client stemming from the Mercury case, as your client's involvement actually helped me to prove the claim of cross-contamination and bad faith claims handling practices. Only your client's false declarations that were repeatedly ratified by your briefs caused the courts to believe a prima facie showing of malice had been achieved, when you were defeating all motions.

In August of 2008, when the trial judge framed the scope of the trial and what evidence I would and would not be permitted to present in my defense and logic of writing the phrase "altered his under oath statements"; and when providing evidence of reasons your clients have been impacted by other key sentences within my public participation press release that they sought to chill; you sat in silence, saying not a word as the trial judge determined the case should be framed on her misperception there was a bad "history between Plaintiff and Defendant" stemming from the case of Mercury vs. Kramer. And this purported bad history was a reason for malice. This, even after this matter was discussed in detail in your client's deposition on July 22, 2008 less than a month prior to the commencement of trial - at which you were present and witnessed.

As a licensed attorney in the state of California, you have an affirmative duty to the courts to present the truth and to not attempt to benefit from improvidently entered orders based on misrepresentations to the courts. You also have an affirmative duty to inform the courts if you have presented misrepresentations, whether initially intentional or not, and to request that the courts set aside any and all orders founded on misrepresentations you have presented.

This situation, caused by you and your clients' repeated misrepresentations to the courts on the issue of malice, has now cost me approximately $400,000.00 in legal defense costs and fees; not to mention much distress and financial hardship over the past three and a half years. As such, I would like for you to fulfill your obligations to the courts as a licensed attorney in the State of California and to inform Superior Court Judges Michael P. Orfield and Lisa Schall; Appellate Court Judges, Justice Cynthia Aaron and Justice J. McDonald and Appellate Court Administrative Presiding Justice, Judith McConnell, that your client gave false testimony before their courts on the issue of malice; that you ratified this false testimony in your briefs to the benefit of your clients,

several times over when defeating motions and helping to frame the scope of the trial; and that you would now like for the courts to re-examine all rulings based on the significant and repeated misrepresentations on the part of you and your clients, Bruce Kelman and GlobalTox, Inc., on the issue of malice. You are welcome to use the exhibit documentation that was attached to the supplement you received from me yesterday when explaining the matter to all courts.

Please let me know as soon as possible, if and when you intend to inform all courts of the above. Time is of the essence. Thank you for your prompt attention to this important matter.

Sincerely,

Mrs. Sharon Kramer

Copy to: Michael Garland, Clerk of the Court, Dept 31
Enclosed: Email, Mr. Scheuer 9.17.08

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10
Exhibit

Kantha App anti SLAPP Opinion
nov 2006

Manhattan Institute paid GlobalTox $40,000 to make revisions in that statement," Kelman was being cross-examined about revisions to the ACOEM paper and stated he had participated in making revisions after turning in the first draft. In context, the question about being paid to "make revisions in that statement" was ambiguous and a reasonable jury could conclude Kelman interpreted the question as asking whether he had been paid $40,000 by the Manhattan Institute to make revisions in the ACOEM paper itself, a suggestion Kelman found offensive. A short while later, Kelman explained how the Manhattan Institute paper was an entirely separate project — the writing of a lay translation of the ACOEM paper — and he readily admitted he was paid by the Manhattan Institute to write the lay translation.

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 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.

The Appellate Panel and the first lower court judge who preside over this case up until trial, Judge Orfield, concluded that Appellant had inferred Respondent lied about being paid by the Manhattan Institute to author a paper for ACOEM. As written by the Appellate Panel, November 2006:

> "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 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)

But as is accurately stated in the last sentence of the press release, Appellant specifically wrote that the Think-tank/Chamber version was a different version from ACOEM's. Appellant specifically wrote that the monies were paid to GlobalTox for the Manhattan Institute version, *not* the ACOEM one. As written in the press release: (Vol.I App.120)

> "..... 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.....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" (Vol.4 RT.414)(Vol.4 RT.386,388)

In trial, Scheuer did not ask Appellant a single question about what she considered to be the altering testimony of Respondent. When Appellant

2009
To Review Panel

Filed 9/14/10 Kelman v. Kramer CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BRUCE KELMAN et al., Plaintiffs and Respondents. v. SHARON KRAMER, Defendant and Appellant.	D054496 (Super. Ct. No. GIN044539)

APPEAL from a judgment of the Superior Court of San Diego County, Lisa C. Schall, Judge. Affirmed.

In this defamation case, Sharon Kramer appeals from a judgment entered on a jury verdict finding she libeled Bruce Kelman. The jury awarded Kelman nominal damages of one dollar and the trial court awarded Kelman $7,252.65 in costs. The jury found that Kramer did not libel GlobalTox and judgment against GlobalTox was entered. The trial court awarded Kramer $2,545.28 in costs against GlobalTox.

In a prior opinion, a previous panel of this court affirmed an order denying Kramer's motion to strike under the anti-SLAPP statute. In doing so, we largely resolved the issues Kramer now raises on appeal. In our prior opinion, we found sufficient evidence Kramer's Internet post was false and defamatory as well as sufficient evidence the post was published with constitutional malice. We also found there was sufficient evidence to defeat Kramer's claim she was protected by the fair reporting privilege provided to journalists by Civil Code section 47, subdivision (d)(1). Under the doctrine of the law case, these determinations are binding on us and compel us to find there is sufficient evidence to support the jury's determination Kramer libeled Kelman and was not entitled to the fair reporting privilege.

We find no error in the trial court's award of costs. Accordingly, we affirm the judgment.

I

FACTUAL BACKGROUND

Our prior unpublished opinion, *Kelman v. Kramer* (Nov. 16, 2006, D047758) (*Kelman v. Kramer I*), fully set forth the factual background of the plaintiff's claims:

"Kelman is a scientist with a Ph.D. in toxicology who has written, consulted, and testified on various topics, including about the toxicology of indoor mold. He is also the president of GlobalTox, which provides research and consulting services, including on toxicology, industrial hygiene, medical toxicology, and risk assessment. Kramer is 'active in mold support and the pressing issue of mold causation of physical injury' after having experienced indoor mold in her own home.

G. A Case Made On Inference Only

Respondent made his case by first setting a false theme of why Appellant would harbor personal malice based on a testimony never even given by him. (Vol.I App.149) (Vol.II App.236) (Vol.II App.287)(Vol.I App.34)(Vol.I App.238)(Vol.III App.753-759) (Vol.5 RT.479)

When in trial, inflammatory inferences of personal malice were made by asking questions about racketeering, dead babies and front groups, implying Appellant had said "Dr. Kelman is the King of Racketeers who kills babies with his front group". (Vol.3 RT.281-285)(Vol.4 RT.308-309)(Vol.4 RT.359)

There was no evidence presented that Appellant had even said a harsh personal word of Respondent before or after she wrote the press release. The best example of the use of inflammatory inference is when Scheuer had Appellant describe what someone – who Appellant does not even know – meant by a front group then went into Communism. (Vol.4 RT420-425)(Vol.5 RT.462)

Respondent provided no evidence in trial that Appellant does not believe to describe two policy papers as "two different papers, two different activities" and simultaneously "lay translation" are altered under oath statements as he never asked her about it. (Vol.4 RT 401-419) (Vol.4 RT.408)

When Appellant stated in trial that she was proud of her press release because it was the first to discuss the connection of the entities involved in the matter, Scheuer ended his questioning. (Vol.4 RT.423)

In trial, Appellant was not permitted to discuss Respondent's usage of the ACOEM version in mold litigation or the WSJ article because the scope of the

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Exhibit

WSJ.com THE WALL STREET JOURNAL. ONLINE

Court of Opinion

Amid Suits Over Mold, Experts Wear Two Hats

Authors of Science Paper Often Cited by Defense Also Help in Litigation

By DAVID ARMSTRONG
January 9, 2007

(See Corrections & Amplifications item below.)

Soon after moving into a New York City apartment, Colin and Pamela Fraser say, they began to suffer headaches, rashes, respiratory infections and fatigue. They attributed it to mold.

But their lawsuit against the cooperative that owns the building hit a roadblock when the court wouldn't let their medical expert testify that mold caused their problems. This is "unsupported by the scientific literature," the state trial judge said.

She relied in part on a position paper from the American College of Occupational and Environmental Medicine, or ACOEM. Citing a substance some molds produce called mycotoxins, the paper said "scientific evidence does not support the proposition that human health has been adversely affected by inhaled mycotoxins in the home, school, or office environment."

The paper has become a key defense tool wielded by builders, landlords and insurers in litigation. It has also been used to assuage fears of parents following discovery of mold in schools. One point that rarely emerges in these cases: The paper was written by people who regularly are paid experts for the defense side in mold litigation.

The ACOEM doesn't disclose this, nor did its paper. The professional society's president, Tee Guidotti, says no disclosure is needed because the paper represents the consensus of its membership and is a statement from the society, not the individual authors.

The dual roles show how conflicts of interest can color debate on emerging health issues and influence litigation related to it. Mold has been a contentious matter since a Texas jury in 2001 awarded $32.1 million to a family whose home was mold-infested. That award, later reduced, and a couple of mold suits filed by famous people like Ed McMahon and Erin Brockovich helped trigger a surge in mold litigation. Insurers and builders worried it would become a liability disaster for them on the scale of asbestos.

The number of suits hasn't been as big as anticipated. One reason appears to be the insurers' success in getting many states to exclude mold coverage from homeowner's-insurance policies. But also helping turn the tide, lawyers and doctors say, is the ACOEM

report. Building groups and the U.S. Chamber of Commerce have cited it to rebut the notion that mold in the home can be toxic.

James Craner, a Nevada doctor who has testified for scores of people who claimed ill effects from mold, says the paper "has been used in every single mold case. The lawyer asks, 'Isn't it true the American College of Occupational and Environmental Medicine concluded that there is no scientific evidence that mold causes any serious health effects?'"

The result, Dr. Craner maintains, is that "a lot people with legitimate environmental health problems are losing their homes and their jobs because of legal decisions based on this so-called 'evidence-based' statement."

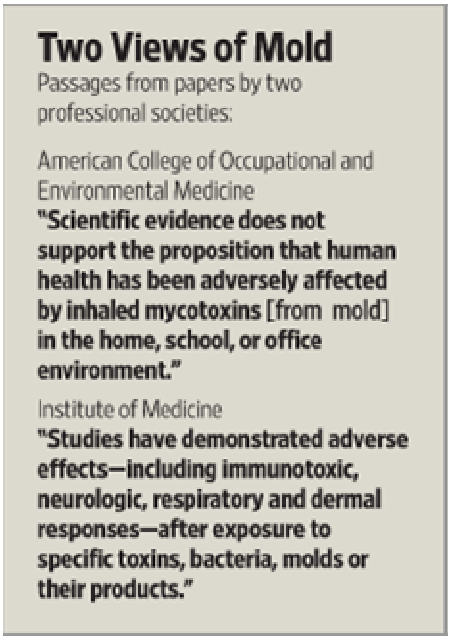
Dr. Craner says a majority of his work is on the plaintiff side and he is paid when he testifies, but he says he currently is an expert for the defense in a case where he concluded the plaintiffs' health issues weren't related to mold.

Two other medical societies have also published statements on mold written, in part, by legal-defense experts. The societies didn't disclose this when they released the papers, although one later published a correction saying two authors served as expert witnesses in mold litigation.

READ MORE

• Read the full text of Dr. Borak's September 2002 email to the leaders of the American College of Occupational and Environmental Medicine about his struggles in drafting their position paper on mold.

• Read the official position statements of the American College of Occupational and Environmental Medicine and of the American Academy of Allergy, Asthma and Immunology, as posted on their Web sites.



Mold reproduces through tiny spores. These can float into homes through windows and vent systems or be carried in on clothes or shoes. Indoors, mold grows when moisture is present.

There's debate about how much this matters. Plaintiffs attribute ills ranging from asthma to cognitive problems to inhalation of mold. The Institute of Medicine, a largely federally funded nonprofit, reviewed the research in 2004 and said "studies have demonstrated adverse effects -- including immunotoxic, neurologic, respiratory and dermal responses -- after exposure to specific toxins, bacteria, molds or their products." But it added that the dose required to cause adverse health effects hasn't been determined. The U.S. Centers for Disease Control and Prevention, for its part, says on its Web site that mold can cause wheezing and eye or skin irritation, but a link to more serious conditions "has not been proven."

'Highly Unlikely'

The ACOEM paper goes further. It says not only is there no evidence indoor mold causes serious health effects, but even if mold produced toxic substances, it's "highly unlikely at best" that anyone could inhale enough to cause a problem. The paper reaches this conclusion by extrapolating from animal studies in which rodents' throats were injected with molds.

The paper's authors say their conclusions are validated by the Institute of Medicine's paper. But the author of the Institute paper's mold toxicity chapter, Harriett Ammann, disagrees, and criticizes the ACOEM paper's methodology: "They took hypothetical exposure and hypothetical toxicity and jumped to the conclusion there is nothing there."

Dr. Ammann, a recently retired toxicologist for Washington state's health department, recently helped the plaintiff side in a mold case. She says this was the only time she has done so for pay. In the Fraser lawsuit in New York, after the judge barred testimony that mold caused health problems, Dr. Ammann, on her own and without pay, provided an affidavit filed with the appellate court saying the judge misinterpreted the research.

The ACOEM, a society of more than 5,000 specialists who investigate indoor health hazards and treat patients with related illnesses, first moved to develop a position paper on mold in early 2002. Dean Grove, then the medical society's president, asked the head of its council on scientific affairs, Yale medical professor Jonathan Borak, to set the process in motion.

He turned to a retired deputy director of the National Institute for Occupational Safety and Health -- part of the CDC -- to spearhead the project. Dr. Borak says he wanted someone with "no established background record of litigation related to mold."

For the Defense

The person he chose, Bryan Hardin, says he hadn't worked on any mold lawsuit at that point, though he was a consultant on other matters for GlobalTox Inc., a firm that regularly worked for the defense in mold cases. And Dr. Hardin says he consulted for the defense in a mold case while he was helping write the ACOEM paper.

In a Feb. 27, 2002, email, Dr. Borak told Dr. Hardin: "That position paper would be prepared by you and your GlobalTox colleagues." Dr. Borak says he believes he didn't know at the time that GlobalTox did mold defense work.

A GlobalTox colleague who aided Dr. Hardin was Bruce Kelman, now president of the firm, which recently changed its name to Veritox Inc. Drs. Kelman and Hardin, now principals at the firm and entitled to a share of its profits, were two of the ACOEM paper's three authors. They are paid $375 to $500 an hour for work on mold cases, court records say.

EXPERT WITNESSES

- **The Situation:** Mold defendants rely on medical-society position papers that reject a link to serious ills, but papers were written by scientists who often work for defense side in mold cases.
- **The Debate:** Whether courts get accurate or skewed view of possible health effects of indoor mold.
- **What's at Stake:** Outcome of widespread litigation over mold.

The paper's third author was Andrew Saxon, then chief of clinical immunology and allergy at the medical school of the University of California, Los Angeles. He, too, has served as a defense expert in numerous mold suits. Dr. Saxon says he is paid $510 an hour for his help. If called to testify in court, his rate rises to $720 an hour, according to a deposition he gave.

Until he retired from UCLA in September, money he earned as a legal-defense expert was paid to the university, and he says UCLA then gave him a little less than half of it. Dr. Saxon estimates he generates $250,000 to $500,000 a year from expert defense work, which includes non-mold cases.

The ACOEM knew about mold defense work by the authors of its paper. Dr. Hardin informed the society in a Sept. 23, 2002, document under his letterhead. Labeled "confidential" and "share only with the ACOEM board of directors," it told of his work as a defense expert on one mold case.

The letter said the other two authors, Drs. Saxon and Kelman, "have been retained by both the defense and plaintiff bar in litigation relating to indoor mold." Both say they work mostly for the defense in mold cases.

Internal ACOEM documents indicate that as the paper was being written in August 2002, there was concern within the society that the paper was too friendly to defense interests. Its authors were asked to modify the first draft's tone "because of the concern about possible misinterpretation of 'buzz words' and phrases such as 'belief system,' 'adherents may claim,' 'supposed hypersensitivity,' and 'alleged disorder,'" according to a June 2002 email to Dr. Hardin from the society's communications director. (The email was obtained by a plaintiff's attorney in a mold case, Karen Kahn.)

Dr. Borak, the head of the society's council on scientific affairs, suggested sending a draft for review to one particular mold authority, Michael Hodgson, director of the occupational safety and health program at the U.S. Veterans Health Administration. Dr.

Hardin objected. He said it would be "inappropriate to add ad hoc reviewers who are highly visible advocates for a point of view the draft position paper analyzes and finds lacking." The draft ultimately wasn't sent.

'A Defense Argument'

In September 2002, Dr. Borak emailed colleagues that "I am having quite a challenge in finding an acceptable path for the proposed position paper on mold." He said several reviewers "find the current version, much revised, to still be a defense argument."

The society released a paper two months later, and its authors, as well as ACOEM officials, say it accurately reflects the science on indoor mold exposure. The authors' "views, if prejudicial, were removed," Dr. Borak says. "It went through a dramatic change of top-heavy peer reviews." He says objections come mainly from "activist litigants" who find it "annoying."

Drs. Hardin and Kelman say the paper has been controversial because it challenged "a belief system" that mold can be toxic indoors. "A belief system is built up and there is anger when the science doesn't support that belief system," Dr. Kelman says.

The Manhattan Institute, a conservative think tank, paid Veritox $40,000 to prepare a lay version of the paper. That version said "the notion that 'toxic mold' is an insidious, secret 'killer,' as so many media reports and trial lawyers would claim, is 'junk science' unsupported by actual scientific study." Its authors were the three writers of the longer paper plus a fourth, who also is a principal at Veritox.

Lawyers defending mold suits also cite a position paper from the American Academy of Allergy, Asthma and Immunology. This paper says it concurs with the ACOEM that it is highly unlikely enough mycotoxins could be inhaled to lead to toxic health effects.

Among the academy paper's five authors is Dr. Saxon. Another, Abba Terr, a San Francisco immunologist, has worked as a defense expert in mold cases. The academy published the paper in its Journal of Allergy and Clinical Immunology last February, not citing the mold-defense work of either man. The publication later ran a correction disclosing their litigation work.

The academy's president says officials were aware Dr. Saxon was an expert witness. "We should have published their [disclosure] statements with the paper," says the official, Thomas Platts-Mills. He says the lapse resulted from a variety of factors, including confusion about whose responsibility the disclosure was.

Unhappy Author

A third author of the academy's paper, Jay Portnoy, chief of allergy, asthma and immunology at the Children's Mercy Hospital in Kansas City, Mo., says he "felt that there was an agenda" -- the effort "seemed very biased toward denying the possibility of there being harmful effects from mold on human health." He says he considered removing his name from the paper, but it was published before he could decide.

Dr. Portnoy says a section he contributed was rewritten by Dr. Saxon to be "a lot more negative." He says the paper wrongly says mold isn't proven to cause allergic rhinitis, with symptoms like wheezing, sore throat and sneezing. Dr. Saxon denies the authors had a bias but says they applied a high standard for proving mold causes a particular effect. He says he didn't skew the content of Dr. Portnoy's section but rewrote it because it was "too diffuse." Dr. Terr in San Francisco didn't return a call seeking comment.

In New York, the Frasers are appealing the refusal of the trial judge, state Supreme Court Justice Shirley Werner Kornreich, to let their expert testify that indoor mold caused their health complaints. The Frasers had moved into the East Side Manhattan apartment in 1996. Their 2002 suit said they repeatedly complained to the co-op's board of dampness and leaks as their health deteriorated.

Their appeal attacks the credibility of mold position papers drafted by scientists who work for defendants. "What you have here is defense experts authoring papers under an official guise," says their attorney, Elizabeth Eilender. Justice Kornreich declined to comment.

Write to David Armstrong at david.armstrong@wsj.com

Corrections & Amplifications:

Harriet Ammann, a toxicologist, says she has been paid as an expert by plaintiffs in three mold cases. This article reports that Dr. Ammann said she had been paid for her work in only one case.

false theme of the case. Then using the false theme to promote a reason for personal malice. This deflected attention that Appellant was writing from a position of public interest – not personal malice. When brought directly to his attention with evidence of such a nature that it cannot be disbelieved, Plaintiff Counsel still took no action to correct. He has still failed to inform the courts of improvidently entered orders while continuing to benefit from the perjury on the issue of malice. This has caused Appellant even more expense with Appellate Court filings, copies, time. To this day, it is his legal responsibility to inform the courts of this insidious situation, not Appellant's. Yet Scheuer remains mum. Silence is not a defense.

C. Appellant Is A Whistleblower

As noted in the article "Kramer vs. Corruption" that the jury was not permitted to read, Appellant is a whistleblower regarding the deception in former health policy over the mold issue and involving the entities she wrote of in her press release. (Vol.IV RT953). Appellant has been an effective Whistleblower.(Vol.4 RT.389-399) What has occurred over this issue is quite similar to the science marketing techniques used by Big Tobacco to deny liability for causation of illness. (Vol.3 RT.201-203) (Vol.3 RT.283-285) (Vol.5 RT.482-485) As taken from the press release:

> ".....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. Although much medical research finds otherwise, the controversial piece claims that it is not plausible the types of illnesses experienced by the Haynes family and reported by thousands from across the US, could be caused by "toxic mold" exposure in homes, schools or office buildings.

> 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.

The connected two public policy papers that were a subject of Appellant's press release are the "Think-tank/Chamber version" and the "ACOEM version".

Although not permitted to be read by the jury in the August 2008, trial, the second time their connection was publicly written of, was on January 9, 2007, twenty two months after Appellant's press release.

This writing was on the front page and above the fold of the Wall Street Journal (WSJ). The expose' was titled "*Amid Suits Over Mold Experts Wear Two Hats, Authors of Science Paper Often Cited by Defense Also Help in Litigation*". (Vol.IV App.871-876)

Respondent and his business partner Bryan Hardin (Hardin) are the *"authors of science papers"* in the WSJ expose. Two of the *"science papers"* discussed in the WSJ are the same papers first publicly discussed as being connected in Appellant's press release of March 2005: the Think-tank/Chamber version and the ACOEM version.

The Think-tank/Chamber version is officially titled *"A Scientific View of the Health Effects of Mold"*. But Respondent does not list it on his Curriculum Vitae of science publications. (Vol.5 App.488)

Exhibit

E. The Case Is About Appellant's State Of Mind

With all due respect to the San Diego Courts, this case is not about their understanding of the politics in public health policy science behind the mold issue or whether they think to go from "two different papers, two different activities" to "translation", "lay translation." is clarifying. (Vol.7 RT.577)

This case is simply about Appellant's state of mind when writing the phrase "altered his under oath statements" in 2005. Whether the courts consider "two different version, two different papers" and "lay translation" to be clarifying statements should not be of relevance in making their rulings. (Vol.7 RT.577)

The determination should be if Appellant, who has knowledge of conflicts of interest over the mold issue, believes to describe two US health policy papers as "two different version, two different papers" and simultaneously "lay translation" to be obfuscating and altering testimony. (Vol.7 RT.556-557,RT.559-560)

There was no evidence presented that Appellant did not and does not believe the truth of her words. She did and she does. As is stated in trial, Appellant is proud of this press release as it was the first to expose an unholy union when setting public health policy over the mold issue detrimental to US citizens.

Respondent did not prove actual malice on the part of Appellant by clear and convincing evidence presented in trial because **he provided no evidence** that Appellant does not believe describing two papers as being connected and not connected at the same time, is in Appellant's mind, altering testimony.

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Exhibit

II

Excluded Evidence

In addition to the issues which were determined in *Kelman v. Kramer I*, on appeal Kramer also argues the trial court erred in excluding evidence which she contends would have shown that Kelman's scientific conclusions have been severely criticized by other, more credible members of the scientific community and that Kramer has been widely recognized as a crusading whistleblower with respect to toxic mold. The trial court correctly excluded this evidence as irrelevant. Kelman's libel claim did not put in issue the validity of his scientific conclusions or the sincerity of Kramer's conflicting views. Kelman's claim was based on his far narrower contention that in reporting his testimony in the Haynes trial, Kramer falsely implied that he had committed perjury and that Kramer knew the implication was false or was reckless in creating it. Neither the validity of Kelman's scientific conclusions nor the sincerity of Kramer's views was relevant to determination of those narrower issues. Thus the trial court did not abuse its discretion in excluding the evidence Kramer offered.

III

Costs

Kelman filed a cost bill of $7,252.65 on October 14, 2008. On October 31, 2008, Kramer filed a motion to strike Kelman's costs and have costs awarded to her as against GlobalTox. In her motion, she argued that as the prevailing party as against GlobalTox she was entitled to an award of costs. With respect to Kelman's cost bill, the only

> ask questions. I expected that there would be some sort of maneuver surrounding this scientific and political event, so it was no surprise that government agencies, including the EPA, pulled their representatives at the last minute, though no explanation was given...
>
> That area of enquiry subsequently led to a request from Senator Kennedy's office in October 2006 to the General Accountability Office for a review of the Federal effort. Again, Sharon Kramer's incredible effort was..... instrumental in the GAO request that led in turn to the 2008 US GAO report that completely destroyed the defense or government Nay-sayers' credibility in mold illness issues. Thanks to Sharon and Senator Kennedy's staff, the longstanding idiotic arguments about mycotoxins alone being the problem from WDB have now been put to rest, with the exception of some really primitive defense attorneys who don't know that the old ACOEM-quoting defense and the old AAAAI quoting defense are a prescription for a loss in court.

Additionally, never mentioned in any ruling or Opinion, Kramer has provided the courts with uncontroverted evidence since September of 2005 that Kelman committed perjury and his attorney, Keith ("Scheuer") repeatedly and willfully suborned it, to establish false extenuating circumstances for Kramer's purported malice. This includes in his Reply Brief of September 2009 submitted to This Court.

Kramer evidenced this, but it was not mentioned in the Opinion that this court willfully accepted suborning of perjury in a legal brief by a California licensed attorney over a matter adversely impacting public health and involving billions of dollars.

There is now a new malicious litigation filed November 4, 2010, in which Kelman and Scheuer are seeking an injunctive relief that Kramer be gagged from ever writing of this libel litigation. This means Kramer would be gagged from writing of this court's aiding with interstate insurance fraud by not following the laws that govern proof of libel with actual malice and repeatedly ignoring what courts are

American College of Occupational and Environmental Medicine

Adverse Human Health Effects Associated with Molds in the Indoor Environment

In recent years, the growth of molds in home, school, and office environments has been cited as the cause of a wide variety of human ailments and disabilities. This evidence-based statement from the American College of Occupational and Environmental Medicine (ACOEM) discusses the current state of scientific knowledge as to the nature of fungal- (mold-) related illnesses while emphasizing the possible relationships to indoor environments. Food-borne exposures, methods of exposure assessment, and mold remediation procedures are beyond the scope of this paper.

"Mold" is the common term for multicellular fungi that grow as a mat of intertwined microscopic filaments (hyphae). Many species of fungi live as commensal organisms in or on the surface of the human body. Exposure to molds and other fungi and their spores is unavoidable except when the most stringent of air filtration, isolation, and environmental sanitation measures are observed, e.g., in organ transplant isolation units.

Molds and other fungi may adversely affect human health through three processes: 1) allergy; 2) infection; or 3) toxicity. It is estimated that about 10% of the population has allergic antibodies to fungal antigens. Only half of these, or 5%, would be expected to show clinical illness. Furthermore, outdoor molds are generally more abundant and important in airway allergic disease than indoor molds — leaving the latter with an important, but minor overall role in allergic airway disease. Allergic responses are most commonly experienced as allergic asthma or allergic rhinitis ("hay fever";). A rare, but much more serious immune-related condition, hypersensitivity pneumonitis (HP), may follow exposure (usually occupational) to very high concentrations of fungal (and other microbial) proteins.

Most fungi generally are not pathogenic to healthy humans. A number of fungi commonly cause superficial infections involving the feet *(tinea pedis)*, groin *(tinea cruris)*, dry body skin *(tinea corporis)*, or nails *(tinea onychomycosis)*. A very limited number of pathogenic fungi — such as *Blastomyces, Coccidioides, Cryptococcus*, and *Histoplasma* — infect non-immunocompromised individuals. In contrast, persons with severely impaired immune function, e.g., cancer patients receiving chemotherapy, organ transplant patients receiving immunosuppressive drugs, AIDS patients, and patients with uncontrolled diabetes, are at significant risk for more severe opportunistic fungal infection.

Some species of fungi, including some molds, are known to be capable of producing secondary metabolites, or mycotoxins, some of which find a valuable clinical use, e.g., penicillin and cyclosporine. Serious veterinary and human mycotoxicoses have been documented following ingestion of foods heavily over-grown with molds. In agricultural settings, inhalation exposure to high concentrations of mixed organic dusts — which include bacteria, fungi, endotoxins, glucans, and mycotoxins — is associated with organic dust toxic syndrome, an acute febrile illness. Present concern over human exposure to molds in the indoor environment appears to derive from a belief that inhalation exposures to mycotoxins cause numerous and varied, but generally nonspecific, symptoms.

There is scientific evidence that in certain cases, molds and other fungi may adversely affect human health, and mold has been associated with health issues ranging from coughs to asthma to allergic rhinitis. However, current scientific evidence does not support the existence of a causal relationship between inhaled mycotoxins in the home, school, or office environment and adverse human health effects. An evaluation of the relevant literature follows.

Allergy and other hypersensitivity reactions
Allergic and other hypersensitivity responses to indoor molds may be immunoglobulin E (IgE) or immunoglobulin G (IgG) mediated, and both types of response are associated with exposure to indoor molds. Uncommon allergic syndromes, allergic bronchopulmonary aspergillosis (ABPA), and allergic fungal sinusitis (AFS), are briefly discussed for completeness, although indoor mold has not been suggested as a particular risk factor in the etiology of either.

1. *Immediate hypersensitivity:* The most common form of hypersensitivity to molds is immediate type hypersensitivity or IgE-mediated "allergy" to fungal proteins. This reactivity can lead to allergic asthma or allergic rhinitis that is triggered by breathing in mold spores or hyphal fragments. Residential or office fungal exposures may be a substantial factor in an individual's allergic airway disease depending on the subject’s profile of allergic sensitivity and the levels of indoor exposures. Individuals with this type of mold allergy are "atopic" individuals, i.e., have allergic asthma, allergic rhinitis, or atopic dermatitis and manifest allergic (IgE) antibodies to a wide range of environmental proteins among which molds are only one participant. These individuals generally will have allergic reactivity against other important indoor and outdoor allergens such as animal dander, dust mites, and weed, tree, and grass pollens. Among the fungi, the most important indoor allergenic molds are *Penicillium* and *Aspergillus* species.[1] Outdoor molds, e.g., *Cladosporium* and *Alternaria*, as well as pollens, can often be found at high levels indoors if there is access for outdoor air (e.g., open windows).

   About 40% of the population are atopic and express high levels of allergic antibodies to inhalant allergens. Of these, 25%, or 10% of the population, have allergic antibodies to common inhalant molds.[2] Since about half of persons with allergic antibodies will express clinical disease from those antibodies, about 5% of the population is predicted to have, at some time, allergic symptoms from molds. While indoor molds are well-recognized allergens, outdoor molds are more generally important.

   A growing body of literature associates a variety of diagnosable respiratory illnesses (asthma, wheezing, cough, phlegm, etc.),

particularly in children, with residence in damp or water-damaged homes.[3-5] Studies have documented increased inflammatory mediators in the nasal fluids of persons in damp buildings, but found that mold spores themselves were not responsible for these changes.[6,7] While dampness may indicate potential mold growth, it is also a likely indicator of dust mite infestation and bacterial growth. The relative contribution of each is unknown, but mold, bacteria, bacterial endotoxins, and dust mites can all play a role in the reported spectrum of illnesses. Their presence can be minimized by control of relative humidity and water intrusion.

2. *Hypersensitivity pneumonitis (HP*): HP results from exaggeration of the normal IgG immune response against inhaled foreign (fungal or other) proteins and is characterized by: 1) very high serum levels of specific IgG proteins (classically detected in precipitin tests performed as double diffusion tests); and 2) inhalation exposure to very large quantities of fungal (or other) proteins.[8] The resulting interaction between the inhaled fungal proteins and fungal-directed cell mediated and humoral (antibody) immune reactivity leads to an intense local immune reaction recognized as HP. Most cases of HP result from occupational exposures, although cases have also been attributed to pet birds, humidifiers, and heating, ventilating, and air conditioning (HVAC) systems. The predominant organisms in the latter two exposures are thermophilic actinomyces, which are not molds but rather filamentous bacteria that grow at high temperatures (116°F).

   The presence of high levels of a specific antibody — generally demonstrated as the presence of precipitating antibodies — is required to initiate HP, but is not diagnostic of HP.[9] More than half of the people who have occupational exposure to high levels of a specific protein have such precipitin antibodies, but do not have clinical disease.[8] Many laboratories now measure IgG to selected antigens by using solid phase immunoassays, which are easier to perform and more quantitative than precipitin (gel diffusion) assays. However, solid phase IgG levels that are above the reference range do not carry the same discriminatory power as do results of a precipitin test, which requires much greater levels of antibody to be positive. Five percent of the normal population has levels above the reference value for any one tested material. Consequently, a panel of tests (e.g., 10) has a high probability of producing a false-positive result. Screening IgG antibody titers to a host of mold and other antigens is not justified, unless there is a reasonable clinical suspicion for HP, and should not be used to screen for mold exposure.[10]

3. *Uncommon allergic syndromes: allergic bronchopulmonary aspergillosis (ABPA) and allergic fungal sinusitis (AFS).*[11] These conditions are unusual variants of allergic (IgE-mediated) reactions in which fungi actually grow within a person's airway. ABPA is the classic form of this syndrome, which occurs in allergic individuals who generally have airway damage from previous illnesses leading to bronchial irregularities that impair normal drainage, e.g., bronchiectasis.[12,13] Bronchial disease and old cavitary lung disease are predisposing factors contributing to fungal colonization and the formation of mycetomas. *Aspergillus* may colonize these areas without invading adjacent tissues. Such fungal colonization is without adverse health consequence unless the subject is allergic to the specific fungus that has taken up residence, in which case there may be ongoing allergic reactivity to fungal proteins released directly into the body. Specific criteria have been recognized for some time for the diagnosis of ABPA.[14,15] As fungi other than *Aspergillus* may cause this condition, the term "allergic broncho-pulmonary mycosis" has been suggested.

   It has more recently become appreciated that a similar process may affect the sinuses — allergic fungal sinusitis (AFS).[16] This condition also presents in subjects who have underlying allergic disease and in whom, because of poor drainage, a fungus colonizes the sinus cavity. *Aspergillus* and *Curvularia* are the most common forms, although the number of fungal organisms involved continues to increase. As with ABPA, the diagnosis of AFS has specific criteria that should be used to make this diagnosis.[17-19]

Recommendations

- Individuals with allergic airway disease should take steps to minimize their exposure to molds and other airborne allergens, e.g., animal dander, dust mites, and pollens. For these individuals, it is prudent to take feasible steps that reduce exposure to aeroallergens and to remediate sources of indoor mold amplification. Sensitized individuals may need to keep windows closed, remove pets, use dust mite covers, use high-quality vacuum cleaners, or filter outdoor air intakes to minimize exposures to inhalant allergens. Humidification over 40% encourages fungal and dust mite growth and should be avoided. Where there is indoor amplification of fungi, removal of the fungal source is a key measure to be undertaken so as to decrease potential for indoor mold allergen exposure.
- ABPA and AFS are uncommon disorders while exposure is ubiquitous to the fungal organisms involved. There is no evidence to link specific exposures to fungi in home, school, or office settings to the establishment of fungal colonization that leads to ABPA or AFS.
- Once a diagnosis of HP is entertained in an appropriate clinical setting and with appropriate laboratory support, it is important to consider potential sources of inhaled antigen. If evaluation of the occupational environment fails to disclose the source of antigens, exposures in the home, school, or other occupied space should be investigated. Once identified, the source of the mold or other inhaled foreign antigens should be remediated.
- Appropriate measures should be taken in industrial workplaces to prevent mold growth, e.g., in machining fluids and where stored organic materials are handled such as in agricultural and grain processing facilities. Engineering controls should be used to reduce potentially contaminated aerosol or particulate generation. If engineering controls are inadequate, personal protective equipment may be needed to minimize worker exposures to aerosols and particulate matter.

Infection

An overview of fungi as human pathogens follows. Exposure to molds indoors is generally not a specific risk factor in the etiology of mycoses except under specific circumstances as discussed below for individual types of infection.

1. *Serious fungal infections:* A very limited number of pathogenic fungi such as *Blastomyces, Coccidioides, Cryptococcus,* and

Histoplasma infect normal subjects and may cause a fatal illness. However, fungal infections in which there is deep tissue invasion are primarily restricted to severely immunocompromised subjects, e.g., patients with hematologic neoplasms including acute leukemia, cancer patients receiving intense chemotherapy, or persons undergoing bone marrow or solid transplantation who receive potent immunosuppressive drugs.[20] Uncontrolled diabetics and persons with advanced AIDS are also at increased risk. Concern is greatest when patients are necessarily in the hospital during their most severe immunocompromised states, at which time intense measures are taken to avoid fungal, bacterial, and viral infection.[21] Outside the hospital, fungi, including *Aspergillus*, are so ubiquitous that few recommendations can be made beyond avoidance of known sources of indoor and outdoor amplification, including indoor plants and flowers, because vegetation is a natural fungal growth medium.[22,23] *Candida albicans* is a ubiquitous commensal organism on humans that becomes an important opportunistic pathogen for immunocompromised subjects. However, it and environmental fungi discussed above that are pathogens in healthy individuals as well (e.g., *Cryptococcus* associated with bird droppings, *Histoplasma* associated with bat droppings, *Coccidioides* endemic in the soil in the southwest U.S.) are not normally found growing in the office or residential environment, although they can gain entry from outdoors. Extensive guidelines for specific immunocompromised states can be found on the Centers for Disease Control and Prevention (CDC) web site at www.cdc.gov.

2. *Superficial fungal infections:* In contrast to serious internal infections with fungi, superficial fungal infections on the skin or mucosal surfaces are extremely common in normal subjects. These superficial infections include infection of the feet *(tinea pedis)*, nails *(tinea onychomycosis)*, groin *(tinea cruris)*, dry body skin *(tinea corporis),* and infection of the oral or vaginal mucosa. Some of the common organisms involved, e.g., *Trichophyton rubrum*, can be found growing as an indoor mold. Others, such as *Microsporum canis* and *T. mentagrophytes*, can be found on indoor pets (e.g., dogs, cats, rabbits, and guinea pigs). As a common commensal on human mucosal surfaces, *C. albicans* can be cultured from more than half of the population that has no evidence of active infection. *C. albicans* infections are particularly common when the normally resident microbial flora at a mucosal site is removed by antibiotic use. Local factors such as moisture in shoes or boots and in body creases and loss of epithelial integrity are important in the development of superficial fungal infections.

   Pityriasis (Tinea) versicolor is a chronic asymptomatic infection of the most superficial layers of the skin due to *Pityriasis ovale* (also known as *P. orbiculare* and *Malassesia furfur*) manifest by patches of skin with variable pigmentation. This is not a contagious condition and thus is unrelated to exposures, but represents the overgrowth of normal cutaneous fungal flora under favorable conditions.

Recommendations

- Only individuals who are immunocompromised need be concerned about the potential for serious opportunistic fungal infections. These individuals should be advised to avoid recognizable fungal reservoirs including, but not limited, to indoor environments where there is uncontrolled mold growth. Outdoor areas contaminated by specific materials such as bird droppings should be avoided as well as nearby indoor locations where those sources may contaminate the intake air.
- Individuals with *M. canis* and *T. mentagrophytes* infections should have their pets checked by a veterinarian. No other recommendations are warranted relative to home, school, or office exposures in patients with superficial fungal infections.

Toxicity

Mycotoxins are "secondary metabolites" of fungi, which is to say mycotoxins are not required for the growth and survival of the fungal species ("toxigenic species") that are capable of producing them. The amount (if any) and type of mycotoxin produced is dependent on a complex and poorly understood interaction of factors that probably include nutrition, growth substrate, moisture, temperature, maturity of the fungal colony, and competition from other microorganisms.[24-28] Additionally, even under the same conditions of growth, the profile and quantity of mycotoxins produced by toxigenic species can vary widely from one isolate to another.[29-32] Thus, it does not necessarily follow from the mere presence of a toxigenic species that mycotoxins are also present.[33-35]

When produced, mycotoxins are found in all parts of the fungal colony, including the hyphae, mycelia, spores, and the substrate on which the colony grows. Mycotoxins are relatively large molecules that are not significantly volatile[36,37]; they do not evaporate or "off-gas" into the environment, nor do they migrate through walls or floors independent of a particle. Thus, an inhalation exposure to mycotoxins requires generation of an aerosol of substrate, fungal fragments, or spores. Spores and fungal fragments do not pass through the skin, but may cause irritation if there is contact with large amounts of fungi or contaminated substrate material.[38] In contrast, microbial volatile organic compounds (MVOCs) are low molecular weight alcohols, aldehydes, and ketones.[39] Having very low odor thresholds, MVOCs are responsible for the musty, disagreeable odor associated with mold and mildew and they may be responsible for the objectionable taste of spoiled foods.[39,40]

Most descriptions of human and veterinary poisonings from molds involve eating moldy foods.[38,40-43] Acute human intoxications have also been attributed to inhalation exposures of agricultural workers to silage or spoiled grain products that contained high concentrations of fungi, bacteria, and organic debris with associated endotoxins, glucans, and mycotoxins.[44,45] Related conditions including "pulmonary mycotoxicosis," "grain fever," and others are referred to more broadly as "organic dust toxic syndrome" (ODTS).[46] Exposures associated with ODTS have been described as a "fog" of particulates[47] or an initial "thick airborne dust" that "worsened until it was no longer possible to see across the room."[48] Total microorganism counts have ranged from 10^5-10^9 per cubic meter of air[49] or even 10^9-10^{10} spores per cubic meter,[50,51] extreme conditions not ordinarily encountered in the indoor home, school, or office environment.

"Sick building syndrome," or "non-specific building-related illness," represents a poorly defined set of symptoms (often sensory) that are attributed to occupancy in a building. Investigation generally finds no specific cause for the complaints, but they may be attributed to fungal

growth if it is found. The potential role of building-associated exposure to molds and associated mycotoxins has been investigated, particularly in instances when *Stachybotrys chartarum (*aka *Stachybotrys atra)* was identified.[52-55] Critical reviews of the literature[33,56-62] have concluded that indoor airborne levels of microorganisms are only weakly correlated with human disease or building-related symptoms and that a causal relationship has not been established between these complaints and indoor exposures to *S. chartarum*.

A 1993-94 series of cases of pulmonary hemorrhage among infants in Cleveland, Ohio, led to an investigation by the CDC and others. No causal factors were suggested initially,[63] but eventually these same investigators proposed that the cause had been exposures in the home to *S. chartarum* and suggested that very young infants might be unusually vulnerable.[64-66] However, subsequent detailed re-evaluations of the original data by CDC and a panel of experts led to the conclusion that these cases, now called "acute idiopathic pulmonary hemorrhage in infants,"[67] had not been causally linked to *S. chartarum* exposure.[68]

If mycotoxins are to have human health effects, there must be an actual presence of mycotoxins, a pathway of exposure from source to susceptible person, and absorption of a toxic dose over a sufficiently short period of time. As previously noted, the presence of mycotoxins cannot be presumed from the mere presence of a toxigenic species. The pathway of exposure in home, school, and office settings may be either dermal (e.g., direct contact with colonized building materials) or inhalation of aerosolized spores, mycelial fragments, or contaminated substrates. Because mycotoxins are not volatile, the airborne pathway requires active generation of that aerosol. For toxicity to result, the concentration and duration of exposure must be sufficient to deliver a toxic dose. What constitutes a toxic dose for humans is not known at the present time, but some estimates can be made that suggest under what circumstances intoxication by the airborne route might be feasible.

Experimental data on the *in vivo* toxicity of mycotoxins are scant. Frequently cited are the inhalation LC_{50} values determined for mice, rats, and guinea pigs exposed for 10 minutes to T-2 toxin, a trichothecene mycotoxin produced by *Fusarium* spp.[69,70] Rats were most sensitive in these studies, but there was no mortality in rats exposed to 1.0 mg T-2 toxin/m^3. No data were found on T-2 concentrations in *Fusarium* spores, but another trichothecene, satratoxin H, has been reported at a concentration of 1.0×10^{-4} ng/spore in a "highly toxic" *S. chartarum* strain, s. 72.[29] To provide perspective relative to T-2 toxin, 1.0 mg satratoxin H/m^3 air would require 10^{10} (ten billion) of these s. 72 *S. chartarum* spores/m^3.

In single-dose *in vivo* studies, *S. chartarum* spores have been administered intranasally to mice[29] or intratracheally to rats.[71,72] High doses (30×10^6 spores/kg and higher) produced pulmonary inflammation and hemorrhage in both species. A range of doses was administered in the rat studies and multiple, sensitive indices of effect were monitored, demonstrating a graded dose response with 3×10^6 spores/kg being a clear no-effect dose. Airborne *S. chartarum* spore concentrations that would deliver a comparable dose of spores can be estimated by assuming that all inhaled spores are retained and using standard default values for human subpopulations of particular interest[73] — very small infants,[a] school-age children,[b] and adults.[c] The no-effect dose in rats (3×10^6 spores/kg) corresponds to continuous 24-hour exposure to 2.1×10^6 spores/m^3 for infants, 6.6×10^6 spores/m^3 for a school-age child, or 15.3×10^6 spores/m^3 for an adult.

That calculation clearly overestimates risk because it ignores the impact of dose rate by implicitly assuming that the acute toxic effects are the same whether a dose is delivered as a bolus intratracheal instillation or gradually over 24 hours of inhalation exposure. In fact, a cumulative dose delivered over a period of hours, days, or weeks is expected to be less acutely toxic than a bolus dose, which would overwhelm detoxification systems and lung clearance mechanisms. If the no-effect 3×10^6 spores/kg intratracheal bolus dose in rats is regarded as a 1-minute administration (3×10^6 spores/kg/min), achieving the same dose rate in humans (using the same default assumptions as previously) would require airborne concentrations of 3.0×10^9 spores/m^3 for an infant, 9.5×10^9 spores/m^3 for a child, or 22.0×10^9 spores/m^3 for an adult.

In a repeat-dose study, mice were given intranasal treatments twice weekly for 3 weeks with "highly toxic" s. 72 *S. chartarum* spores at doses of 4.6×10^6 or 4.6×10^4 spores/kg (cumulative doses over 3 weeks of 2.8×10^7 or 2.8×10^5 spores/kg).[74] The higher dose caused severe inflammation with hemorrhage, while less severe inflammation but no hemorrhage was seen at the lower dose of s. 72 spores. Using the same assumptions as previously (and again ignoring dose-rate implications), airborne *S. chartarum* spore concentrations that would deliver the non-hemorrhagic cumulative 3-week dose of 2.8×10^5 spores/kg can be estimated as 9.4×10^3 spores/m^3 for infants, 29.3×10^3 spores/m^3 for a school-age child, and 68.0×10^3 spores/m^3 for adults (assuming exposure for 24 hours per day, 7 days a week, and 100% retention of spores).

The preceding calculations suggest lower bound estimates of airborne *S. chartarum* spore concentrations corresponding to essentially no-effect acute and subchronic exposures. Those concentrations are not infeasible, but they are improbable and inconsistent with reported spore concentrations. For example, in data from 9,619 indoor air samples from 1,717 buildings, when *S. chartarum* was detected in indoor air (6% of buildings surveyed) the median airborne concentration was 12 CFU/m^3 (95% CI 12 to 118 CFU/m^3).[75]

Recommendations

- The presence of toxigenic molds within a home, school, or office environment should not by itself be regarded as demonstrating that mycotoxins were present or that occupants of that environment absorbed a toxic dose of mycotoxins.
- When mold colonization is discovered in the home, school, or office, it should be remediated after the source of the moisture that supports its growth is identified and eliminated. Authoritative guidelines for mold remediation are available.[76-78]
- Indoor air samples with contemporaneous outdoor air samples can assist in evaluating whether or not there is mold growth

indoors; air samples may also assist in evaluating the extent of potential indoor exposure. Bulk, wipe, and wall cavity samples may indicate the presence of mold, but do not contribute to characterization of exposures for building occupants.

- When patients associate health complaints with mold exposure, treating physicians should evaluate all possible diagnoses, including those unrelated to mold exposure, i.e., consider a complete appropriate differential diagnosis for the patient's complaints. To the extent that signs and symptoms are consistent with immune-mediated disease, immune mechanisms should be investigated.
- If a diagnosis of mycotoxicosis is entertained, specific signs and symptoms ascribed to mycotoxins should be consistent with the potential mycotoxins present and their known biological effects at the potential exposure levels involved.

Summary

Molds are common and important allergens. About 5% of individuals are predicted to have some allergic airway symptoms from molds over their lifetime. However, it should be remembered that molds are not dominant allergens and that the outdoor molds, rather than indoor ones, are the most important. For almost all allergic individuals, the reactions will be limited to rhinitis or asthma; sinusitis may occur secondarily due to obstruction. Rarely do sensitized individuals develop uncommon conditions such as ABPA or AFS. To reduce the risk of developing or exacerbating allergies, mold should not be allowed to grow unchecked indoors.

Fungi are rarely significant pathogens for humans. Superficial fungal infections of the skin and nails are relatively common in normal individuals, but those infections are readily treated and generally resolve without complication. Fungal infections of deeper tissues are rare and in general are limited to persons with severely impaired immune systems. The leading pathogenic fungi for persons with non-impaired immune function, *Blastomyces, Coccidioides, Cryptococcus,* and *Histoplasma*, may find their way indoors with outdoor air, but normally do not grow or propagate indoors. Due to the ubiquity of fungi in the environment, it is not possible to prevent immune-compromised individuals from being exposed to molds and fungi outside the confines of hospital isolation units.

Some molds that propagate indoors may, under certain conditions, produce mycotoxins that can adversely affect living cells and organisms by a variety of mechanisms, for example, the ingestion of contaminated foods. Occupational diseases are also recognized in association with inhalation exposure to fungi, bacteria, and other organic matter, usually in industrial or agricultural settings. One mold, *Stachybotrys chartarum*, is known to be able to produce mycotoxins under appropriate growth conditions. However, years of intensive study have failed to establish exposure to *S. chartarum* in home, school, or office environments as a cause of adverse human health effects. Levels of exposure in the indoor environment, dose-response data in animals, and dose-rate considerations suggest that delivery by the inhalation route of a toxic dose of mycotoxins in the indoor environment is highly unlikely, even for the most vulnerable subpopulations.

Mold spores are present in all indoor environments and cannot be eliminated from them. Normal building materials and furnishings provide ample nutrition for many species of molds, but they can grow and amplify indoors only when there is an adequate supply of moisture. Where mold grows indoors there is an inappropriate source of water that must be corrected before remediation of the mold colonization can succeed. Mold growth in the home, school, or office environment should not be tolerated because mold physically destroys the building materials on which it grows, mold growth is unsightly and may produce offensive odors, and mold is likely to sensitize and produce allergic responses in allergic individuals. Except for persons with severely impaired immune systems, indoor mold is not a source of fungal infections. Current scientific evidence does not support the existence of a causal relationship between inhaled mycotoxins in home, school, or office environments and adverse human health effects.

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[a] 5th percentile body weight for 1-month-old male infants, 3.16 kg; respiratory rate for infants under 1 year of age, 4.5 m^3/day.[73]

[b] 50th percentile body weight for 6-year-old boys, 22 kg; respiratory rate for children age 6-9, 10.0 m^3/day.[73]

[c] 50th percentile body weight for men aged 25-34 years, 77.5 kg; respiratory rate for men age 19-65, 15.2 m^3/day.[73]

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N/A -- Group Petitions ACOEM for Review of Mold Guidelines: *Top* [12/01/10]
By Greg Jones, reporter

A group of physicians, attorneys and concerned citizens is asking the American College of Occupational and Environmental Medicine to allow the public to review and comment on proposed revisions to the college's position paper on the health effects of mold exposure.

More than 90 individuals have signed the petition, which was submitted to ACOEM and a number of governmental officials, including President Barack Obama, Health and U.S. Human Services Secretary Kathleen Sebelius, U.S. Attorney General Eric Holder and the chairpersons and ranking members of the House and Senate labor committees. The petition calls for a two-week review period before revisions are finalized.

"I feel almost certain that if public comment is not allowed, what they're going to continue to attempt to promote is that moldy workplaces are not a source of injury for workers who were not immunocompromised prior," said Sharon Kramer, a mold activist who organized the petition. "The spin in this document is going to be that prior healthy workers are not at risk from mold."

Kramer said the paper amounts to "aiding and abetting interstate insurer unfair advantage in workers' comp claim handling practices," and that it also "legitimized a litigation defense argument."

Dodd Fisher, an attorney with the Fisher Davis firm in Grosse Pointe, Mich., who handles toxic tort and mold exposure cases, said the paper is commonly cited by defense attorneys and courts tend to give it greater credit than they should.

"It makes it sound like 5,000 or 6,000 doctors are backing up this statement, at least from the appearance of a scientific consensus statement," he said. "The argument the defense makes is this is a universally accepted position document that expresses the general or universal acceptance of environmental physicians."

Kramer, Dodd and the other signatories claim that ACOEM's position paper on mold wasn't properly reviewed and isn't based on scientific evidence.

ACOEM confirmed that it is revising the 2002 position paper, but did not return calls asking for additional information about the reasons for the revisions, when the revisions will be finalized or who is involved in the revision process.

The ACOEM position paper, titled "Adverse Human Health Effects Associated with Molds in the Indoor Environment," relied in part on a test in which mice were exposed to a specific strain of mold and suffered no significant health effects. That test was extrapolated to reach the conclusion that exposure to mold will have no effects on humans.

The paper states that exposure to mold, and specifically secondary metabolites they produce called mycotoxins, does not harm human health. It urges treating physicians to evaluate other possible diagnoses when a patient claims to suffer from a health condition caused by exposure to mold.

Additionally, it says the possibility that mold exposure caused a symptom should be entertained only after all other possible causes are excluded "and when mold exposure is known to be uncommonly high."

The paper says mold exposure is a problem only for people with severely impaired immune systems, and concludes with the claim that "scientific evidence does not support the proposition that human health has been adversely affected by inhaled mycotoxins in home, school or office environments."

That conclusion is challenged by a study by the Institute of Medicine (IOM), published in 2004, reporting a link between "mold and other factors related to damp conditions in homes and buildings to asthma symptoms in some people with the chronic disorder, as well as to coughing, wheezing and upper respiratory tract symptoms in otherwise healthy people." The IOM report does caution that there is not sufficient evidence to draw conclusions about other health implications related to mold.

Kramer agreed that the research into the health effects of mold exposure is incomplete, but that doesn't mean that there are no effects.

"Absence of evidence is not the same thing as evidence of absence," she said. "While it is perfectly acceptable to say this is plausible and more research is needed -- that would be absence of evidence -- what is not science is to take math, add it to a rat study and profess to prove evidence of absence."

The U.S. Government Accountability Office (GAO) also looked into the issue in 2008 and determined that additional research was necessary, but that there was some evidence to link adverse health effects with exposure to mold.

Dodd, the Grosse Pointe attorney who also teaches a toxic torts class at the University of Detroit Mercy School of Law, said his concern is for attorneys and clients unaware of all the articles criticizing the ACOEM paper. Without knowing about the alleged deficiencies, an attorney will have a hard time overcoming the apparent weight of the mold statement, he said.

The International Journal of Occupational and Environmental Health and Wall Street Journal published articles critical of the ACOEM mold statement, which Dodd says has helped his cause.

"Since the Wall Street Journal article and since the IJOEH articles, it's not as difficult for me to deal with the issues, but if you're a litigator and you don't have the information I have to combat that position statement, you're going to have a very difficult time addressing the court," he said.

The articles questioned the use of Bruce Kelman and Bryan Hardin to author the ACOEM paper, because they were toxicologists and defense witnesses who testified that there was no health effect caused by exposure to mold. Additionally, ACOEM was criticized for not disclosing this fact.

The Wall Street Journal article, published in September 2007, notes that Ted Guidotti, president of ACOEM at the time, said there was no need to disclose that information because doing so would suggest that the paper expressed Hardin and Kelman's position rather than a consensus opinion of the organization.

Hardin and Kelman now work for Washington-based Veritox, an expert witness and toxicology consulting company. Calls to Veritox were not returned.

The company went by the name GlobalTox before it was called Veritox.

In an article in the International Journal of Occupational and Environmental Health, Dr. James Craner, a board-certified occupational and environmental medicine practitioner based in Reno, Nev., notes that the focus of GlobalTox and its expert witnesses "was on dismissing mold as a toxicological hazard." The article, titled, "A Critique of the ACOEM Statement on Mold," published in 2008, concludes with a call for a transparency policy at ACOEM and a more rigorous system of peer review at ACOEM's Journal of Occupational and Environmental Medicine, where the mold statement was first published.

Craner, who is an ACOEM member, told WorkCompCentral that the overall tone and focus of the mold statement is incorrect and it should be withdrawn and completely rewritten.

"The foundation of the writing of that paper is so corrupt that to quote-unquote rewrite it is almost an impossible task; it's almost an insult," he said. "Developing organizational guidelines and position statements needs to start with the constituent holders."

In a lawsuit against the Roswell (N.M.) Independent School District, the San Antonio-based law firm of Chunn,

Price and Harris, relied on these articles as part of a motion to exclude or limit the testimony of an expert who relied on the ACOEM paper.

David Harris, a partner with the firm, said on the morning he and Lonnie Chunn were expecting to argue the motion to exclude, the judge dismissed the case. The judge said Paige Taylor, the student claiming exposure, would graduate by the time the court could issue an order and because Taylor was not seeking monetary damages, the court would lack jurisdiction to issue an injunction in that case.

"If I ever get on the plaintiff's side again, I feel very confident that anyone who tries to rely on the ACOEM paper, they're just going to be in for a world of hurt," Harris said. "It's just nonsensical the extrapolations that were made."

Kramer said she does not expect ACOEM to respond to her petition or to calls for more transparency in the drafting of position papers. She said the occupational medicine field is conflicted because it has to balance the interest of patients while also limiting liability for employers and insurers.

"One way to do that is to make the workplace safe for the workers so there is limited injury, but another way to do that is to write papers that deny the workplace is causing injury," she said. "Occupational physicians sit on a fence and have to look at what's in the best interest of the workers and the employer. With the mold statement, they fell off the fence."

The 2002 ACOEM mold paper can be viewed here:
http://www.acoem.org/guidelines.aspx?id.

To read the 2008 GAO report, click here:
http://www.workcompcentral.com/pdf/2010/misc/GAOreport.pdf.

To read the 2004 IOM report, click here:
http://www.workcompcentral.com/pdf/2010/misc/IOM2004Report.pdf.

To view the letter that accompanied the petition, click here:
http://katysexposure.wordpress.com/2010/11/29/citizens-taxpayers-and-concerned-scientists-urge-transparency-in-workers-comp-medical-association-guidelines-used-to-determine-environmentally-injured-workers-comp-insurer-benefits-request/.

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Print News

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTH DISTRICT

BRUCE J. KELMAN, Plaintiff, v. SHARON KRAMER, and DOES 1 through 20, inclusive, Defendants.	CASE NO.: 37-2010-00061530-CU-DF-NC Assigned for All Purposes to: HON. THOMAS P. NUGENT DEPARTMENT: N-30 UNLIMITED CIVIL CASE [PROPOSED] PRELIMINARY INJUNCTION Hearing Date: March 25, 2011 Time: 1:30 p.m. Department: N-30

On proof made to the Court's satisfaction, and good cause appearing:

IT IS HEREBY ORDERED that, during the pendency of this action, the above-named Defendants, and each of them, and all persons acting under their instructions or in concert with them or any of them, are enjoined and restrained from stating, repeating, publishing or paraphrasing, by any means whatsoever, any statement that

If gagged from writing the below ever again, the CA courts will be illegally gagging me from writing and evidencing how they aided insurer fraud w/ UNLEGAL rulings

was determined to be libelous in an action titled Kelman v. Kramer, San Diego Superior Court case no. GIN 044539. The libelous passage of the ~~press release~~ states:

> "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. Upon viewing documents presented by the Hayno's [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."

~~IT IS FURTHER ORDERED~~ that, before this order may take effect, Plaintiff must file a written undertaking in the sum of $_____, as required by C.C.P. § 529, for the purpose of indemnifying Defendants for the damages they may sustain by reason of the issuance of this preliminary injunction if the Court finally decides that Plaintiff is not entitled to it. The preliminary injunction shall issue on Plaintiff's filing of such written undertaking.

The Court reserves jurisdiction to modify this injunction as the ends of justice may require.

_____
Judge of the Superior Court

Exhibit