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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - NORTH DISTRICT

BRUCE J. KELMAN, GLOBALTOX, INC.,)
)
Plaintiff,)
)
vs.) Case No. GIN044539
)
SHARON KRAMER, and DOES 1 through)
20, inclusive,)
)
Defendants.)
_____)

DEPOSITION OF BRUCE J. KELMAN
Volume II (Pages 202 - 359)
Los Angeles, California
July 22, 2008

Reported by:
DENISE HERFT
CSR No. 12983

1 the Haynes family about a half a million dollars;
2 correct?

3 MR. SCHEUER: Objection: irrelevant;
4 asked and answered previously.

10 :30:22 5 I'll instruct the witness not to answer.

6 BY MR. BANDLOW:

7 Q Will you follow that instruction?

8 A Yes, I've already answered it.

9 Q What do you know about the U.S. Chamber of
10 :31:18 10 Commerce?

11 A The same amount that I knew on the
12 previous deposition.

13 Q Do you understand that organization to
14 have any particular bias?

10 :31:32 15 MR. SCHEUER: Objection; vague and
16 ambiguous.

17 What do you mean by "bias"? Do you mean
18 racial bias?

19 MR. BANDLOW: Any kind of bias.

10 :31:40 20 MR. SCHEUER: Do you mean gender bias?

21 MR. BANDLOW: Any kind of bias at all.

22 MR. SCHEUER: You mean leans to one side
23 as opposed to another side?

24 BY MR. BANDLOW:

10 :31:44 25 Q Do you have any belief that it has a

1 pro-business bias?

2 A I know very little about the organization.

3 Q Do you know if it has a pro-insurance
4 industry bias?

10 :31:54 5 A Same answer.

6 Q Do you know if it has a pro-builder bias?

7 A Same answer.

8 Q And you've testified on a number of
9 occasions that -- that Veritox was paid \$40,000 to
10 :32:12 10 prepare the work-for-hire that you talked about a
11 moment ago in the Manhattan Institute report;
12 correct?

13 A I have.

14 Q And you've since changed that testimony to
10 :32:22 15 indicate you now believe it was \$25,000; correct?

16 A No, I haven't changed the prior testimony.
17 That's what I believed at the time. When we looked
18 at the actual checks, it came to 25,000. So
19 apparently I misremembered the 40,000.

10 :32:34 20 Q Can you think of any particular reason why
21 you thought that number was 40,000 at one point?

22 A That's what I thought it was.

23 Q Do you know who Paul Howard is?

24 A He was somebody at the Manhattan
10 :32:56 25 Institute.

1 Q Was he the person you were dealing with
2 when GlobalTox was preparing the Manhattan
3 Institute report?

4 A At this point I would have to go back and
10 :33:08 5 look. I don't remember.

6 Q Did you have any conversations with
7 Mr. Howard -- well, did you have any conversations
8 with Mr. Howard in or around 2003 about what the
9 Manhattan Institute was?

10 :33:20 10 A No, I never had a conversation about what
11 the organization was.

12 Q Do you recall who initially reached out or
13 who made the initial contact that resulted in
14 GlobalTox being hired to prepare this Manhattan
10 :33:40 15 Institute report?

16 A I don't remember the individual.

17 Q Do you remember how it came about; what
18 was the genesis of how the Manhattan Institute
19 report came about?

10 :33:50 20 A I got a call. I remember the person I was
21 talking to said they wanted to -- they read the
22 ACOEM position statement on mold; that it was hard
23 to understand, and I said that it had been written
24 for physicians. And at the time, the question was,
10 :34:14 25 Well could you write something -- would you be

1 willing to write an article that would be more
2 assessable, for example, to judges.

3 Q Did he tell you why it was he wanted this
4 to be assessable to judges?

10 :34:38 5 A That's all he said.

6 Q Did he say -- did he tell you what the
7 Manhattan Institute was about?

8 A You asked me that already.

9 Q And you don't recall him telling you any
10 :34:46 10 of the specifics of that organization?

11 A That's right.

12 Q And when you had these interactions with
13 him, did you have at that time any state of mind
14 about what the Manhattan Institute was about?

10 :34:54 15 A No. I never heard of it before.

16 Q And then eventually you entered into a
17 contract to create the Manhattan Institute report;
18 correct?

19 A Yes.

10 :35:14 20 Q And under that contract you agreed that
21 GlobalTox's charges would not exceed 25,000 without
22 getting the prior approval of the Manhattan
23 Institute report; correct?

24 A I believe that's what was in the contract
10 :35:32 25 that we went back and found.

1 MR. BANDLOW: I have no idea where we were
2 on exhibits. Let's just say Exhibit 5000 to be
3 safe at this point. I know that's not even close.

4 MR. SCHEUER: How about 200, I don't think
10 :36:10 5 we're up to 200.

6 MR. BANDLOW: A thousand might be fine.

7 MR. SCHEUER: Yeah, a thousand.

8 MR. BANDLOW: I'll hand you that. Mark
9 that as 1000.

10 :36:46 10 (Defendants' Exhibit 1000 was marked for
11 identification by the Certified Shorthand Reporter;
12 a copy of which is attached hereto.)

13 MR. SCHEUER: Do you have a copy for me?

14 MR. BANDLOW: You'll have one in a second.
10 :37:06 15 She'll hand you one.

16 BY MR. BANDLOW:

17 Q We're looking at Exhibit 1000 which are
18 documents that were recently produced in this case,
19 and so do you recognize this letter as one that you
10 :37:14 20 wrote on or about March 28, 2003, the first page?

21 A That looks like our standard contract and
22 looks like my signature. Yes, I recognize it.

23 Q Do you know who Lawrence More is, the
24 other signature at the bottom?

10 :37:32 25 A Not at this point.

1 Q Turning the page, there's an invoice there
2 dated April 30th, 2003; do you recognize that
3 document?

4 A It looks like one of our invoices.

10 :37:46 5 Q Okay. And do you know if any work was
6 performed and invoiced prior to this invoice? I'll
7 represent this is the earliest invoice and time
8 that I have. Do you know if there's any prior
9 invoice other than this one?

10 :38:02 10 A I don't -- we didn't find one prior.

11 Q And that's a description of the services
12 you provided; correct?

13 A That would be for both of us, yes.

14 Q For both you and Mr. Hardin?

10 :38:16 15 A Yes.

16 Q And what was it -- what was it meant by
17 your entry here "write article"?

18 A It meant we were writing the article.

19 Q The Manhattan Institute report?

10 :38:32 20 A That was the only -- yes, that was the
21 only article we wrote for them.

22 Q And to write that article, did you do any
23 independent research other than just look at what
24 you already had in the ACOEM statement?

10 :38:48 25 A No. It was the same science; there wasn't

1 any need to.

2 Q So you weren't creating the Manhattan
3 Institute report based on any other documentation,
4 other than the ACOEM statement documentation;
10 :39:08 5 correct?

6 A No, and the body of literature.

7 Q The body of literature that the ACOEM
8 statement relied on?

9 A The body of scientific literature that
10 :39:18 10 existed at the time about mold.

11 Q Was that body of literature anything
12 separate and apart from the body of literature that
13 had been relied on for the ACOEM statement?

14 MR. SCHEUER: It's been asked and answer,
10 :39:28 15 but you can answer it again.

16 THE WITNESS: The body of scientific
17 literature is the body of scientific literature.
18 We didn't confine our determination when we
19 reviewed the literature for the ACOEM position
10 :39:42 20 statement on health effects of mold, and we didn't
21 confine it when we did the Manhattan Institute
22 report.

23 BY MR. BANDLOW:

24 Q Okay. You did some of this service here
10 :39:50 25 of quote "write article;" correct?

1 A Yes.

2 Q Do you recall -- okay. So you're sitting
3 there and you're doing that, you're writing an
4 article; do you recall what's in front of you?
10 :40:02 5 What do you have that you are relying on for
6 writing that article?

7 A Scientific articles, I think there were
8 some books, and we were trying to figure out how to
9 express those scientific concepts in language that
10 :40:34 10 would be understandable to a non-physician and
11 non-technical person.

12 Q Did you start the writing process with the
13 text of the ACOEM statement and then go into a
14 document that had that text and start rewriting it,
10 :40:52 15 is that how the process worked?

16 A I think for some sections we did that; for
17 other sections we backed up and looked at broader
18 issues. It depended on whether we felt the science
19 was expressed in a way that was that a lay person
10 :41:14 20 could understand; in other words, a non-physician
21 could understand.

22 Q But in terms of the information that went
23 into the Manhattan Institute report, was it
24 information that was in addition or separate to the
10 :41:28 25 information that went into the ACOEM statement?

1 A I think I answered that already.

2 Q I don't have a sense in my mind that you
3 did, so pardon me for asking again, because I
4 really don't truly understand. Did you have any
10 :41:40 5 additional information other than the information
6 you had to write the ACOEM statement that you used
7 to write the Manhattan Institute report?

8 A They're both based on the body of
9 scientific literature that existed at the time we
10 :41:56 10 did the writing. Whether new literature had come
11 out between July of 2000, whenever it was we wrote
12 the ACOEM report, and I can't remember the exact
13 date, and the much later time frame when he wrote
14 the Manhattan Institute report; I don't remember if
10 :42:12 15 there was additional significant literature that
16 came out. So in both cases we did -- we relied on
17 the scientific literature that existed at the time.

18 Q And this invoice dated April 30th, you
19 believe that that 5.5 hours is a correct amount of
10 :42:38 20 the time that you put in for that work?

21 A Well, I only invoice the time I put in, so
22 yes.

23 Q Do you recall what was discussed in these
24 teleconferences with clients -- "with client and
10 :42:52 25 other authors"?

1 A Again, not specifically. In general it
2 was what kind of progress we were making. There
3 was also agreement that the section we wrote would
4 not be subject to any changes, I mean, other than
10 :43:12 5 graphic changes.

6 Q So the Manhattan Institute was not to have
7 any sort of editorial control over the ultimate
8 product of the report?

9 A No.

10 :43:26 10 Q Okay.

11 A Other than they could choose to publish it
12 or not.

13 Q Okay. The next invoice dated May 30th,
14 2003, what did you mean by entering the description
10 :43:52 15 "compose and edit paper"?

16 A It means I was writing a paper, composing
17 it, and we were editing it.

18 Q And what is meant by "consultations with
19 Dr. Hardin;" do you know what that's referring to?

10 :44:14 20 A We were talking about the paper.

21 Q And you believe that's an accurate
22 estimation of what the time you put into those
23 activities, five hours?

24 A Yes. I only put down on the invoice the
10 :44:32 25 time I actually spend.

1 Q In other words, this -- you don't believe
2 you were spending 30 hours, but you just said I'll
3 bill them for five. You think that's the amount of
4 time you were actually working on this; correct?

10 :44:50 5 A At this point, I don't remember if there
6 was additional time involved. It's my general
7 practice if I spend extra time because of something
8 that I need to put together that I should have
9 known already, then I don't bill for it.

10 :45:08 10 Q The next invoice dated June 12, 2003,
11 that's your entry for "revise and edit manuscript"?

12 A Yes.

13 Q And you believe you spent about four hours
14 doing that?

10 :45:32 15 A Yes.

16 Q Do you think it was correct that
17 Mr. Hardin spent about 27 hours revising and
18 editing the manuscript?

19 A Yes.

10 :45:50 20 Q The next entry dated July 24th, you
21 believe you spent about 6.25 hours doing those
22 services listed in the description?

23 A Yes.

24 Q And the next invoice dated August 1st,
10 :46:16 25 2003. There's an entry in there "prepare for and

1 attend Chamber of Commerce meeting," did you attend
2 that meeting?

3 A No.

4 Q Was it only Dr. Hardin?

10 :46:26 5 A There were lots of people there.

6 Q In terms of who was involved in the
7 Manhattan Institute report, was it only Dr. Hardin
8 who attended that meeting from Veritox?

9 A Dr. Hardin was the only one who attended
10 :46:44 10 from Veritox. Is that what you're asking?

11 Q Yes.

12 A Yes.

13 Q Do you know what was discussed at that
14 Chamber of Commerce meeting?

10 :46:52 15 A I believe that was the meeting or the time
16 that they presented the report, but I wasn't there,
17 so I don't know what went on at that presentation.

18 MR. BANDLOW: Turn away from that exhibit
19 for a moment.

10 :48:02 20 BY MR. BANDLOW:

21 Q When the paper was presented to the
22 Chamber of Commerce, do you recall the title of the
23 paper as it was presented?

24 A No.

10 :48:12 25 Q Isn't it true the real name of that paper

1 was called "A Scientific View of the Health Effects
2 of Mold"?

3 A The real name was whatever was on the
4 report. I don't have it in front of me, so I don't
10 :48:30 5 know.

6 Q And didn't the Chamber of Commerce also
7 commission a paper by attorneys Cliff Hutchison and
8 Robert Powell for a paper called "A New Plague,
9 Mold Litigation: How Junk Science and Hysteria
10 :48:46 10 Built an Industry"?

11 A I believe that was another report; we
12 didn't pay much attention to it.

13 Q Did you have any involvement in that
14 report?

10 :48:58 15 A Only an agreement that we weren't going to
16 have any involvement in it.

17 Q And that paper was presented at the same
18 time the Manhattan Institute paper was presented;
19 correct?

10 :49:14 20 A I have no knowledge of that, but I would
21 assume it did.

22 Q Wasn't it presented at an event titled:
23 "The Growing Hazard of Mold Litigation"?

24 A My involvement was writing the paper, so I
10 :49:30 25 really didn't pay attention to anything else.

1 Q Do you have any knowledge that the event
2 at which the Manhattan Institute paper was
3 presented was called "The Growing Hazard of Mold
4 Litigation"?

10 :49:40 5 MR. SCHEUER: Do you know that?

6 THE WITNESS: At this point, I just don't
7 remember, so I don't know that.

8 BY MR. BANDLOW:

9 Q And the statement in the Manhattan
10 :50:10 10 Institute report, is there a statement in the
11 Manhattan Institute report that says, quote, "The
12 notion that toxic mold is an insidious secret
13 killer as so many media reports and trial lawyers
14 would claim is junk science unsupported by actual
10 :50:32 15 scientific study," that's a concluding sentence in
16 the Manhattan Institute report; correct?

17 MR. SCHEUER: Counsel, I'm going to object
18 to this. This is way beyond what was ordered for a
19 deposition today. The witness has also already
10 :50:46 20 testified to this. I'll allow the witness to
21 answer this question, but we're not going to relive
22 the first day of his deposition.

23 You can answer.

24 THE WITNESS: I need the question again.
10 :50:58 25 I lost it.

1 BY MR. BANDLOW:

2 Q The Manhattan Institute report concludes
3 with the sentence, quote, "The notion that toxic
4 mold is an insidious secret killer as so many media
10 :51:12 5 reports and trial lawyers would claim is junk
6 science unsupported by actual scientific study,"
7 end quote; correct?

8 A Well, I agree with that statement. I'd
9 have to have the document in front of me. I wrote
10 :51:28 10 it a long time ago. I don't remember.

11 Q Do you know if that statement appears in
12 the ACOEM report?

13 A Well, I wrote the ACOEM position statement
14 even longer time, so I'd have to take a look at it.

10 :52:14 15 Q Mr. Vance, during the Haynes trial,
16 questioned you about your Kilian testimony. Do you
17 know how Mr. Vance was made aware of your Kilian
18 testimony?

19 MR. SCHEUER: Question is whether you know
10 :52:28 20 how Mr. Vance was made aware of your Kilian
21 testimony.

22 THE WITNESS: Only through Ms. Kramer's
23 testimony.

24 BY MR. BANDLOW:

10 :52:42 25 Q And that was testimony that she, in fact,

1 provided the Kilian transcript to Mr. Vance;
2 correct?

3 MR. SCHEUER: You're asking the witness
4 what your witness testified to?

10 :52:52 5 BY MR. BANDLOW:

6 Q Is that the testimony that you're
7 recalling?

8 A Something to that effect, but I'd like to
9 see the transcript to determine exactly what she
10 :53:06 10 said. I know she claimed -- well, I need to see
11 the transcript. I don't remember.

12 Q And it's correct that the -- it wasn't --
13 I want to make sure I understand this -- it wasn't
14 until you began research for documents in this case
10 :54:08 15 that you reached the understanding that the
16 Manhattan Institute had paid 25,000 not 40,000;
17 correct?

18 A Up until we went back and actually pulled
19 the contract and the -- the checks, I believe --
10 :54:32 20 and the invoices, I had believed that we were paid
21 \$40,000 for it.

22 Q Did anybody else besides the Manhattan
23 Institute make any payments to Veritox for the
24 Manhattan Institute report?

10 :54:44 25 A No.

1 Q Did the U.S. Chamber of Commerce make any
2 payment to you for that paper, the Manhattan
3 Institute report?

4 A The payment, I produced all the payment
10 :54:58 5 that we got. I don't remember where the checks
6 came from, and I don't fully understand the
7 relationship between the Manhattan Institute and
8 the U.S. Chamber of Commerce so --

9 Q You know of no other compensation provided
10 :55:12 10 to either you, Veritox and any of the authors of
11 the Manhattan Institute for that report other than
12 the documents you've produced in this case?

13 A That's correct.

14 Q You ever heard of the U.S. Chamber Center
10 :55:28 15 for Legal Policy?

16 A I don't recall that name at this point.

17 Q You're not aware if they made any payment
18 for the Manhattan Institute paper?

19 A Not to Veritox, they didn't, unless it was
10 :55:44 20 through the Manhattan Institute; I don't understand
21 any relationship between those organizations.

22 Q Was the Manhattan Institute paper
23 commissioned by the U.S. Chamber of Commerce?

24 Meaning, did -- was Veritox commissioned by the
10 :55:58 25 U.S. Chamber of Commerce to do the Manhattan

1 Institute report?

2 MR. SCHEUER: As opposed to the Manhattan
3 Institute itself?

4 MR. BANDLOW: Yes.

10 :56:06 5 THE WITNESS: When we were on -- the
6 contract was with the Manhattan Institute, and it
7 was my understanding that was who we were writing
8 for.

9 BY MR. BANDLOW:

10 :56:14 10 Q Have you ever seen the U.S. Chamber of
11 Commerce Web site?

12 A At this point, I can't remember if I've
13 gone to it or not. It's not something I would have
14 paid attention to.

10 :56:28 15 Q Are you aware that the U.S. Chamber of
16 Commerce Web site states the Manhattan Institute
17 report was co-commissioned by the U.S. Chamber of
18 Commerce and the Manhattan Institute?

19 A No, I'm not aware of that. And as I said,
10 :56:40 20 our contract was with the Manhattan Institute.

21 Q Dr. Andrew Saxon, he is a retired
22 immunologist from UCLA; correct?

23 A I think he's said that he's emeritus, by I
24 don't know his current status.

10 :57:16 25 Q And he has done expert witness testimony

1 for the defense in mold litigation; correct?

2 A On occasion, yes.

3 Q And he's done that since 1999; correct?

4 A I don't know.

10 :57:28 5 Q And Dr. Saxon was listed as the third
6 author of the ACOEM paper; correct?

7 A Correct.

8 Q Okay. And was he also a co-author of the
9 Manhattan Institute paper?

10 :57:56 10 A Yes.

11 Q Was he compensated for his involvement in
12 the Manhattan Institute paper?

13 A He was not.

14 Q Why not?

10 :58:08 15 A We contacted Dr. Saxon about the
16 immunology parts that were being written for the
17 Manhattan Institute; he had substantial suggestions
18 and suggested wording changes and different
19 examples that we were using, and we felt that that
10 :58:32 20 was a substantive contribution to the paper, and he
21 should be listed as an author.

22 Q But his -- any interactions with him or
23 any services by him, none of that appears on any of
24 the invoices that were sent to the Manhattan

10 :58:48 25 Institute report; correct?

1 A I think the invoices are the invoices.
2 He's not on those invoices nor would he be because
3 he's not a member of Veritox and he never has been.

4 Q But was there a conscious choice not to
10 :59:06 5 reference him in any of the invoices that were
6 submitted to the Manhattan Institute report?

7 A We only put individuals from -- at that
8 time I think it was GlobalTox -- who were charging.
9 There wouldn't be any reason otherwise, unless
10 :59:24 10 efforts put in by GlobalTox individuals and direct
11 support for that publication that were -- we chose
12 not to bill for it.

13 Q But you were listing -- you were providing
14 a description of your services in connection with
10 :59:44 15 preparing the Manhattan Institute report; correct?

16 A No, that's not correct. I provided an
17 invoice.

18 Q And so what was your intention when you
19 were completing the description category for the
10 :59:56 20 invoice?

21 A It's part of the invoice.

22 Q Okay. Why didn't you provide in the
23 description of your invoice a reference that said
24 teleconference with Dr. Saxon regarding draft or
11 :00:10 25 something of that nature?

1 A It didn't occur to us.

2 Q Did you get Dr. Saxon's permission to list
3 him as a co-author in the Manhattan Institute
4 paper?

11 :00:42 5 A We did.

6 Q You asked for it and he said yes?

7 A He said he had no objection.

8 Q So when Dr. Saxon testified in a separate
9 matter that he did not know his name was on it, do
11 :01:00 10 you believe he was not testifying truthfully?

11 MR. SCHEUER: Objection; assumes a fact
12 not in evidence. There's no evidence at all that
13 Dr. Saxon said that.

14 MS. KRAMER: This is testimony from
11 :01:36 15 Mr. Saxon saying he didn't know his name was on it.

16 BY MR. BANDLOW:

17 Q I'm looking at trial testimony from the
18 case, looks like it was in Nevada, involving
19 Dr. Saxon. He was -- and I will represent for the
11 :01:52 20 record, based on this transcript, he was asked a
21 question, quote, "When the lay version of the ACOEM
22 paper was printed by the Institute for Legal
23 Reform, the ACOEM again did not have any conflict
24 of interest waiver on your part, did it?"

11 :02:08 25 And he answered, quote, "I have no idea.

1 I've never seen that version. I'll call it the
2 nonscientific piece that has my name on it."

3 He was then asked, From your view, did you
4 make any efforts despite anyone calling you or
11 :02:26 5 anything else to make sure a conflict of interest
6 waiver was included with the lay version put out by
7 the Institute for Legal Reform, and he answered,
8 quote, "No, because I didn't even know my name was
9 on it."

11 :02:40 10 Assuming that that is accurate -- that is
11 an accurate reading of his testimony in a case, do
12 you believe that he was testifying truthfully when
13 he said he didn't know his name was on it?

14 MR. SCHEUER: Objection; that is -- we're
11 :02:56 15 not even permitted to see the transcript; there's
16 no foundation here at all.

17 This is a typed --

18 MS. KRAMER: First part.

19 MR. SCHEUER: This is unsigned.

11 :03:14 20 There's -- this is a typed page that could have
21 been fabricated by Ms. Kramer yesterday.

22 I'll instruct the witness not to answer.

23 BY MR. BANDLOW:

24 Q Well, let's disregard your pejorative
11 :03:26 25 comment about Ms. Kramer -- that was uncalled