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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BRUCE J. KELMAN et al.,

Plaintiffs and Respondents,

v.

SHARON KRAMER,

Defendant and Appellant.

D047758

(Super. Ct. No. GIN044539)

**(Page 10 of the November 16, 2006 anti-SLAPP Opinion below)**

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.

**(Page 19 & 20)**

The order is affirmed. Kelman is awarded costs on appeal.

\_\_\_\_\_  
McCONNELL, P. J.

WE CONCUR:

\_\_\_\_\_  
McDONALD, J.

\_\_\_\_\_  
AARON, J.

Initially, we note this lawsuit is not about a conspiracy. This lawsuit was filed by Kelman and GlobalTox alleging one statement in a press release was libelous. Thus, conspiracy issues are not relevant.

**In 2006, the Fourth District Division One Appellate Court deemed Kramer a liar while agreeing with her purportedly libelous writing that Kelman admitted being paid by the Manhattan Institute think-tank to write a lay translation of the ACOEM mold statement (on behalf of the affiliates of the US Chamber of Commerce).**

**"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.....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 web site of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine."**

*"Truth is a complete defense to liability for defamation. (Philadelphia Newspaper, Inc. v. Hepps (1986) 475 U.S. 767, 768-769; Gantry Constr. Co v. American Pipe & Const. Co. (1975) 49.CalApp.3d 186, 191-192). The truth defense requires only a showing that the substance, gist or sting of the communication or statement is true. (Gantry Constr.Co v American Pipe & Constr. Co., at p. 194) Unpublished anti-SLAPP Opinion, (2006) D047758 Bruce J. Kelman & GlobalTox v. Sharon Kramer, Cal.App 4th.*

**Not in this case. In 2010, the Fourth District Division One Appellate Court deemed Kramer a liar again while ignoring the evidence that Kramer's writing is correct about who paid whom for what...and many other facts ignored in this case that have aided an insurance fraud to continue in US and CA policies. From Kramer's Reply To Court's Query, January 30, 2010:**

### **THE SIX KEY FACTS OF THIS STRATEGIC LITIGATION**

Much like a Santa Ana wind blowing into the San Diego Appellate court. When the static, immovable airs and visibility blocking smut are purged from this strategic litigation; six facts remain in evidence, clear as day, for this Reviewing Court's opened eyes.

After five years of litigation:

**A. Kelman cannot even state how Kramer's phrase "altered his under oath statements" translates into a false accusation of perjury – the sole claim of the case.**

B. Kelman cannot direct any court's eyes to one piece of evidence of Kramer ever being impeached as to her belief of her validity and logic of her use of her March 2005 phrase "altered his under oath statements" when describing Kelman's testimony given in a legal proceeding in Oregon, February, 2005.

C. Kelman cannot direct this court's eyes to a single piece of evidence of Kramer even uttering a harsh word of him, personally, before she wrote in March of 2005. To speak out of the "positions" of many entities involved in mass marketing a scientific fraud to US courts (scientifically proven the toxins of mold are not toxic) is not evidence of personal malice for one of the many entities and individuals involved. It is a First Amendment right guaranteed to all US citizens to freely speak truthful words that are for the public good.

D. This Court has been provided with uncontroverted and irrefutable evidence that since September of 2005, Kramer has provided all judges and justices to oversee this litigation with uncontroverted and irrefutable evidence that Kelman has committed criminal perjury in this libel action to establish a fictional theme of Kramer having malice for him, personally. She has provided all courts with uncontroverted and irrefutable evidence that Scheuer has willfully suborned Kelman's perjury. "Uncontradicted and unimpeached evidence is generally accepted as true." *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3rd 312 317-318

E. Kelman cannot state a reason for this Reviewing Court that Kramer would harbor malice for him, personally. Now that the "Foaming At The Mouth, Vindictive Ninny of a Litigant Out To Get an Esteemed Scientific Expert Witness From Her Personal Mold Litigation of Long Ago" theme for Kramer's malice is gone with the Santa Ana winds by the exposing of the criminal perjury and suborning of criminal perjury (Perjury by Kelman: *"I testified that the types and amounts of mold in the Kramer house could not have caused the life threatening illnesses she claimed"* & Suborning Perjury by Scheuer: *"Apparently furious that the science conflicted with her dreams of a remodeled home, Kramer launched into an obsessive campaign to destroy the reputations of Dr. Kelman and GlobalTox"*); the replacement absurd and character assassinating theme for Kramer's purported malice is *"An Unquenchable Desire To Be Known as 'Queen of the Chatboards'"*. "A state of mind, like malice, "can seldom be proved by direct evidence. It must be inferred from objective or external circumstantial evidence." (*Drum v. Bleau, Fox & Associates* (2003) 107 Cal.App.4 1009, 1021.

F. Kelman and undisclosed party to this litigation, VeriTox owner Hardin, are the authors of the US mold policy paper "Adverse Human Health Effects Of Molds In An Indoor Environment", *ACOEM* (2002). They are also the authors of the legal mold policy paper, "A Scientific View Of The Health Effects Of Mold" *US Chamber of Commerce Institute For Legal Reform & Manhattan Institute Center For Legal Policy* (2003).

This means an author of influential US medical and legal mold policy papers has been proven by uncontroverted and irrefutable evidence to have been committing criminal

perjury before the San Diego courts, in a libel action against the first person to publicly write of how these two “questionable” policy papers were closely connected and how they are used in litigation; while the other author did not disclose he was a party to the strategic litigation.

The anti-SLAPP Appellate Panel ignored the evidence of both of these facts when ruling over a strategic litigation impacting US public health policy as they deemed Kramer had falsely accused Kelman of perjury about taking money to make edits in a medical association paper without apparently reading Kramer’s writing to see it is 100% correct about who paid whom for what.”

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

|                           |   |                               |
|---------------------------|---|-------------------------------|
| BRUCE J. KELMAN,          | ) | CASE NO.:                     |
|                           | ) | 37-2010-00061530-CU-DF-NC     |
| Plaintiff,                | ) |                               |
|                           | ) | Assigned for All Purposes to: |
| v.                        | ) | HON. THOMAS P. NUGENT         |
|                           | ) | DEPARTMENT: N-30              |
| SHARON KRAMER, and DOES 1 | ) |                               |
| through 20, inclusive,    | ) | UNLIMITED CIVIL CASE          |
|                           | ) |                               |
| Defendants.               | ) | [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

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

4 "Dr. Bruce Kelman of GlobalTox, Inc., a Washington  
5 based environmental risk management company, testified  
6 as an expert witness for the defense, as he does in  
7 mold cases throughout the country. Upon viewing  
8 documents presented by the Hayne's [sic] attorney of  
9 Kelman's prior testimony from a case in Arizona, Dr.  
10 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."

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

19  
20 The Court reserves jurisdiction to modify this  
21 injunction as the ends of justice may require.  
22

23  
24 \_\_\_\_\_  
Judge of the Superior Court  
25  
26



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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO, NORTH DISTRICT

|    |                           |   |                               |
|----|---------------------------|---|-------------------------------|
| 10 | BRUCE J. KELMAN,          | ) | CASE NO. BC                   |
| 11 | GLOBALTOX, INC.,          | ) | Assigned for All Purposes to: |
| 12 |                           | ) | HON.                          |
| 13 | Plaintiffs,               | ) | DEPARTMENT                    |
| 14 |                           | ) |                               |
| 15 | v.                        | ) | UNLIMITED CIVIL CASE          |
| 16 |                           | ) |                               |
| 17 | SHARON KRAMER, and DOES 1 | ) |                               |
| 18 | through 20, inclusive,    | ) | COMPLAINT FOR LIBEL           |
| 19 |                           | ) |                               |
| 20 | Defendants.               | ) |                               |
| 21 |                           | ) |                               |

22 Plaintiffs BRUCE J. KELMAN (hereafter "KELMAN") and  
23 GLOBALTOX, INC. (hereafter "GLOBALTOX") complain against  
24 Defendants as follows:

25 FIRST CAUSE OF ACTION  
26 (Libel Against All Defendants)

27 1. Plaintiff BRUCE J. KELMAN (hereafter "KELMAN") is  
28 an individual who resides in the State of Washington.

1 2. Plaintiff GLOBALTOX, INC. (hereafter "GLOBALTOX")  
is a corporation organized and existing under the laws of the  
State of Washington, with its principal place of business in

1 8. Commencing on or about March 9, 2005, Defendants  
2 published and distributed written press releases that falsely  
3 implied that KELMAN and GLOBALTOX provided perjurious  
4 testimony in lawsuits and stated that KELMAN, while working  
5 for GLOBALTOX, "altered his under oath statements" while  
6 testifying on the witness stand in an Oregon lawsuit.  
7 Defendants posted these statements on various online message  
8 boards and internet sites, including ToxLaw.com and  
9 ArriveNet.com.  
10

11 9. Such statements are false, and are libelous on  
12 their face. They expose Plaintiffs to hatred, contempt,  
13 ridicule, and obloquy, and tend to injure Plaintiffs in their  
14 business, in that such statements accuse Plaintiffs of  
15 providing false testimony under oath, and engaging in  
16 dishonest and criminal conduct.  
17

18 10. These defamatory statements were seen and read by  
19 persons across the United States and elsewhere who visited  
20 the above-referenced message boards and internet sites.  
21

22 11. As a proximate result of Defendants' wrongful  
23 publication, Plaintiffs have suffered loss to their  
24 reputation, shame and mortification, all to their general  
25 damage in an amount to be proved at trial.

26 12. In addition, as a further proximate result of the  
27 above-described publication, Plaintiffs have suffered special  
28