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Deposition of Bruce J.

Kelman, July 22, 2008, in
which he states he cannot
remember the testimony he
gave in the Mercury case.

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

3 MR. SCHEUER: No, it's not.

4 MR. BANDLOW: Is that not that one?

12 :24:40 5 MR. SCHEUER: This is pages 1, 5 and 6 of
6 the declaration.

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

12 :24:52 10 MS. KRAMER: Want to go to lunch and do
11 that?

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

14 I'm going to back up, because there's
12 :25:20 15 something in that declaration that I don't
16 understand.

17 BY MR. BANDLOW:

18 Q You recall that you filed a declaration
19 very early on in this case in which you stated that
12 :25:46 20 you quote "testified that the type and amount of
21 mold in the Kramer house could not have caused the
22 life threatening illnesses that she claimed;" do
23 you recall saying that in a declaration?

24 A This case has been going on for three
12 :26:00 25 years, no. I'm not saying I didn't, but I need it

1 in front of me.

2 Q Do you recall that that is what you
3 testified to when you testified in the case
4 involving Ms. Kramer's claim with her insurance
12 :26:14 5 provider?

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

12 :26:28 10 Q Well, don't you recall that I took your
11 deposition in December of 2007, and in that
12 deposition you said you couldn't remember what
13 testimony you gave in Ms. Kramer's action against
14 her insurance carrier; correct?

12 :26:44 15 MR. SCHEUER: That's exactly the same
16 testimony he just gave, and you are now admittedly
17 going over stuff you already asked the witness
18 about.

19 BY MR. BANDLOW:

12 :26:52 20 Q Here's why I'm asking, because in
21 December of 2007 I asked you these questions and
22 you answered just like you did, you didn't remember
23 anything about it because it was so long ago, and
24 then in March of 2008 I get a signed declaration
12 :27:04 25 from you in which you say quote "I testified that

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

4 MR. SCHEUER: Why don't you show us that
12 :27:18 5 declaration that you're talking about.

6 MR. BANDLOW: Well, it's there. If you
7 want me to go get the signature page, that's one of
8 the things he says there, that's the page that was
9 copied. Starts out, "I first learned of Defendant
12 :27:28 10 Sharon Kramer --

11 MR. SCHEUER: What paragraph?

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

12 :28:14 15 BY MR. BANDLOW:

16 Q So what I'm asking is: Was there
17 something that caused you to remember your
18 testimony in Ms. Kramer's action against her
19 insurance carrier better between December and March
12 :28:24 20 of 2008?

21 A At this point, it would have -- I don't
22 remember specifically. I think we have produced --
23 if we haven't, we should have -- what little case
24 material we've got left from that situation. If we
12 :28:58 25 haven't produced that, that was an oversight, but

1 I'm quite certain that we did produce that.

2 Q As you sit here today, do you recall if
3 you testified in Ms. Kramer's action against her
4 insurance carrier that the type and amount of mold
12 :29:32 5 in the Kramer house could not have caused the
6 life-threatening illnesses that she claimed?

7 A I have to go back and look at the record
8 that would -- that would certainly be consistent.
9 Since I don't have the material in front of me, I
12 :29:58 10 don't know how much I can say about it.

11 Q Weren't you made aware of documents -- at
12 the time that the lawsuit with Ms. Kramer's
13 insurance carrier was going on, weren't you shown
14 documents that showed that, in fact, she did not
12 :30:16 15 make that claim that the mold was causing
16 life-threatening diseases?

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

19 (Record read as follows:

12 :30:04 20 "QUESTION: Weren't you made aware
21 of documents -- at the time that the lawsuit
22 with Ms. Kramer's insurance carrier was going
23 on, weren't you shown documents that showed
24 that, in fact, she did not make that claim that
12 :30:18 25 the mold was causing life-threatening

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1 diseases?")

2 MR. SCHEUER: Object as having been asked
3 and answered at the prior session of Dr. Kelman's
4 deposition and goes beyond the scope of today's
12 :31:02 5 deposition, but I'll permit the witness to answer.

6 BY MR. BANDLOW:

7 Q Weren't you provided with documents at the
8 time you were acting as an expert in the case
9 involving Ms. Kramer against her insurance carrier,
12 :31:20 10 weren't you provided with documents that showed
11 that she was not, in fact, claiming a
12 life-threatening illness on the basis of mold in
13 her house?

14 MR. SCHEUER: Same objection.

12 :31:28 15 You can answer.

16 THE WITNESS: That's absolutely not true.
17 I might have been showed -- I think Ms. Kramer has
18 revised the history of her suit. So I may have
19 been shown documents to that effect, but there were
12 :31:48 20 other documents claiming extensive injury.

21 BY MR. BANDLOW:

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

24 A Yes.

12 :32:04 25 Q And that the claim was that mold could

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1 exacerbate that particular condition?

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

12 :32:20 5 THE WITNESS: To the best of my
6 recollection, the levels of mold spores indoors
7 were equivalent to the levels outdoors, and what I
8 said was that there was no elevated risk indoors
9 compared to outdoors.

12 :32:44 10 BY MR. BANDLOW:

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

12 :32:58 15 A Yes.

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

19 A There was a set of documents to that
12 :33:10 20 effect and a set of documents with all sorts of
21 strange claims that did relate to life-threatening
22 illnesses.

23 Q But you remember seeing a document in
24 which you believe it indicated that Ms. Kramer was
12 :33:24 25 asserting the house could cause life-threatening

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