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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:



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

3

4

5 BRUCE J. KELMAN, GLOBALTOX, INC.,)
6 Plaintiff,)
7 vs.)Case No. GIN044539
8 SHARON KRAMER, and DOES 1 through)
9 20, inclusive,)
10 Defendants.)
_____)

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18 DEPOSITION OF BRUCE J. KELMAN taken on
19 behalf of the Defendant at SPILLANE SHAEFFER
20 ARONOFF BANDLOW LLP at 1880 Century Park East,

21 Suite 1004, Los Angeles, California, commencing at
22 9:04 a.m. on July 22, 2008, reported by DENISE
23 HERFT, CSR No. 12983, pursuant to Notice.

24

25

203



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Sharon Kramer

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Terry Weiss - Videographer

Hahn & Bowersock

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1 Los Angeles, California, July 22, 2008

2 9:04 a.m.

3

4

09:04:38 5 THE VIDEOGRAPHER: The date is July 22,

6 2008. The time is 9:04. We're talking Volume two

7 in the deposition of Bruce J. Kelman in the matter
8 of Bruce J. Kelman, et al. versus Sharon Kramer, et
9 al. for the Superior Court of California, County of
09:04:56 10 San Diego, North District. Case Number GIN044539.

11 My name is Terry Weiss. I represent Hahn
12 and Bowersock which is located in Costa Mesa,
13 California. This deposition is being taken at
14 Spillane Shaeffer Aronoff Bandlow located in
09:05:14 15 Los Angeles, California.

16 At this time could all parties please
17 introduce themselves starting with the witness.

18 THE WITNESS: Bruce Kelman.

19 MR. SCHEUER: Keith Scheuer,
09:05:28 20 S-c-h-e-u-e-r, counsel for the witness.

21 MR. BANDLOW: Lincoln Bandlow, counsel for
22 the defendant.

23 MS. KRAMER: Sharon Kramer.

24 THE VIDEOGRAPHER: Would the court
09:05:40 25 reporter please swear in the witness.

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1 BRUCE KELMAN,
2 called as a witness, and having been first duly sworn
3 by the Certified Shorthand Reporter, was examined and

4 testified as follows:

5

6

EXAMINATION

7

BY MR. BANDLOW:

8

Q Mr. Kelman, you've given deposition

9

testimony multiple times; correct?

09:06:00 10

A Yes.

11

Q And you are aware of the various

12

procedures involved in taking a deposition;

13

correct?

14

A Yes.

09:06:06 15

Q And you understand that your testimony

16

today will be given under penalty of perjury

17

similar to testimony given in a court of law?

18

A Yes.

19

Q Okay. This matter pertains to an

09:06:18 20

allegation of defamation brought by you and your

21

company Veritox. To the extent I refer to Veritox

22

today, we understand that I am referring to either

23

Veritox or its prior name, GlobalTox; correct?

24

A Yes.

09:06:36 25

Q Is it correct in this lawsuit you have

1 waived any claim of any damages whatsoever?

2 A Monetary damages.

3 Q Okay. So --

4 MR. SCHEUER: Excuse me, I assume you're
09:06:56 5 excluding nominal damages?

6 BY MR. BANDLOW:

7 Q Yes. Nominal amount, say, a dollar that
8 you would be entitled to by a jury if they
9 concluded in your favor; I'm not counting that.

09:07:08 10 I'm counting any actual damages you claim to have
11 suffered in this case, you're waiving any claim to
12 those; correct?

13 A Yes, I think that's correct.

14 Q And you're waiving any claim to any
09:07:22 15 out-of-pocket losses you may have suffered in
16 connection with the facts alleged in this lawsuit;
17 correct?

18 A Um, yes.

19 Q You're waiving any claim to any punitive
09:07:34 20 damages in this claim; correct?

21 THE WITNESS: Actually, is that correct?

22 MR. SCHEUER: Yes.

23 THE WITNESS: Yes.

24 BY MR. BANDLOW:

09:07:52 25

Q Then what is it you seek to get out of

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1 this lawsuit?

2 A Same thing that I've asked for all along,
3 a retraction and an apology for the lies that have
4 been told.

09:08:06 5 Q What specifically would you like that
6 retraction to say?

7 A Exactly what you've already got in your
8 possession.

9 Q The letter drafted by your counsel that
09:08:22 10 was proposed as a retraction that would be
11 acceptable to you in this case?

12 A I think we've made it pretty clear, but
13 I'd have to see what you're referring to because
14 there's been several exchanges.

09:08:42 15 Q Do you believe -- are you seeking a
16 retraction by which Ms. Kramer endorses your
17 science?

18 A I think the wording that we've got on the
19 retraction is pretty clear. I really don't care
09:09:12 20 what Ms. Kramer believes.

21 Q Now, you said a second ago in your

22 testimony you want an apology. What do you want an
23 apology for?

24 A Ms. Kramer has in her press release
09:09:40 25 indicated that I lied on the stand, and she's also

210

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1 tried to use wording that would intimate that
2 somehow I was paid to write the ACOEM paper, this
3 is the ACOEM position statement on mold; and
4 that's -- those are the principle issues that I'm
09:10:10 5 referring to.

6 Q Didn't her press release, in fact, state
7 clearly that the payment was for the Manhattan
8 Institute report and not for the ACOEM paper?

9 A No, it wasn't clear.

09:10:26 10 Q Isn't it correct that what you want from
11 Ms. Kramer for her to sign a written statement in
12 which she says quote: "To my knowledge their
13 testimony and advice are based on their expertise
14 and objective understanding of the underlying
09:10:50 15 scientific data," end quote.

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

18 (Record read as follows:

19 "QUESTION: Isn't it correct that

09:10:34 20 what you want from Ms. Kramer for her to

21 sign a written statement in which she says

22 quote: "To my knowledge their testimony

23 and advice are based on their expertise

24 and objective understanding of the

09:10:50 25 underlying scientific data," end quote.")

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1 THE WITNESS: I think at this point I have

2 to confer with my counsel.

3 MR. SCHEUER: Excuse us for a moment.

4 THE VIDEOGRAPHER: We're now going off the

09:11:44 5 record. The time is 9:11.

6 (Recess taken from 9:11 a.m. until

7 9:13 a.m.)

8 THE VIDEOGRAPHER: We're now back on the

9 record. The time is 9:13.

09:13:58 10 MR. BANDLOW: There was a question pending

11 when you asked to confer with your counsel, why

12 don't we have the reporter read the question back.

13 (Record read as follows:

14 "QUESTION: Isn't it correct that

09:10:34 15 what you want from Ms. Kramer for her to sign
16 a written statement in which she says quote:
17 "To my knowledge their testimony and advice
18 are based on their expertise and objective
19 understanding of the underlying scientific
09:10:52 20 data," end quote.")

21 THE WITNESS: Um, they -- we've had several
22 back and forths, so at this point, in order to
23 verify what it was that we had actually proposed, if
24 you're asking me to craft language, then I have to
09:14:50 25 do that with my counsel; I can't do that here. If

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1 you're asking me about a specific proposal that we
2 sent back to you, I really need to see the proposal.
3 There's been too much back and forth. I don't
4 remember.

09:15:08 5 BY MR. BANDLOW:

6 Q Okay. Let me -- you can go ahead and look
7 at this document. We're not going to mark it as an
8 exhibit right now. Unfortunately, that's my only
9 copy at this moment. Do you recognize the lawyer
09:15:26 10 listed at the top of that letter?

11 A Um --

12 Q Very top of the letter?

13 MR. SCHEUER: The law firm you're
14 referring to?

09:15:36 15 MR. BANDLOW: Yes.

16 THE WITNESS: Scheuer and Gillett?

17 BY MR. BANDLOW:

18 Q That's your attorney Mr. Scheuer; correct?

19 A Yes.

09:15:40 20 Q Do you know if this was a letter sent by
21 your lawyer in which retraction language was
22 requested of Ms. Kramer?

23 A Yes, it was.

24 Q And do you see the language that I quoted
09:16:10 25 a moment ago in my question?

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1 A Yes, I do.

2 Q So at this -- as of the date of that
3 letter, that was a statement that you wished to
4 have Ms. Kramer make in a written statement;
09:16:28 5 correct?

6 A That's correct.

7 Q Let me have that back, please.

8 Now, is it your understanding that since
9 the date of this letter, the June 2007 period,
09:16:40 10 there's been amended retraction demands?

11 MR. SCHEUER: If you have an
12 understanding.

13 THE WITNESS: At this point I just don't
14 remember the sequence.

09:16:54 15 BY MR. BANDLOW:

16 Q Do you have in your mind, independently of
17 any interchanges that have gone on between counsel,
18 do you have in your mind right now the language
19 you'd like to hear Ms. Kramer speak to correct
09:17:10 20 whatever you believe needs to be corrected in this
21 manner?

22 A That retraction would work.

23 MR. SCHEUER: Excuse me, Counsel, what's
24 the date on that letter?

09:17:22 25 MR. BANDLOW: June 21st, 2007.

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1 BY MR. BANDLOW:

2 Q You would like Ms. Kramer to issue a
3 written statement in which she says Dr. Kelman and

4 other personnel from Veritox provide testimony and
09:17:48 5 scientific advice in a variety of context; you
6 would like her to say that?

7 A If that's what's on that letter.

8 Q And are you aware that Ms. Kramer is
9 involved in spearheading a congressional
09:18:16 10 investigation into toxic mold experts and will
11 be testifying -- will testify before congress on
12 those matters?

13 MR. SCHEUER: Compound question, but you
14 can answer it.

09:18:28 15 THE WITNESS: I'm not aware of any part of
16 that.

17 BY MR. BANDLOW:

18 Q Okay. Are you aware Ms. Kramer has
19 maintained that -- that your testimony and
09:18:48 20 testimony of -- well, that your testimony is not,
21 in fact, based on underlying scientific data?

22 A I really haven't tracked Ms. Kramer, so I
23 don't keep track of what she says.

24 Q So in connection with the actual lawsuit
09:19:26 25 itself that's on ongoing and that's going to have a

1 trial soon, would you be requesting should you
2 prevail in that lawsuit that Ms. Kramer be
3 compelled to issue some kind of written statement?

4 MR. SCHEUER: You're -- I'm sorry, I'm not
09:19:56 5 quite understanding the question. You're asking
6 the witness if his prayer for reliefs -- relief
7 includes a request for an order compelling the
8 wit -- compelling the defendant to issue
9 retraction.

09:20:10 10 MR. BANDLOW: No. I'm not asking what his
11 prayer for relief is, I know what that is; I read
12 the complaint. What I'm asking is assuming after a
13 trial concludes in this matter and assuming you
14 were to prevail at trial, would you request that
09:20:24 15 the court order Ms. Kramer to issue some kind of
16 written statement, would that be one of the
17 remedies you would request if you prevailed at
18 trial?

19 MR. SCHEUER: After a judgment is entered?
09:20:36 20 Is that your -- I'm sorry, I'm just not
21 understanding the question.

22 BY MR. BANDLOW:

23 Q Well, okay. Let me see if I can spin it
24 out this way: In a liable case where you allege
09:20:48 25 false statements were made about you, one of the

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1 things you might want from a trial is to have a
2 jury conclude that false things were said about
3 you, that your position is correct that false
4 things were said about you, you just want a jury to
09:21:06 5 say that.

6 But in addition to a jury saying that what
7 was said about you was false, you may also want an
8 order from the court requiring the defendant to
9 make some kind of written retraction statement as a
09:21:20 10 result of the jury finding those statements were
11 false; the second thing, a court order requiring
12 her to make some kind of written statement; do you
13 want that in this case?

14 MR. SCHEUER: I'm sorry, you're asking the
09:21:34 15 witness if he wants the court to order Ms. Kramer
16 to issue a retraction?

17 MR. BANDLOW: Yes.

18 MR. SCHEUER: Even though he hasn't pled
19 that in the complaint, you're asking if he -- if
09:21:46 20 that's his personal desire?

21 MR. BANDLOW: If that's something he would

22 like to seek in this lawsuit, yes.

23 MR. SCHEUER: Well, that changes the
24 question. I'm not -- I really am not clear what
09:21:58 25 you're asking. Are you asking what his personal

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1 desires what he would like to see?

2 MR. BANDLOW: Yes.

3 MR. SCHEUER: You know, I would like to
4 see peace on earth. You are asking what he would
09:22:06 5 like to see, in his world of druthers, what he
6 would like to see?

7 MR. BANDLOW: Assuming he were to prevail
8 at trial, would one of -- would he like to request
9 that the court order Ms. Kramer to issue some kind
09:22:22 10 of statement?

11 MR. SCHEUER: Okay. Well, here's my
12 problem, are you asking him does he intend to ask
13 the court to compel Ms. Kramer to issue some kind
14 of statement, or are you asking him something
09:22:32 15 more -- something softer, if that's just his
16 personal desire?

17 BY MR. BANDLOW:

18 Q Is that something you would like to do in

19 this case?

09:22:42 20 A I hadn't even considered that. I wasn't
21 aware that that was an option.

22 Q So then by -- you've testified that you've
23 waived any claim to damages, so is it essentially,
24 then, your desire to have a trial simply to prove
09:23:06 25 that what Ms. Kramer said about you was false?

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1 A I think that's -- a major component is, at
2 this point, I want a jury to look at that press
3 release and determine whether I was defamed by the
4 press release.

09:23:36 5 Q Okay. Now, just for purposes of clarity
6 for the record, I asked a series of questions about
7 whether you seek any damages, and I want to make
8 sure I'm clear; when I say "you," I want it to be
9 understood that I mean you and your company,
09:24:04 10 Veritox. Both of those plaintiff entities have
11 waived any claims to damages; correct?

12 A If we're talking about -- both entities
13 are saying the same thing, is that what you are
14 asking?

09:24:20 15 Q Yes.
16 A Yes.
17 Q Okay. There's no claim for any damages by
18 either you, personally, or by Veritox?
19 A Okay. I need to take a minute and make
09:24:32 20 sure I have the definition of damages.
21 MR. SCHEUER: You're talking other than
22 nominal damages?
23 MR. BANDLOW: Other than the jury saying,
24 Well, Kelman and Veritox were right, so we need to
09:24:44 25 give them a dollar to show that they were right;

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1 other than that kind of nominal damages, you're not
2 making any claim to damages?
3 THE WITNESS: I think that's correct.
4 BY MR. BANDLOW:
09:24:58 5 Q All right. You have provided some
6 discovery responses in this case in which you have
7 identified various individuals that you've had
8 conversations with regarding this lawsuit or
9 regarding Ms. Kramer, and I want to go through
09:25:24 10 those now. Coreen Robbins is an employee of
11 Veritox; correct?

12 A Yes.

13 Q What do you recall discussing with Coreen
14 Robbins regarding this lawsuit?

09:25:48 15 MR. SCHEUER: Okay. I'll interpose an
16 objection here; pursuant to the court's order, the
17 witness can testify as to conversations with
18 Ms. Robbins other than those that convey
19 information that came from counsel or contain
09:26:10 20 information that was intended for counsel.

21 MR. BANDLOW: And I understand that.

22 BY MR. BANDLOW:

23 Q And I'm not asking for any information you
24 may have conveyed to Coreen Robbins that was given
09:26:22 25 to you by counsel or she may have conveyed to you

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1 that was given to her by counsel, so using that
2 exclusion, what do you recall discussing with
3 Coreen Robbins regarding this lawsuit?

4 MR. SCHEUER: It's a broader exclusion
09:26:34 5 than that. It is also information intended to be
6 conveyed to counsel.

7 MR. BANDLOW: Fine; I'll accept that.

8 THE WITNESS: The discussion that I can
9 recall outside of the objection was that the --
09:26:56 10 there had been a press release, that it was a
11 continuation of a series of -- and I don't remember
12 if the idea was cyberstalking -- I don't remember
13 if Dr. Robbins used that word -- and that she felt
14 and did I agree that we needed to take action on
09:27:28 15 this.

16 BY MR. BANDLOW:

17 Q Take that slowly now. First of all, when
18 was the first conversation you had with Coreen
19 Robbins regarding the press release?

09:27:42 20 A I don't remember an exact date; shortly
21 after the press release came out.

22 Q Do you believe it was within days of the
23 press release?

24 A Actually, I need to amend that, shortly
09:27:52 25 after we knew -- discovered that the press release

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↑

1 had come out.

2 Q Sure.

3 Assuming the press release came out on
4 March 9th, 2005, around that date, do you have a

09:28:10 5 recollection of when you were made aware of the
6 press release in relation to that date?

7 A It was certainly less than a month, but I
8 don't have a specific recollection.

9 Q Okay. And you said you discussed there
09:28:32 10 had been a press release. Do you know who brought
11 up the subject of the press release between you and
12 Ms. Robbins?

13 A No, I don't.

14 Q You don't have any independent
09:28:48 15 recollection of whether it was you introducing the
16 concept of the press release to her or her
17 introducing it to you?

18 A No, I don't.

19 Q Now, you said that this was a continuation
09:29:02 20 of a series of cyberstalking incidents, what was
21 the series leading -- that was prior to the press
22 release that you're referring to there?

23 A Previous internet postings.

24 Q These were internet postings by
09:29:20 25 Ms. Kramer?

1 A Yes.

2 Q What was the substance of those postings?

3 A Without looking at them, very generally,
4 they were derogatory comments about the company and
09:29:32 5 us, but I don't remember. I'd have to go back and
6 look.

7 Q You don't know the specific derogatory
8 comments made prior to this press release?

9 A There's been a plethora of material
09:29:50 10 released on the internet by Ms. Kramer, and I don't
11 remember each one.

12 Q Okay. So of the plethora, you can't give
13 me one?

14 A No. I gave you the ideas. I make it a
09:30:00 15 point not to remember stuff like that.

16 Q And is it your contention that this --
17 that these were communications directed to you
18 personally?

19 A Oh, no, she was not that brave. These
09:30:14 20 were derogatory comments put out on the internet
21 chat rooms.

22 Q How could it be cyberstalking if it wasn't
23 to you personally?

24 A By my definition, that would include it.

09:30:26 25 Q So broad postings on internet boards to

↑

1 the public at large, you would consider that
2 cyberstalking of you?

3 A These were very specific comments about me
4 put on the internet chat rooms and the company.

09:30:40 5 When I say "me," it's both me and the company.

6 Q Would you consider the Wall Street Journal
7 article that was written about you and your company
8 cyberstalking?

9 A I considered that a plant. Ms. Kramer has
09:30:56 10 admitted that she was behind that article.

11 Q Did you ever sue based on the Wall Street
12 Journal article?

13 A No.

14 Q Veritox ever sue based on the Wall Street
09:31:12 15 Journal article?

16 A No. I'm not aware that that's a practical
17 alterative for a newspaper.

18 Q Why is that? Why is that not practical?

19 A Just without understanding the legal part,
09:31:26 20 it seems that newspapers can print whatever they
21 want whether it's true or not. If that's an
22 incorrect understanding, that's fine, but that's my

23 understanding.

24 Q Okay. But you testified that, prior to

09:31:44 25 the press release, you said series of

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1 cyberstalking. Can you think of one communication

2 from Ms. Kramer that was directed specifically to

3 you prior to the press release?

4 A I think I answered that question already.

09:32:02 5 Q I don't recall that you did. Can you

6 remember a single communication that was made

7 directly to you by Ms. Kramer prior to the press

8 release?

9 MR. SCHEUER: Did you intend to say

09:32:14 10 communication made to him?

11 MR. BANDLOW: Uh-huh.

12 MR. SCHEUER: Or about him.

13 MR. BANDLOW: To him.

14 BY MR. BANDLOW:

09:32:20 15 Q Did she communicate directly to you in any

16 way prior to the press release?

17 A Again, I think I answered that question,

18 but not that I remember.

19 Q Do you know if Ms. Kramer communicated
09:32:34 20 directly to anyone at Veritox prior to the press
21 release?

22 A I don't remember.

23 Q Had Ms. Kramer had any communications
24 directly with Coreen Robbins prior to the press
09:32:56 25 release?

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1 A Again, I don't remember the time sequence.
2 I know she objected to our activities at one point,
3 but I don't remember the time sequence. I'd have
4 to go back and a look.

09:33:10 5 Q And the press release issued in this case,
6 Ms. Kramer didn't direct that particularly to you
7 as an individual, did she?

8 A Yes.

9 Q How did she do that?

09:33:22 10 A She named me.

11 Q Okay. But did she send it to you?

12 A No, she was not that forthright.

13 Q When you saw the press release --

14 A Excuse me, can we stop for a minute so I
09:33:38 15 can confer with Counsel?

16 THE VIDEOGRAPHER: We're now going off the
17 record. The time is 9:33.

18 (Recess taken from 9:33 a.m. until
19 9:35 a.m.)

09:35:34 20 THE VIDEOGRAPHER: We're now back on the
21 record. The time is 9:35.

22 MR. SCHEUER: Can I interject something
23 here? Ms. Kramer is wearing no microphone. Will
24 the court reporter take down things that she says?

09:35:46 25 THE REPORTER: I can't hear her, but I

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1 will take down whatever I can hear.

2 MR. SCHEUER: Thank you.

3 BY MR. BANDLOW:

4 Q You said you had a conversation with
09:36:00 5 Ms. Robbins about whether there was a need to take
6 action within -- regarding the press release;
7 correct?

8 A Yes.

9 Q Did you ever contact Ms. Kramer after the
09:36:10 10 release -- you were made aware of the press release
11 and asked her to retract it prior to filing a

12 lawsuit?

13 A No.

14 Q Why not?

09:36:16 15 A She didn't appear to be rational.

16 Q Why do you say that?

17 A The statements she was making were without
18 basis, and they seemed to be fantasies, and I
19 didn't feel that it would do any good.

09:36:32 20 Q Isn't it correct that Ms. Kramer's phone
21 number was listed at the end of the press release?

22 MR. SCHEUER: If you recall.

23 THE WITNESS: I don't remember.

24 BY MR. BANDLOW:

09:36:58 25 Q Isn't it a fact at the end of the press

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1 release she provided her name and contact
2 information with her phone number for anybody who
3 wanted to contact her about the press release?

4 A I don't remember.

09:37:12 5 Q Did you discuss that being an action that
6 could be taken in response to the press release
7 with Ms. Robbins?

8 A At this point, I don't remember.

9 Q You said she was not, I guess, bold enough
09:37:32 10 to send this press release directly to you, but she
11 was bold enough to put her personal phone number,
12 wasn't she?

13 MR. SCHEUER: The witness has answered
14 that he doesn't remember, Counsel.

09:37:44 15 BY MR. BANDLOW:

16 Q And you never attempted to send a letter
17 to Ms. Kramer to correct any statements in the
18 press release, did you?

19 A That's correct.

09:37:50 20 Q And Veritox never attempted to call or
21 send Ms. Kramer a letter to correct any statements
22 in the press release; correct?

23 A That's correct.

24 Q The first Ms. Kramer was ever made aware
09:38:06 25 of any concerns you or Veritox might have had about

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1 the press release was when she was served with a
2 lawsuit; correct?

3 MR. SCHEUER: Calls for speculation about
4 what Ms. Kramer was aware of.

09:38:20 5 BY MR. BANDLOW:

6 Q Do you know of any other method by which
7 Ms. Kramer was made aware of your complaints about
8 the press release other than serving her with a
9 lawsuit?

09:38:32 10 A I would have no way of knowing that, no.

11 Q Are you aware if your attorney ever sent a
12 letter to Ms. Kramer prior to the filing of a
13 lawsuit regarding this matter, the press release?

14 A Say it again.

09:38:52 15 Q Are you aware if your attorney ever sent a
16 letter to Ms. Kramer prior to the filing of a
17 lawsuit regarding the press release?

18 A If he did, I'm not aware of it.

19 Q Veritox issues press releases, don't they?

09:39:12 20 A We may have on occasion, but it's
21 extraordinarily rare.

22 Q Did you discuss with Ms. Robbins the
23 possibility of Veritox and you issuing a press
24 release on your own to respond to Ms. Kramer's
09:39:32 25 press release?

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1 A Right at this point, I don't remember.

2 Q Well, okay, let me ask it this way, you
3 said that you talked about whether you should take
4 action; do you recall any specific actions that you
09:39:46 5 could potentially take that you discussed with
6 Ms. Robbins after you were made aware of the press
7 release?

8 A We may have discussed others. The only
9 one I can recall right now -- the only one I can
09:40:00 10 recall is filing suit.

11 Q Was it -- did Ms. Robbins express a
12 position on whether or not Veritox should file
13 suit?

14 A She did.

09:40:18 15 Q What did she say?

16 A She thought it was absolutely necessary.
17 That's not a direct quote, but that was the idea.

18 Q And what is it in your mind that you
19 believe she felt it was absolutely necessary to do
09:40:36 20 that? What indications did she give you? What did
21 she say? What is it you base that testimony on?

22 A As I recall, the press release had been
23 issued. Once it had been issued, you couldn't
24 unissue it. So at this point the only thing I can
09:40:56 25 remember that we discussed as a remedy was filing

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1 suit for her having lied in the press release.

2 Q Do you believe a retraction in this matter
3 would in some way fix the damage you believe that
4 was caused by the press release?

09:41:16 5 A Partially, yes.

6 Q Why didn't you ask for that right away?

7 A I think I answered that question already.

8 We didn't believe Ms. Kramer would listen. She
9 didn't appear to be the kind of individual that

09:41:30 10 would listen from her prior postings.

11 Q Had she ever refused to listen to you?

12 A I had no direct communication with
13 Ms. Kramer.

14 Q You never once tried to communicate with

09:41:42 15 her at all before or after the press release, did

16 you?

17 A After, yes; before, certainly not.

18 Q The method by which you communicated with

19 her after the press release was to sue her;

09:41:58 20 correct?

21 A Once it was issued, yes.

22 Q Other than to sue her, had you ever in

23 your life attempted to communicate with Ms. Kramer?

24 A No. I certainly wouldn't try and

09:42:08 25 communicate with a person like that.

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1 Q So you have no reason to believe she would
2 or would not communicate with you because you never
3 even attempted to communicate with her; isn't that
4 correct?

09:42:20 5 A Well --

6 MR. SCHEUER: Could I have that read back.

7 (Record read as follows:

8 "QUESTION: So you have no reason to

9 believe she would or would not communicate

09:42:14 10 with you because you never even attempted

11 to communicate with her; isn't that

12 correct?")

13 MR. SCHEUER: Question is, is that

14 correct.

09:42:54 15 THE WITNESS: I'm sorry, say it once more.

16 (Record read.)

17 THE WITNESS: I think that statement has

18 two parts that are unrelated to each other, so I

19 don't think I can answer it the way you asked it.

09:43:02 20 BY MR. BANDLOW:

21 Q You had never called Ms. Kramer and she
22 didn't return your calls; right?

23 A I think I already stated that I did not.

24 Q You had never written any letters to
09:43:12 25 Ms. Kramer and she refused to respond to your

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1 letters, did you?

2 A Oh, certainly not. What's the point?

3 Q You never instructed anybody else to try
4 to communicate with Ms. Kramer, did you?

09:43:22 5 A No.

6 Q Okay. Did Ms. Robbins -- going back to
7 your communication with her, did she communicate to
8 you anything she had heard from others about the
9 press release?

09:43:44 10 A At this point I only recall our discussion
11 about the press release and what to do about it; I
12 really don't remember.

13 Q Do you have any reason to believe that the
14 press release had been brought to Ms. Robbins's
09:44:04 15 attention by any third party, other than you?

16 A Again, at this point, I don't remember.

17 Q Did Ms. Robbins express any opinion about
18 Ms. Kramer in this conversation?

19 A I don't recall directly. The only part of
09:44:40 20 the conversation that I can recall directly was
21 that we needed to do something about the press
22 release.

23 Q After this initial conversation with
24 Coreen Robbins, did you have any other
09:45:04 25 conversations with her about this lawsuit?

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1 A We have had other conversations. They've
2 mostly been about the progress of the lawsuit.

3 Q What have you told Ms. Robbins about the
4 progress of the lawsuit?

09:45:46 5 MR. SCHEUER: Again, interpose the
6 objection that you can respond to this question to
7 the extent it does not divulge communications that
8 came from counsel or that are intended to be
9 related back to counsel.

09:46:04 10 THE WITNESS: Not being an expert in law,
11 the only thing I can remember are within the
12 context of reeling information from counsel.

13 BY MR. BANDLOW:

14 Q Has Ms. Robbins ever communicated to you
09:46:24 15 any information she's obtained about the purported
16 effects the press release was having?

17 A This is starting -- some of this is quite
18 old, so at this point, the only thing I can recall
19 are communications about the progress of the suit.

09:47:00 20 Q Has -- has Ms. Robbins ever conveyed to
21 you any third party that she's been made aware of
22 who saw the press release?

23 A If she has at this point, I don't
24 remember.

09:47:20 25 Q Okay. Have you had any conversations with

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1 anybody at Veritox, outside of the presence of your
2 attorney, regarding waiving any claims for damages
3 on behalf of Veritox?

4 MR. SCHEUER: Well, same objection.

09:47:52 5 Regardless of whether I was present or not, there's
6 a privilege as to conversations that were intended
7 to be conveyed to me or related information from
8 me.

9 Outside of that limitation, you can
09:48:10 10 answer.

11 THE WITNESS: Okay. I apologize. I'm
12 slightly confused about what falls within, what
13 falls without.

14 BY MR. BANDLOW:

09:48:26 15 Q Let me ask you this way: Did you seek
16 approval from anybody at Veritox to waive Veritox's
17 claim of damages in this case?

18 A It's definitely -- I don't know if
19 "approval" is the right term. We did discuss it
09:48:44 20 and came to a consensus.

21 Q Who did you discuss that with?

22 A All of the principals. Well, all of the
23 health principals for sure. I don't remember what
24 I did with the engineering principals.

09:48:56 25 Q Who specifically? Give me names of people

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1 you recall discussing the concept of waiving
2 damages with.

3 A Dr. Robbins, Dr. Hardin, and Ms. Swenson.

4 Q Anyone else?

09:49:16 5 A That's all I can recall right now.

6 Q Do you recall what, if anything, Coreen
7 Robbins had to say about the concept of Veritox
8 waiving its claim of damages?

9 MR. SCHEUER: Same admonition as far as
09:49:34 10 whether these communications were intended for me.

11 THE WITNESS: Again, I don't remember
12 specifically. The general concept was that this
13 was about asking a jury to determine whether we had
14 been defamed.

09:49:58 15 BY MR. BANDLOW:

16 Q Did anybody -- did any of these three:
17 Robbins, Hardin or Swenson object to the concept of
18 waiving damages on behalf of Veritox?

19 A No.

09:50:10 20 Q Is there anything specific you can recall
21 Brian Hardin talking about when you discussed the
22 concept of waiving damages?

23 MR. SCHEUER: Same admonition.

24 THE WITNESS: Not in addition to what I've
09:50:30 25 already discussed.

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1 BY MR. BANDLOW:

2 Q Anything specific you can recall
3 discussing with Lonie Swenson about the concept of
4 waiving Veritox damages?

09:50:40 5 A Not in addition to what I've already
6 discussed.

7 MR. BANDLOW: I need to take a two-minute
8 break.

9 THE VIDEOGRAPHER: We're now going off the
09:50:54 10 record. The time is 9:50.

11 (Recess taken from 9:50 a.m. until
12 10:00 a.m.)

13 THE VIDEOGRAPHER: We're now back on the
14 record. The time is 10 o'clock.

10:00:44 15 BY MR. BANDLOW:

16 Q What -- when was the first time you had
17 any conversation with Paul Lees-Haley regarding
18 Ms. Kramer or this lawsuit?

19 A I don't remember specifically.

10:01:04 20 Q What, if anything, do you recall talking
21 to Paul Lees-Haley about regarding this lawsuit or
22 Ms. Kramer?

23 A I just vaguely remember a conversation
24 with him about the lawsuit. I don't remember how
10:01:24 25 it started.



1 Q Did he initiate the conversation?

2 A I don't remember.

3 Q Do you know if he had ever seen the press
4 release?

10:01:34 5 A At this point, I don't remember how we got
6 into the conversation.

7 Q What do you know about Paul Lees-Haley?

8 How do you know Paul Lees-Haley?

9 A He's done some very good scientific work,
10:01:56 10 and he's been -- I think, mostly just through his
11 scientific work.

12 Q Is Mr. Haley the person who came up with
13 the fake bad scale?

14 A I believe that's true.

10:02:16 15 Q And that's a test used to determine
16 whether people who claim they are sick are, in
17 fact, sick or not; correct?

18 A Actually, I never looked at it. That's
19 outside my area of expertise, so that's not
10:02:36 20 something I looked at or at least, at this point, I
21 don't recall looking at it.

22 Q And do you know if the Wall Street Journal
23 article was also about Paul Lees-Haley?

24 A At this point, I don't remember.

10:02:52 25 Q Do you recall any specific conversations

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1 with Paul Lees-Haley regarding Sharon Kramer?

2 A I know we've had a conversation. At this
3 point, I don't remember exactly what it was about.

4 Q Do you remember any of the contents of
10:03:22 5 that conversation?

6 A I believe it was some time ago and, no, I
7 don't, other than just the general subject.

8 Q Who is Ronald Joyner?

9 A He's a former head of, I think, it was
10:03:58 10 Global Toxicology for G.E. Plastics.

11 Q How do you know Mr. Joyner?

12 A I've known -- I knew Mr. Joyner since the
13 time that during the time period while we both
14 worked for Battelle Memorial Institute.

10:04:28 15 Q What -- when was the first time you had
16 any conversation with Mr. Joyner about this
17 lawsuit?

18 A I believe it was shortly after the press
19 release came out, but I can't remember a specific

10:05:04 20 conversation at this point. We're talking about
21 three years ago, so that's as close as I can come
22 to remembering.

23 Q Do you recall who initiated the
24 conversation, that first conversation after the
10:05:22 25 press release came out?

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1 A No, I don't.

2 Q Do you know if Mr. Joyner had even seen
3 the press release?

4 A At this point, I don't remember the
10:05:32 5 specific conversation, so I can't answer that.

6 Q Is there anything about conversations with
7 Mr. Joyner about either this lawsuit or Ms. Kramer
8 that you can recall as we sit here today?

9 A Generally, expressed the concept that he
10:05:52 10 was pretty appalled at her filings or her postings
11 and the tone and intent of those postings and the
12 tone and intent of the press release.

13 Q Do you recall any specific postings that
14 he was appalled at?

10:06:12 15 A I don't know what he was looking at.

16 Q Why did you use the word "appalled"? What

17 was it about the conversation that caused you just
18 now to use that word?

19 A That came back to me as a con -- as a word
10:06:28 20 that he had used.

21 Q So is there any other specific words that
22 he used that you can recall besides appalled?

23 A That's the one that just came back. Right
24 now I can't recall anything else.

10:06:42 25 Q And you don't recall any of the specific

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1 postings that you're referring to that he was
2 appalled at?

3 A To the best of my memory, he made a
4 general reference, and I don't know what he was
10:06:58 5 reading.

6 Q You don't recall what that general
7 reference was?

8 A No. I mean, other than just referring to
9 postings by Sharon Kramer.

10:07:30 10 Q Did you work with Mr. Joyner on issues
11 relating to the tobacco industry?

12 A No.

13 Q Other than this conversation around the
14 time the press release came out, have you had any
10:07:48 15 other conversations with Mr. Joyner about this
16 lawsuit?

17 A I think he asked me a couple times for
18 updates.

19 Q What did you tell him?

10:08:02 20 A It was just whatever was going on at the
21 time of the lawsuit.

22 Q Who is Edward Light?

23 A He's an industrial hygienist.

24 Q How do you know Mr. Light?

10:08:36 25 A He's contacted me at least once. I think

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1 more than once, but I can, right now, only recall
2 once about various toxicology issues including
3 mold, actually including mycotoxins.

4 Q What was it he was contacting you about
10:09:04 5 those issues? What was it he was seeking?

6 A At this point, I don't remember.

7 Q Have you had any conversations with
8 Mr. Light about this lawsuit?

9 A Again, at this point, I don't have a

10:09:28 10 specific recollection. I know there was no
11 in-depth discussion.

12 Q Do you know if Mr. Light sits on any
13 particular committees?

14 A I don't, in general, know what he does.

10:09:44 15 Q Do you know if Ms. Kramer actually sits on
16 a committee with Mr. Light?

17 A I believe they're both on ASTM. ASTM does
18 not confine their membership to -- people on their
19 committees to people with a scientific background.

10:10:00 20 Q What is that acronym you've just given?

21 A Actually, at the moment, I don't remember.

22 Q What is ASTM? What is that organization?

23 A It's an organization that publishes
24 consensus -- positions is a wrong word -- it's

10:10:32 25 consensus reports, and they also produce consensus

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1 testing protocols.

2 Q Who are the people to your knowledge that
3 make up that organization?

4 A Well, it's -- anyone is allowed to join,

10:11:02 5 so it's primarily people who -- organizations that

6 need standardized testing protocols, but the
7 membership is not limited, and, in fact, it's not
8 limited to people with any scientific background at
9 all.

10:11:26 10 Q Is it a respected organization?

11 MR. SCHEUER: Objection; vague and
12 ambiguous.

13 BY MR. BANDLOW:

14 Q Do you respect that organization?

10:11:34 15 A They're -- I don't know how to answer
16 that. Some of their protocols, particularly their
17 testing protocols, when they finally come out, can
18 be quite good. They, in the last decade, ventured
19 into -- tried to expand beyond that, and those
10:12:04 20 documents have been of variable quality.

21 Q Do you know the president of the ASTM?

22 A No idea.

23 Q Do you know if Ms. Kramer was provided
24 with a free membership in the ASTM?

10:12:26 25 MR. SCHEUER: Do you know that?

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1 THE WITNESS: No, I don't know that.

2 BY MR. BANDLOW:

3 Q Do you know if she was provided a free
4 membership so that she could help keep conflicts of
10:12:42 5 interest out of the mold testing standards?

6 A No, I don't know that.

7 Q And you don't recall any specific
8 conversations with Mr. Light about Ms. Kramer?

9 A Not at this point.

10:12:50 10 Q Do you know if Mr. Light ever saw the
11 press release that's at issue in this case?

12 A At this point, I don't remember if we
13 discussed it or not; so, no, I don't know.

14 Q How do you know Michael Holland?

10:13:12 15 A He's a medical toxicologist. At one time
16 he was affiliated with Veritox. He's had a very
17 long and distinguished career.

18 Q How was he affiliated with Veritox?

19 A He was one of our consulting physicians
10:13:32 20 for a period of time.

21 Q Have you had any conversations with
22 Mr. Holland about this lawsuit?

23 A I may have, but I don't recall any right
24 now.

10:13:52 25 Q You provided an interrogatory response; it



1 was an interrogatory that asked you to list those
2 people who have knowledge of the press release at
3 issue in this case. One of the people listed was
4 Michael Holland. What knowledge do you believe

10:14:14 5 Mr. Holland has of the press release at issue in
6 this case?

7 A I think we've had a general conversation
8 about it.

9 Q When do you think that was?

10:14:32 10 A Again, at this point, I don't remember,
11 but I think he is aware of the press release and
12 we've discussed -- I just don't remember a specific
13 conversation.

14 Q Do you remember any specific conversations
10:14:46 15 with Mr. Holland about Sharon Kramer?

16 A No.

17 Q Is there any --

18 A Not at this point.

19 Q Is there any particular thing that you
10:14:58 20 believe Michael Holland knows about this lawsuit?

21 A I don't recall the conversation, so at
22 this point I can't answer that.

23 Q How do you know David Eaton?

24 A I've known Dr. Eaton since he was a
10:15:30 25 graduate student.

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1 Q Have you had any conversations with
2 Mr. Eaton about this lawsuit?

3 A I believe I have.

4 Q Do you know when that was?

10:15:42 5 A Not at this point, not a recent
6 conversation.

7 Q Was it around the time of the issuance of
8 the press release?

9 A At this point, I really don't remember.

10:15:56 10 Q Is there anything specific you can recall
11 about what David Eaton would know about the facts
12 of this case?

13 A Other than I'm pretty sure he's aware that
14 there is a lawsuit going on, I don't remember a
10:16:16 15 specific conversation. I know we had it, but --

16 Q Why are you pretty sure he's aware of it?

17 A I believe we had a conversation; I just
18 don't remember specifically what it was. It wasn't
19 the focus of -- the fact that I mentioned it or we
10:16:32 20 discussed it, it wasn't the focus of any particular

21 single discussion.

22 Q In the complaint in this action, you
23 allege that the phrase in the press release that
24 you altered your under oath statements is a false
10:17:36 25 statement; correct?

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1 A Within the context of that press release,
2 yes.

3 Q And you believe that that creates an
4 implication that you committed perjury; is that
10:17:52 5 correct?

6 A Yes.

7 Q Is there any other statement in that press
8 release that you believe to be a defamatory
9 statement?

10:17:58 10 MR. SCHEUER: Counsel, we went through
11 this the first time that Dr. Kelman was deposed I
12 think, and I don't think you have any right to take
13 his deposition again on that same stuff. I'll
14 permit this if it's limited, but we're not going to
10:18:14 15 revisit the entire first deposition.

16 BY MR. BANDLOW:

17 Q You testified five minutes into today's
18 deposition that one of the things you wanted to do
19 is correct the lies, with an "S," that have been
10:18:26 20 told. What are those plural lies?

21 A The implication that I lied under oath,
22 and the implication that there was any payment ever
23 in any way for the composition statement on health
24 effects of mold.

10:19:18 25 Q Isn't it correct that in the press release

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1 Ms. Kramer wrote that the Manhattan Institute
2 report was the commissioned piece?

3 A I'd have to have the press release in
4 front of me, but --

10:19:38 5 MR. SCHEUER: Do you have an extra copy?

6 MR. BANDLOW: No, I'm sorry, I don't.

7 THE WITNESS: There's a statement in this
8 press release that says, "A version of the
9 Manhattan Institute commissioned piece may also be
10:20:10 10 found as a position statement on the Web site of
11 the United States medical policy writing body, the
12 American College of Occupational and Environmental
13 Medicine."

14 BY MR. BANDLOW:

10:20:20 15 Q Where in that press release do you believe
16 it says that you received payment for the ACOEM
17 report?

18 A Ms. Kramer clearly is trying to connect
19 the two in a financial way.

10:20:32 20 Q What language in the press release do you
21 believe does that?

22 A I just read it to you.

23 Q The language "A version of the Manhattan
24 Institute commissioned piece may also be found as a
10:20:50 25 position statement;" is there anything incorrect

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1 about that statement that you read?

2 A Yes. The Manhattan Institute report is
3 not a version of the ACOEM statement. They're two
4 separate documents; they're written differently.

10:21:02 5 The only relationship between them is the science
6 is the same.

7 Q Where does she say -- where does she say
8 in this press release that the Manhattan Institute
9 report is a version of the ACOEM statement?

10:21:18 10 A In the sentence that I just read.

11 Q That sentence says, "A version of the
12 Manhattan Institute commissioned piece may be found
13 as a position statement," et cetera. Is that a
14 statement that says the Manhattan Institute report
10:21:34 15 is a version of the ACOEM statement?

16 A I think that's an attempt to connect the
17 two.

18 Q And you --

19 A The implication is certainly there. We
10:21:44 20 can debate individual words if you like.

21 Q Well, that's what you've done in the
22 filing of this lawsuit.

23 What --

24 A No, I don't agree with that.

10:21:54 25 MR. SCHEUER: Objection to Counsel's

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1 statement as being argumentative.

2 MR. BANDLOW: We've been debating what the
3 word "altered" means for about three years, but
4 we'll move on.

10:22:04 5 MR. SCHEUER: Objection to that aside as
6 well.

7 BY MR. BANDLOW:

8 Q Are you -- do you not want the ACOEM
9 statement and the Manhattan Institute report linked
10:22:18 10 to one another?

11 MR. SCHEUER: Objection: irrelevant;
12 vague and ambiguous.

13 Does he want that for what purpose?

14 BY MR. BANDLOW:

10:22:28 15 Q It concerns you that those two reports are
16 linked to one another, doesn't it?

17 MR. SCHEUER: Objection: vague and
18 ambiguous; irrelevant.

19 What's the meaning of "concerns you"?

10:22:38 20 BY MR. BANDLOW:

21 Q You didn't like that Ms. Kramer in her
22 press release linked the Manhattan Institute report
23 with the ACOEM statement, did you?

24 MR. SCHEUER: Objection; irrelevant.

10:22:52 25 What is meant -- and vague and ambiguous.

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1 What is meant by the phrase "you didn't
2 like"?

3 BY MR. BANDLOW:

4 Q Can you answer the question? Do you

10:23:06 5 understand it?

6 A Yes.

7 Q Answer -- go ahead.

8 A Can I answer it?

9 MR. SCHEUER: You may answer it at will.

10:23:16 10 THE WITNESS: Their previous attempts that

11 have been made to confuse the ACOEM statement with

12 the Manhattan Institute position -- the Manhattan

13 Institute report with the ACOEM position statement.

14 I already testified the Manhattan Institute report

10:23:40 15 was a work-for-hire. The ACOEM position was not.

16 Ms. Kramer is trying to capitalize on that by

17 trying to link the two in a financial way.

18 BY MR. BANDLOW:

19 Q What are the efforts -- besides this

10:24:02 20 financial aspect you've talked about, are there any

21 other efforts that you believe are out there to

22 confuse these two statements and their relation to

23 each other?

24 MR. SCHEUER: Counsel, objection; vague

10:24:12 25 and ambiguous.



1 When you say what other efforts are out
2 there, are you referring to Kelly Vance's
3 cross-examination during the Haynes trial, would
4 that count as one of the efforts?

10:24:22 5 MR. BANDLOW: I'm asking the witness to
6 clarify a statement he just made under oath in this
7 deposition if there are efforts to confuse those
8 two statements. We can certainly have the reporter
9 read back his testimony, and then I'll just ask the
10:24:32 10 question, what did you mean by that?

11 Why don't we have her read back that
12 testimony.

13 THE REPORTER: The last answer?

14 MR. BANDLOW: Yes. There's a part where
10:24:36 15 he says efforts to confuse.

16 (Record read as follows:

17 "ANSWER: Their previous attempts
18 that have been made to confuse the ACOEM
19 statement with the Manhattan Institute
10:23:26 20 position -- the Manhattan Institute report
21 with the ACOEM position statement. I
22 already testified the Manhattan Institute
23 report was a work-for-hire. The ACOEM
24 position was not. Ms. Kramer is trying

10:23:48 25

to capitalize on that by trying to link

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1 the two in a financial way.")

2 BY MR. BANDLOW:

3 Q Beginning part of that you said efforts to
4 confuse the two statements, what did you mean by
10:25:14 5 that?

6 MR. SCHEUER: Well, that misstates what
7 the transcript says.

8 MR. BANDLOW: Let's do it again. Read
9 that back that you did, and I'll stop you when I
10:25:40 10 think I've got enough, so go ahead.

11 (Record read as follows:

12 "ANSWER: Their previous attempts that
13 have been made to confuse the ACOEM statement
14 with the Manhattan Institute position.")

10:25:42 15 MR. BANDLOW: Stop.

16 What did you mean by that?

17 THE WITNESS: There's -- well, the effort
18 by Kelly Vance in the Haynes trial was one example,
19 and there's been numerous outrageous ideas posted
10:26:00 20 in chat rooms. At this point, I don't remember if

21 those were Ms. Kramer's postings.

22 BY MR. BANDLOW:

23 Q Well, the two statements, the ACOEM

24 statement and the Manhattan report are related in

10:26:20 25 some manner to each other, aren't they?

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1 MR. SCHEUER: Asked and answered. Asked

2 and answered at the last deposition and asked and

3 answered today.

4 You can answer it one more time.

10:26:26 5 THE WITNESS: As I said, they're based on

6 the same science. They're based on the existing

7 science at the time. They're two different

8 documents. They're expressed very differently.

9 BY MR. BANDLOW:

10:26:58 10 Q Would you call -- is it correct to say

11 that the Manhattan Institute report is a lay

12 version of the ACOEM statement?

13 MR. SCHEUER: Objection; we went over this

14 endlessly at the last deposition.

10:27:10 15 I instruct the witness not to answer.

16 BY MR. BANDLOW:

17 Q Will you follow that instruction?

18 A Yes. I answered you over and over and
19 over again.

10:27:18 20 Q Do you know if one of the listed
21 co-authors of the Manhattan Institute report calls
22 it a lay version of the ACOEM statement?

23 A I don't know.

24 Q In fact, hasn't Andrew Saxon testified
10:27:34 25 under oath that the Manhattan Institute report is a

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1 lay version of the ACOEM statement?

2 MR. SCHEUER: If you know.

3 THE WITNESS: I don't know.

4 BY MR. BANDLOW:

10:27:42 5 Q Was Mr. Saxon listed as an author of the
6 Manhattan Institute report?

7 A Yes.

8 Q Hasn't he, in fact, denied that he was an
9 author of that report?

10:27:50 10 A I don't know that he has.

11 Q Hasn't he, in fact, testified under oath
12 that he had nothing to do with the Manhattan
13 Institute report and his name was just put on it?

14 A I have no knowledge of that.

10:28:00 15 Q Hasn't he, in fact, testified he didn't
16 even know his name had been put on the Manhattan
17 Institute report?

18 A I think I answered that question already.

19 Q Was Ms. Kramer's press release the first
10:28:26 20 time it had been made public that you had
21 involvement in preparing the Manhattan Institute
22 report?

23 MR. SCHEUER: Other than the face of the
24 Manhattan Institute report you mean?

10:28:38 25 MR. BANDLOW: Uh-huh.

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1 MR. SCHEUER: Other than what is written
2 on the face of the Manhattan Institute report, was
3 this the first time as far as Dr. Kelman knows that
4 someone had said that he had been involved in the
10:28:50 5 preparation of the Manhattan Institute report?

6 MR. BANDLOW: Yeah.

7 MR. SCHEUER: You can answer that.

8 THE WITNESS: My name is on the report.
9 The report was presented publicly, so I guess I
10:29:00 10 don't understand your question.

11 BY MR. BANDLOW:

12 Q Ms. Kramer's press release that she
13 issued, she was writing about the trial testimony
14 you gave in the Haynes case; correct?

10:29:26 15 MR. SCHEUER: Objection; the document
16 speaks for itself.

17 BY MR. BANDLOW:

18 Q You recall that she was writing about your
19 testimony in the Haynes case in Oregon?

10:29:38 20 A I believe she was without naming anything
21 referring to the Haynes and Kilian transcripts.

22 Q And in that case the jury found in favor
23 of the Haynes family; correct?

24 A That was their finding.

10:30:08 25 Q And it's correct that that jury awarded

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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

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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

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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.

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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.

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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

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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?

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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?

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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.

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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

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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

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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.

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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.

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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,

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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

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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

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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?

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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?

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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.

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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

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1 for -- and simply say I'm asking you as an attorney
2 and officer of the court to assume what I read is
3 testimony from an under oath testimony provided by
4 Dr. Saxon; assuming that was the case and it was,

11:03:40 5 do you believe he was testifying truthfully when he
6 said he didn't know his name was on it?

7 MR. SCHEUER: Give me a moment here.
8 You're representing that you have read that
9 transcript?

11:04:00 10 MR. BANDLOW: Uh-huh.

11 MR. SCHEUER: Yes?

12 MR. BANDLOW: Yes, I've read this
13 transcript.

14 MR. SCHEUER: Not just the type written
11:04:06 15 part there, but you have read the transcript, and
16 was it signed by Dr. Saxon?

17 MR. BANDLOW: I don't recall if the
18 testimony had been reviewed and signed by
19 Dr. Saxon.

11:04:16 20 MR. SCHEUER: So Dr. Saxon may have
21 changed his testimony?

22 MR. BANDLOW: I'm not sure. I believe
23 this entire deposition transcript was produced to
24 you in this case.

11:04:26 25 MR. SCHEUER: I promise you it was not.

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1 So you can't even tell me, as you sit here today,

2 whether that is the final transcript and whether
3 Dr. Saxon signed off on that transcript?

4 MR. BANDLOW: I don't know that to be a
11:04:40 5 fact. I'm asking the witness to assume that that
6 was his testimony and that testimony has not been
7 changed.

8 MR. SCHEUER: All right. So assuming that
9 Dr. Saxon says -- said what Counsel says Dr. Saxon
11:04:54 10 said, the question is -- is that lawyerly enough
11 for you?

12 THE WITNESS: I'm with you.

13 MR. SCHEUER: Question is, when Dr. Saxon
14 supposedly said what he said, do you believe that
11:05:10 15 he was testifying truthfully?

16 THE WITNESS: I've never known Dr. Saxon
17 to lie, so I would assume that he would testify
18 truthfully. I don't know what else to say to that.

19 BY MR. BANDLOW:

11:05:34 20 Q Dr. Saxon is the only non-Veritox
21 principal listed as a co-author of the Manhattan
22 Institute report; correct?

23 A I don't remember if Dr. Robbins was a
24 principal at that time.

11:05:52 25 Q But she certainly had been at one point an

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1 employee of GlobalTox slash Veritox?

2 A She was an employee at the time.

3 Q Okay. And was Dr. Saxon the only
4 physician as opposed to a Ph.D. who was listed as
11:06:08 5 the author of the Manhattan Institute paper?

6 A Yes.

7 Q Did you believe that it added credibility
8 to the Manhattan Institute paper to have a
9 non-Veritox owner listed as a co-author of the
11:06:26 10 paper?

11 MR. SCHEUER: Objection: irrelevant;
12 improper in this deposition, but I'll permit the
13 witness to answer.

14 THE WITNESS: Dr. Saxon is a world
11:06:38 15 renowned immunologist. Frankly, I think any time
16 his name is on any publication, it carries
17 credibility. In this case, the motivation for
18 putting him on it was that we felt he made a
19 substantial contribution to the publication.

11:07:18 20 BY MR. BANDLOW:

21 Q Did you -- did you offer to pay Mr. Saxon
22 for his contribution in the Manhattan Institute

23 report?

24 A It's Dr. Saxon, and at this point, I don't

11:07:36 25 remember. It may have come up, I just don't

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1 remember.

2 Q And you can't recall specific reasons why

3 he was not compensated for his work on the

4 Manhattan Institute report?

11:07:46 5 MR. SCHEUER: I think the witness just

6 testified that he doesn't remember.

7 MR. BANDLOW: Well, I asked him if he

8 offered to pay Dr. Saxon.

9 BY MR. BANDLOW:

11:07:58 10 Q This is a different question: Do you

11 remember anything about the issue of whether

12 Dr. Saxon would be paid or not for his work on the

13 Manhattan Institute report?

14 A No.

11:08:10 15 Q Has Veritox ever received any moneys from

16 the U.S. Chamber of Commerce?

17 A Not that I'm aware of.

18 Q Are you aware of a complaint filed by

19 Ms. Claim -- by Ms. Kramer with the Florida State

11:09:22 20 Bar?

21 A Yes.

22 Q What are you aware of on that particular
23 matter?

24 A I have the complaint.

11:09:32 25 Q And Dr. Saxon was serving as an expert

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1 witness in that particular case regarding her
2 complaint with the Florida Bar; correct?

3 A I don't remember. If you want to talk
4 about it, I would like to see a copy of it.

11:09:48 5 Q Okay.

6 MR. SCHEUER: Counsel, while the witness
7 is looking at that paper, I'd like to ask you how
8 this line of questioning conceivably fits in with
9 the order for Dr. Kelman's deposition today? This
11:10:30 10 was a document that you had in your possession when
11 you deposed him in December of 2007. You could
12 have asked him these questions then. Nothing new
13 has come up about this. This is just an abuse of
14 the court's order allowing this deposition today.

11:10:46 15 MR. BANDLOW: Well, I don't agree that the

16 court so limited that deposition. I believe you
17 brought that up to the court and the court was not
18 inclined to agree with a predeposition request that
19 it be so limited.

11:11:02 20 I also don't agree with your position
21 throughout this matter that I had completed my
22 deposition of Mr. Kelman the first time around when
23 there was a stack of documents that had been
24 produced the day before it, and there's recently
11:11:18 25 been a production of thousands of pages of

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1 documents. So I don't agree with your limitation
2 on this deposition.

3 That being said, I'm forging through this
4 as fast as I can.

11:11:38 5 BY MR. BANDLOW:

6 Q Did you have any part, Mr. Kelman, in
7 trying to obtain Ms. Kramer's communications with
8 her physician Dr. Marinkovich in that Florida case?

9 A I never heard of the Florida case
11:11:54 10 before -- no.

11 Q Okay.

12 A And before I got the documents, that I was

13 unaware of the Florida case. This is -- I don't
14 think this is the actual form.

11:12:10 15 MR. SCHEUER: Counsel, I'll represent to
16 you that you produced that document.

17 MR. BANDLOW: Uh-huh. I know we did. I'm
18 just asking if he had any knowledge of it.

19 We've got five minutes of tape. Let's
11:12:36 20 take a five-minute break.

21 THE VIDEOGRAPHER: We're now going off the
22 record. The time is 11:12.

23 (Recess taken from 11:12 a.m. until
24 11:23 a.m.)

11:24:22 25 THE VIDEOGRAPHER: We're now back on the

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1 record. The time is 11:23.

2 BY MR. BANDLOW:

3 Q I want to go back and look at Exhibit 1000
4 that we marked earlier in this case. It's after
11:24:36 5 the invoices conclude. It's an e-mail. Do you see
6 this e-mail from Michael Holland?

7 A Yes.

8 Q Do you recall receiving that on or about

9 the date listed on that e-mail?

11:24:56 10 A No.

11 Q Did you have any conversations with

12 Mr. Holland about the contents of this e-mail?

13 A Not that I can recall.

14 Q Do you know why he said, "Bruce, mystery

11:25:10 15 solved"?

16 A No.

17 Q Do you know why he said -- he says, quote,

18 "A mold advocate" slash "victim from California"

19 paren "no surprise" exclamation end paren; do you

11:25:42 20 know why he said that?

21 A Give me a moment to read this. Okay.

22 What was the question?

23 Q Do you know why -- did you have any

24 conversations with Michael Holland about the

11:26:06 25 substance of this e-mail?

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1 A Not that I remember.

2 Q And you don't recall what mystery he had

3 solved?

4 A Oh, well, if you go to the bottom of the

11:26:26 5 e-mail, apparently Ms. Kramer was sending e-mails

6 to Michael Holland.

7 Q And do you know why Mr. Holland was
8 bringing this to your attention?

9 A We were working pretty closely at that
11:26:54 10 time, so he thought it was interesting. I have no
11 specific recollection.

12 Q Did you ever communicate back to
13 Mr. Holland in response to this e-mail?

14 A At this point, I mean, it wasn't a
11:27:10 15 significant event. I really don't remember.

16 Q Do you know -- do you know where this
17 e-mail was maintained for purposes of your
18 producing it in this action? Where did you find
19 this?

11:27:26 20 A There would have been a printed copy.

21 Q Do you know what file it was in? Why was
22 this saved?

23 A I have no idea.

24 Q Are you aware of Ms. Kramer's activities
11:28:06 25 with various U.S. congressmen regarding the mold

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1 issue?

2 MR. SCHEUER: Objection; vague and
3 ambiguous as to various activities.

4 BY MR. BANDLOW:

11:28:16 5 Q Do you have any knowledge of Ms. Kramer's
6 interaction with members of congress?

7 A Only what she's produced.

8 Q Are you aware that she has been asking
9 Congressman Henry Waxman and his congressional
11:28:32 10 Oversight and Government Reform Committee for
11 congressional hearings into the conflicts of
12 interest over the mold issue?

13 A Only what's she produced.

14 Q You weren't aware of that until she
11:28:46 15 produced documents in this case?

16 A No.

17 Q Are you aware that Ms. Kramer is urging
18 Senator Kennedy's Health, Education, Labor and
19 Pension Committee to request a GAO audit? Are you
11:29:02 20 aware she requested that Mr. Kennedy do to that to
21 look into conflicts of interest in the mold issue?

22 A Only by her own word from what she's
23 produced.

24 Q Would you like Ms. Kramer to stop
11:29:16 25 interacting with congress on these issues?

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1 MR. SCHEUER: Objection; irrelevant.

2 Instruct the witness not to answer.

3 BY MR. BANDLOW:

4 Q You going to follow that instruction?

11:29:28 5 A Yes.

6 Q Are there any particular communications
7 you've been made aware of from Ms. Kramer to any
8 members of congress that you disagree with?

9 MR. SCHEUER: Could I have that read back,
11:30:02 10 please.

11 (Record read as follows:

12 "QUESTION: Are there any
13 particular communications you've been
14 made aware of from Ms. Kramer to any
11:29:38 15 members of congress that you disagree
16 with?")

17 MR. SCHEUER: That's irrelevant, but you
18 can answer.

19 THE WITNESS: I'm sorry. Read it again.

11:30:14 20 BY MR. BANDLOW:

21 Q Actually, I'm sorry. Let me back up. I
22 probably should lay some better foundation for
23 that.

24 Ms. Kramer's interaction with members of
11:30:22 25 congress, your knowledge of that would be based

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1 solely on documents or information she's produced
2 in this case; correct?

3 A That's what I said.

4 Q Have you looked at those documents?

11:30:32 5 A Briefly.

6 Q Were there any communications that
7 Ms. Kramer has had with any members of Congress
8 that upon your looking at them you said to
9 yourself, "I disagree with that"?

11:30:42 10 A Well, in general she seemed to be
11 perpetuating and perpetrating her lies, but I don't
12 think that -- if you want to talk about a specific
13 document, I'll have to have it in front of me.

14 Q What lies do you think she's perpetuated?

11:31:02 15 A I need a document to work off of. I can't
16 do that --

17 Q You just said it. You just said it.

18 MR. SCHEUER: That's argumentative. Is
19 there a question pending?

11:31:12 20 BY MR. BANDLOW:

21 Q You have no independent recollection, as
22 we sit here in today's deposition, of what
23 purported lies Ms. Kramer is perpetuating to
24 congress?

11:31:22 25 MR. SCHEUER: That's a yes or no question.

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1 THE WITNESS: Not independent of what
2 she's produced.

3 MR. BANDLOW: Let's mark that as
4 Exhibit 1001.

11:32:00 5 (Defendants' Exhibit 1001 was marked for
6 identification by the Certified Shorthand Reporter;
7 a copy of which is attached hereto.)

8 MR. SCHEUER: Do you have an extra copy of
9 that?

11:32:04 10 MR. BANDLOW: Unfortunately, I do not for
11 myself or anyone else.

12 BY MR. BANDLOW:

13 Q Have you read -- and I'll submit for the
14 record that this letter to Mr. Waxman was produced

11:32:28 15 in this litigation. Have you read that letter --
16 ever read that letter? Was that one of the things

17 that you said you briefly looked at?

18 A At this point, I don't recall nor do I
19 recall if this has ever been produced it.

11:32:44 20 MR. BANDLOW: Sadly probably 10,000 copies
21 of it have.

22 BY MR. BANDLOW:

23 Q Is there anything in that particular
24 document in front of you you think perpetuates the
11:32:58 25 lies Ms. Kramer is telling?

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1 MR. SCHEUER: Objection; irrelevant.

2 This is beyond the scope of the order for
3 this deposition today.

4 I'll permit the witness to answer.

11:36:44 5 THE WITNESS: Could I have the question
6 again.

7 (Record read as follows:

8 "QUESTION: Is there anything in
9 that particular document in front of you
11:32:54 10 you think perpetuates the lies Ms. Kramer
11 is telling"?)

12 THE WITNESS: Yes.

13 BY MR. BANDLOW:

14 Q What is it?

11:36:50 15 A Wide spread and ongoing promulgation of
16 medical misinformation; the attempt to -- the
17 misinformation is being promoted by private, yet
18 federally funded medical associations; the -- I'm
19 unaware of any federal funding for ACOEM for mold
11:37:32 20 issues.

21 The statement that, or the implication
22 that, the Department of Health and Human Services,
23 the Centers for Disease Control and Prevention,
24 NIOSH -- there's a typographical error here, by the
11:37:54 25 way, I don't think this is what was produced; it

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1 should be ATSDR -- and OSHA have outsourced the
2 study of mold illnesses to those private medical
3 associations. Again, the implication is that
4 they're not doing their own work and they certainly
11:38:16 5 are.

6 The statement that "the interests of
7 industry have taken precedence over the lives and
8 safety of the American public" with regards to mold
9 is not true; a reference to Berkeley Labs and

11:38:40 10 EPA -- you haven't produced that, so I guess I
11 can't comment on that. Normally, Berkeley Labs
12 wouldn't be considered the same kind of credible
13 source as a learned body.
14 The attempt to equate asthma cases to mold
11:39:16 15 exposures, although asthma can be related to mold
16 exposures. The idea that 4.6 million people are
17 affected is not true, at least not proven. And
18 then "these numbers do not reflect even more
19 serious non-respiratory illness brought on by the
11:39:34 20 toxins produced by molds." Well, I'm assuming that
21 we're not referring to eating molds which is
22 actually a different issue. And, of course, these
23 numbers, the idea that there's a vast amount of
24 illnesses produced by toxins from molds in indoor
11:39:52 25 environments has not been born out.

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1 Systematic infections, again, referring --
2 I'm assuming that we're referring to mold. Mold
3 infections that cause hospitalizations are rare.
4 It is true that mold grows on -- if one takes the
11:40:22 5 benign interactions of mold with school children,

6 office workers and residents, there would be large
7 numbers such as toenail fungus, but these aren't
8 building materials.

9 And the idea that the number of school
11:40:48 10 children, office workers and residents that have
11 been affected by mold and indoor environments is
12 vast, is not born out by the data.

13 The idea that "physicians are being
14 provided with misinformation downplaying the
11:41:26 15 severity of illness" is not born out by scientific
16 literature. The statement that the public is not
17 being warned of the dangers with the implication
18 being there's vast dangers is, again, there are no
19 vast dangers. It's not born out by the scientific
11:41:46 20 literature.

21 The effort to reference the Wall Street
22 Journal as if this was something that Ms. Kramer
23 had nothing to do with is outrageous and a
24 misrepresentation of that article. It would have
11:42:06 25 been appropriate if she had added something that



1 said a journal article that I contributed heavily
2 to or I was responsible for, but she specifically

3 doesn't say that.

4 Then the presentation of findings in the
11:42:22 5 Wall Street Journal as factual and supported by any
6 data is, again, outrageous. The statement in 2002
7 a physician and a PhD who frequently testify in
8 mold lawsuits as expert witnesses for the defense
9 was specifically brought into ACOEM to offer the
11:42:42 10 organization's position statement is false. I've
11 been a member of that organization for many years.

12 The statement that none, which I assume
13 goes back to the physician and the PhD -- actually,
14 I don't understand -- oh, I see. She's trying to
11:43:18 15 misrepresent or coningle that the fact Dr. Hardin
16 and I are PhDs and the physician must refer to
17 Dr. Saxon, but it's a misrepresentation the way she
18 presents it.

19 Again, "none were prior members of ACOEM,"
11:43:42 20 is absolutely not true, "nor did they have
21 expertise," and actually mycotoxin research; that's
22 absolutely not true.

23 The statement that Dr. Hardin's
24 "membership was provided gratis" is absolutely not
11:43:58 25 true, and at the time she wrote this, she knew it



1 was not true.

2 The idea that the position statement
3 ignores the evidence of symptoms indicating or
4 indicative of poisoning, again, is absolutely not
11:44:24 5 true. Ms. Kramer doesn't understand what the use
6 of that kind of evidence is in science, and it
7 certainly was not ignored.

8 "The authors made their own calculations
9 from secondhand data based on a single rodent
11:44:44 10 study" is absolutely not true. She knows that at
11 this point. She's even testified at this point
12 that she knew it was not true. Actually, I'm not
13 sure on the date of the testimony. The testimony
14 part may be incorrect, but she had already been
11:44:56 15 corrected on the single rodent study issue that's
16 just, again, a litany of misinformation that she's
17 perpetuated.

18 "The calculations and their conclusion
19 have never been duplicated" is, again, not true.
11:45:10 20 The calculations are a standard approach to dose
21 response. Ms. Kramer, since she is unfamiliar to
22 toxicology, thinks this was novel, and it certainly
23 wasn't. Other peer-reviewed papers certainly do

24 share the conclusions we made.

11:45:34 25 Then her reference, again, to the Wall

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1 Street Journal quoting Dr. Harriet Ammann, she very
2 selectively overlooks the fact that Dr. Ammann
3 agreed with the conclusions of the Institute of
4 Medicine report; she signed it. Again, she's --
11:46:18 5 actually, I don't know if the quotation is correct
6 from the Wall Street Journal, but the idea that
7 she's quoting the Wall Street Journal on an article
8 that she contributed heavily to without divulging
9 that is outrageous.

11:46:40 10 The ACOEM position statement on mold does
11 not dismiss mold-induced illness at all. In fact,
12 two-thirds of the position statement on mold is
13 about effects that occurred.

14 The idea that the ACOEM position statement
11:47:20 15 is based on the existing science when it was
16 written and it certainly has not caused at the
17 time, or does it currently cause, any responsible
18 physician to wrongly perceive that mold does not
19 cause serious illness; it's absolutely not what the
11:47:40 20 ACOEM position statement says.

21 She then perpetuates the idea that somehow
22 the ACOEM statement is tied to the Institute of --
23 or the Manhattan Institute report, somehow
24 indicating that this, other than through the
11:48:10 25 science, her statement that the OSHA handbook

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1 ignores the findings of thousands peer-reviewed
2 papers including findings of the Institute -- NIH
3 Institute of Medicine, but cites ACOEM's position
4 statement three times, somehow she has -- first of
11:48:52 5 all, the Institute of Medicine is not an NIH
6 Institute, and it's misleading to present it as
7 such.

8 And the findings of that position of the
9 report from the Institute of Medicine clearly state
11:49:16 10 in the executive summary that exposure to mold has
11 not been shown -- has not been proven to cause --
12 actually, I can't remember the exact -- I can't
13 quote it at this point, but Ms. Kramer has never
14 once referred to those -- the actual findings of
11:49:40 15 the Institute of Medicine; she's only selectively
16 examined parts of it that are convenient to her as

17 an advocate.

18 Having just talked about the ACOEM

19 position statement, she indicates that one of the

11:50:12 20 authors, or she tries to indicate that one of the

21 authors was the subject of an NBC Dateline

22 investigation; absolutely not true.

23 The statement that -- that someone has

24 been promoting "the concept that it has been

11:50:52 25 scientifically established that toxins found within

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1 water damaged buildings do not cause health

2 problems" is a gross misrepresentation. In fact,

3 those toxins, the issue is dose, we made that very

4 clear all the way through. And the toxins that are

11:51:10 5 found in minute quantities to know to cause any

6 adverse effects, in fact, cause significant effects

7 at high enough concentrations. So the idea that

8 they do not cause health problems is, again, a lie

9 that she's perpetuating.

11:51:36 10 I really don't under -- am not familiar

11 with the Association of Occupational and

12 Environmental Clinics, so I can't tell whether

13 she's -- what she's referring to. The idea that

14 ACOEM leaving out the A-O-E-C misused government
11:52:18 15 funding to promote false science. If she's
16 referring to the position statement on mold, again,
17 is absolutely not true.

18 So on casual reading those would be the
19 items that she's included in this that are just
11:53:02 20 outrageously false.

21 Q Have you ever attempted to assert your
22 position on these issues to Mr. Waxman's office?

23 A I haven't been asked to, certainly not.

24 Q If you were asked, would you?

11:53:16 25 A Of course.

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1 Q And I think you testified a moment ago
2 that it has not been the position you've presented
3 that mold doesn't have any kind of effects;
4 correct?

11:53:34 5 A Yes.

6 Q But you authored something that had a
7 concluding sentence that was "Thus the notion that
8 toxic mold is an insidious secret killer as so many
9 media and trial lawyers would claim is junk science

11:53:52 10 unsupported by actual scientific study." Doesn't
11 that conflict with what you just said?

12 A Absolutely not.

13 Q Why not?

14 A It's not an insidious killer, and we've
11:54:04 15 got lots of data showing that.

16 Q Is it a killer at all?

17 A Yes. Any chemical of sufficient
18 quantities will cause death. That's a basic tenant
19 as part of the dose response of toxicology.

11:54:18 20 Mycotoxins in sufficient quantities are quite
21 spectacular in effects. That's why they're called
22 "myco-," coming from mold, -toxins.

23 Q So the distinction is the use of the word
24 "insidious"?

11:54:42 25 MR. SCHEUER: Objection: vague;

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1 ambiguous; incomprehensible. I don't know what
2 that question means.

3 BY MR. BANDLOW:

4 Q Is it junk science that toxic mold can
11:54:56 5 kill people? That's not junk science; right?

6 A In sufficient quantities, of course, and

7 we've clearly said that.

8 Q Then why in the Manhattan Institute report

9 didn't your sentence say toxic mold in small

11:55:22 10 quantities is not a secret killer? Why did you

11 have the broad statement that "the notion that

12 toxic mold is an insidious secret killer is junk

13 science unsupported by actual scientific study"?

14 A Well, it is. What I wrote was absolutely

11:55:42 15 correct.

16 Q Wasn't Ron Gotts investigated by Dateline?

17 A I would have to ask Dr. Gotts.

18 Q You don't have any knowledge of that?

19 A I'm unaware of -- no.

11:56:00 20 Q And you wrote a paper with Dr. Gotts,

21 didn't you?

22 A I did. Dr. Gotts is also a respected

23 toxicologist.

24 Q Does Dr. Ammann agree with the science set

11:56:18 25 forth in the ACOEM report?

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1 A I think you'll have to ask Dr. Ammann.

2 Q Aren't you aware that she disagrees with

3 particularly the use of the rat studies?

4 A You'll have to show me what you're
11:56:32 5 referring to.

6 Q Doesn't she disagree with the notion you
7 can extrapolate from those rat studies a lack of
8 effect on humans?

9 A She may. That's -- the extrapolation was
11:56:56 10 not only from the rat studies, so I'm not sure --
11 if you ask me if you could go directly from animal
12 studies to affects in humans, I would also say, no,
13 you have to take into account the body of
14 literature and the body of science that exists.

11:57:14 15 Q When the ACOEM was put out, was there a
16 disclosure of the fact that you often testify for
17 the defense in mold cases?

18 MR. SCHEUER: Objection; this was gone
19 into in the prior session of Dr. Kelman's
11:57:28 20 deposition. This is beyond the scope of what was
21 permitted today, but I'll permit the witness to
22 answer again.

23 BY MR. BANDLOW:

24 Q Was it?

11:57:36 25 A I'm sorry, it's really hard to remember

1 the question after the objections.

2 Q Was it disclosed in the ACOEM statement
3 that you often provide testimony for the defense in
4 mold litigation?

11:57:56 5 A When the ACOEM publication -- no, it was
6 not. That was not something we have any control
7 over.

8 Q You could have inserted that as a
9 footnote, couldn't you?

11:58:06 10 A No. That's not anything we have control
11 over. At the point that the ACOEM position
12 statement was published, it was published as a
13 position statement of the college. We just
14 furnished a draft. We've been over this over and
11:58:22 15 over again.

16 So the draft that went in was then --
17 we're not considered authors. The college is at
18 the time it comes out, and a conflict of interest
19 statement was filed.

11:58:38 20 Q What about the J-O-E-M statement, was
21 there a conflict statement in that?

22 MS. KRAMER: Journal of Occupational
23 Environmental Medicine.

24 MR. SCHEUER: What statement are you

11:58:50 25 referring to?

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1 BY MR. BANDLOW:

2 Q Journal of Occupational Environmental
3 Medicine, there was a version of the ACOEM
4 statement printed by that organization; correct?

11:58:58 5 A Well, that's the journal that the American
6 College of Occupational Medicine publishes their
7 position statements in.

8 Q And it was printed under your names;
9 correct, the authors' names: you, Dr. Hardin,
11:59:24 10 et cetera?

11 A I'd have to look at it. I don't think so.
12 We were acknowledged. It's also customary to
13 acknowledge the individuals that have donated their
14 time to put position statements together.

11:59:44 15 Q Do you know Mary Mulvey Jacobson?

16 A No.

17 Q You never heard that name before?

18 A Not before Ms. Kramer produced her
19 materials, at least not that I recall.

12:00:02 20 Q Do you recall producing in connection with

21 this litigation a presentation made by Mary Mulvey
22 Jacobson in July 2007 before the Joint Committee on
23 Public Health in Massachusetts?

24 A No. It could have been produced. I don't
12:00:24 25 recall producing it.

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1 Q Have you look at that document.

2 MR. BANDLOW: I'll mark that as
3 Exhibit 1002 when he's done.

4 THE WITNESS: Okay. Um --

12:00:38 5 MR. SCHEUER: There's no question pending.

6 (Defendants' Exhibit 1002 was marked for
7 identification by the Certified Shorthand Reporter;
8 a copy of which is attached hereto.)

9 BY MR. BANDLOW:

12:00:42 10 Q Have you ever seen that document before?

11 A If I did, I'm not sure this is -- we
12 produced this?

13 MS. KRAMER: Yes.

14 MR. BANDLOW: Produced in that form with
12:00:52 15 that highlighting.

16 MR. SCHEUER: Excuse me, you're saying the
17 highlighting was produced by us?

18 MR. BANDLOW: Yes.

19 THE WITNESS: I don't remember that.

12:01:12 20 MR. SCHEUER: I dispute what you say.

21 MR. BANDLOW: It was contained in that
22 link you provided to me to the Veritox file.

23 MR. SCHEUER: The electronic link?

24 MR. BANDLOW: Yes, it looked exactly like
12:01:28 25 that.

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1 THE WITNESS: Okay. That's possible

2 but --

3 BY MR. BANDLOW:

4 Q Have you seen that document before?

12:01:36 5 A Actually, not that I remember.

6 Q Do you have any idea why that document
7 would be in Veritox's possession?

8 A It probably was part of some case, and we
9 were ordered to produce anything that referenced
12:01:52 10 the ACOEM position statement, so that's why that
11 would have come out.

12 Q And you don't know why those portions are
13 highlighted?

14 A I don't think I did that.

12:02:02 15 Q Are you aware that Ms. Jacobson has been
16 giving public presentations in which she states
17 that your science that you promote is harming
18 people?

19 A Well, I mean, since she's conferring with
12:02:22 20 Ms. Kramer, I have no doubt; but, no, I'm not aware
21 of that.

22 Q Do you know if the Haynes family was ever
23 threatened with a liable lawsuit by Veritox?

24 A The Haynes family?

12:02:54 25 Q Yeah.

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1 A Not that I'm aware of.

2 Q Do you think the Haynes family would have
3 any fear speaking out about your testimony in that
4 case?

12:03:02 5 MR. SCHEUER: Objection: calls for
6 speculation; irrelevant.

7 Instruct the witness not to answer.

8 BY MR. BANDLOW:

9 Q Have you seen documents in this case
12:03:18 10 produced by Mr. Vance, Calvin Vance in which he

11 indicates he believed you lied when you testified
12 in the Haynes case?

13 A I believe I have seen, amongst many other
14 documents, a document that indicates that.

12:04:04 15 Q Are you aware of any other people besides
16 Ms. Kramer and Ms. Jacobson who are calling for a
17 congressional oversight hearing into conflicts of
18 interest in medicine in which you're involved?

19 A I really haven't paid attention, so --

12:04:24 20 Q Are you aware that --

21 A There could be, I don't know.

22 Q Are you aware that 14 of the city
23 councilors of Boston have sent a letter in support
24 of Ms. Kramer and Ms. Jacobson?

12:04:36 25 MR. SCHEUER: Objection; assumes facts not

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1 in evidence.

2 The witness can answer.

3 It's also irrelevant.

4 I'll permit the witness to answer.

12:04:44 5 THE WITNESS: I'm not aware.

6 BY MR. BANDLOW:

7 Q Are you aware that New York City Councilor
8 Rosie Mendez, and New York State Senator Liz
9 Krueger have sent a letter supporting Ms. Kramer
12:05:02 10 and Ms. Jacobson's request for congressional
11 investigation?

12 MR. SCHEUER: Objection as irrelevant.

13 THE WITNESS: These are politicians, no,
14 I'm not aware, and I don't track that.

12:05:06 15 BY MR. BANDLOW:

16 Q Are you aware that Tempe, Arizona City
17 Councilman Barbara Carter has sent a letter
18 supporting Ms. Kramer and Ms. Jacobson's request
19 for a congressional investigation?

12:05:12 20 MR. SCHEUER: Objection; irrelevant.

21 The witness can answer.

22 THE WITNESS: I'm not aware of that.

23 BY MR. BANDLOW:

24 Q Are you aware that the Semmelweis Society
12:05:24 25 has sent a letter in support of Ms. Kramer and

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1 Ms. Jacobson's request for a congressional
2 investigation?

3 A Could I the spelling, please.

4 Q Semmelweis, S-e-m-m-e-l-w-e-i-s?

12:05:36 5 A Never heard of them.

6 Q Are you aware that Detroit Air Traffic
7 Controllers Union has sent a letter in support of
8 Ms. Kramer's and Ms. Jacobson's request for a
9 congressional investigation?

12:05:46 10 MR. SCHEUER: Same objection

11 THE WITNESS: I'm not aware of it.

12 BY MR. BANDLOW:

13 Q Are you aware the American Federation of
14 Teachers in Massachusetts has sent a letter
12:05:56 15 supporting Ms. Kramer and Ms. Jacobson's request
16 for a congressional investigation?

17 MR. SCHEUER: Objection; irrelevant;
18 assumes facts not in evidence.

19 I permit the witness to answer.

12:06:06 20 THE WITNESS: I'm not aware of it.

21 BY MR. BANDLOW:

22 Q Are you aware that the Homeowners Against
23 Deficient Dwelling has sent a letter supporting
24 Ms. Kramer and Ms. Jacobson's request for a
12:06:16 25 congressional investigation?

1 A The what?

2 Q Homeowners Against Deficient Dwelling.

3 MR. SCHEUER: Objection: irrelevant;
4 assumes facts not in evidence.

12:06:22 5 Permit the witness to answer.

6 THE WITNESS: I'm not aware of it.

7 BY MR. BANDLOW:

8 Q Are you aware that Policyholders of
9 America has sent a letter supporting Ms. Kramer and
10 Ms. Jacobson's request for a congressional
11 investigation?

12 MR. SCHEUER: Objection: irrelevant;
13 lacks foundation.

14 Permit the witness to answer.

12:06:44 15 THE WITNESS: I'm not aware of nor am I
16 aware that any of this is true.

17 MR. BANDLOW: Let's just mark all of that
18 as 1003.

19 (Defendants' Exhibit 1003 was marked for
12:07:00 20 identification by the Certified Shorthand Reporter;
21 a copy of which is attached hereto.)

22 BY MR. BANDLOW:

23 Q To the extent you question the basis for
24 my questions, there you go.

12:07:14 25

A There I go, okay. Is that a question?

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1 MR. BANDLOW: In case you want to object
2 on that basis, Mr. Scheuer, that's the basis for
3 these questions. And I also dispute your relevancy
4 objections, but we'll deal with that at the proper
12:07:26 5 time.

6 BY MR. BANDLOW:

7 Q Are you aware that the Massachusetts
8 Nurses Association has sent a letter supporting
9 Ms. Kramer and Ms. Jacobson's request for a
12:07:36 10 congressional investigation?

11 MR. SCHEUER: Objection: lacks
12 foundation; irrelevant.

13 Permit the witness to answer.

14 THE WITNESS: I'm not aware of it.

12:07:42 15 BY MR. BANDLOW:

16 Q Are you aware that the Massachusetts
17 Coalition for Occupational Safety and Health has
18 sent a letter in support of Ms. Kramer and
19 Ms. Jacobson's request for a congressional
12:07:50 20 investigation?

21 MR. SCHEUER: Objection: lacks

22 foundation; irrelevant.

23 I'll permit the witness to answer.

24 THE WITNESS: I'm not aware of it.

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1 BY MR. BANDLOW:

2 Q Are you aware that the Fungal Disease
3 Resource Center has sent a letter supporting
4 Ms. Kramer and Ms. Jacobson's request for a
12:08:10 5 congressional investigation?

6 MR. SCHEUER: Objection: irrelevant;
7 lacks foundation.

8 I'll permit the witness to answer.

9 THE WITNESS: I'm not aware of it.

12:08:12 10 BY MR. BANDLOW:

11 Q Are you aware that the Boston Teachers
12 Union has sent a letter supporting Ms. Kramer and
13 Ms. Jacobson's request for a congressional
14 investigation?

12:08:20 15 MR. SCHEUER: Objection: irrelevant;
16 lacks foundation.

17 I'll permit the witness to answer.

18 THE WITNESS: I think you asked that
19 already, but I'm not aware of it.

12:08:30 20 MS. KRAMER: That's a different one.

21 MR. BANDLOW: Different teachers union.

22 BY MR. BANDLOW:

23 Q Are you aware that the Work Loss Data
24 Institute has sent a letter supporting Ms. Kramer
12:08:38 25 and Ms. Jacobson's request for a congressional

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1 investigation?

2 MR. SCHEUER: Objection: lacks
3 foundation; irrelevant.

4 I'll permit the witness to answer.

12:08:44 5 THE WITNESS: No, I'm not aware of it.

6 BY MR. BANDLOW:

7 Q Are you aware that the Massachusetts State
8 representative Michael Rush has sent a letter
9 supporting Ms. Kramer and Ms. Jacobson's request
12:08:56 10 for a congressional investigation?

11 MR. SCHEUER: Objection: lacks
12 foundation; irrelevant.

13 I'll permit the witness to answer.

14 THE WITNESS: No, I'm not aware of that.

12:09:02 15 BY MR. BANDLOW:
16 Q Are you aware that California Work Safe is
17 supporting the request for a congressional
18 investigation?
19 MR. SCHEUER: Objection: lacks
12:09:10 20 foundation; irrelevant.
21 Permit the witness to answer.
22 THE WITNESS: Any congressional invest --
23 actually, I'm not aware of any congressional
24 investigation.
12:09:22 25 ///

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1 BY MR. BANDLOW:
2 Q Did ACOEM ever sue the Wall Street Journal
3 for the article we've talked about?
4 A You asked me that already.
12:10:18 5 Q I asked if Veritox did.
6 A No, you asked me about ACOEM in the
7 previous deposition.
8 MR. SCHEUER: Objection; asked and
9 answered.
12:10:24 10 You can answer it again.

11 THE WITNESS: I don't think so, but ACOEM
12 is its own organization.

13 BY MR. BANDLOW:

14 Q Has anyone sued the Wall Street Journal
12:10:32 15 over that article as far as you know?

16 MR. SCHEUER: Objection; irrelevant.

17 Again, if you know the answer, you can --
18 the question is as far as you know.

19 THE WITNESS: No, not as far as I know.

12:10:46 20 BY MR. BANDLOW:

21 Q We were talking earlier about some of the
22 research for the ACOEM paper that was discussed in
23 the Henry Waxman letter --

24 A Which letter?

12:11:08 25 Q The Henry Waxman letter that you went

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1 through and listed the things. Have you seen
2 firsthand the effects of inhaled mycotoxins?

3 MR. SCHEUER: Has he seen? I'm sorry,
4 could I have the question --

12:11:28 5 THE WITNESS: Yes.

6 BY MR. BANDLOW:

7 Q Where have you seen firsthand the effects

8 from inhaled mycotoxins?

9 A The presence of mycotoxins on particles is
12:11:38 10 ubiquitous. Right now I'm looking at the effects
11 of inhaled mycotoxins at extremely low
12 concentrations.

13 Q You're not a medical doctor; correct?

14 A I think I -- we covered that in the first
12:11:52 15 deposition.

16 Q And you don't examine human beings for
17 biological effects of mycotoxins; correct?

18 A Not independent of a physician, no.

19 Q You're not a veterinarian either; correct?

12:12:08 20 A That's correct.

21 Q Okay. So have you ever studied the effect
22 of inhaled mycotoxins in animals?

23 A Of course.

24 Q But studied other people's research?

12:12:20 25 A Studied is studied.

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1 Q But not actually done studies on the
2 animals themselves; correct?

3 MR. SCHEUER: Could you rephrase that

4 question maybe. Counsel, I think your question
12:12:36 5 maybe just can be rephrased.

6 BY MR. BANDLOW:

7 Q Do you understand the concept of bench
8 research?

9 A You're trying to use a verb -- I don't
12:12:46 10 know what that means to you.

11 Q To me, it means not looking at other
12 people's research but actually doing the studies on
13 the animals themselves. Have you ever done that to
14 a understand the effects of mycotoxins on animals?

12:13:00 15 A You never do -- first of all, you never do
16 a study on animals without looking at the body of
17 literature before you do the study, otherwise you
18 can't formulate your question. If you're asking me
19 have I ever experimented on animals with
12:13:16 20 mycotoxins, the answer is, no. I answered that at
21 the previous deposition and nor would there be a
22 reason to for these kinds of effects.

23 Q Did you provide expert opinion services
24 for the U.S. Department of Justice in 2006 in a
12:13:48 25 mold claim involving a military family, the

1 Mitchells?

2 MR. SCHEUER: Objection; irrelevant.

3 Permit the witness to answer.

4 THE WITNESS: That's possible. I don't

12:13:58 5 remember specifically.

6 BY MR. BANDLOW:

7 Q Do you recall there was a claim that
8 children were injured by mold in military housing
9 after a sump pump leak, does that sound familiar?

12:14:10 10 MR. SCHEUER: Objection; irrelevant.

11 Permit the witness to answer.

12 THE WITNESS: No. I would have to see the
13 case specifics. I don't memorize all the cases
14 I've done.

12:14:20 15 BY MR. BANDLOW:

16 Q These we just saw at part of the new
17 production, so I'm trying to do the best I can.

18 A That's fine. Why don't you give me what
19 it is you're referring to, and I can answer that.

12:14:26 20 Q Do you recall Veritox being hired by the
21 Department of Justice to deal with these claims by
22 the family, the Mitchells, the military family?

23 A That's possible. I don't recall that
24 specifically. If you want to talk about what it is

12:14:40 25 you're referring to, why don't you give it to me.

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1 MR. BANDLOW: Where ever we are next in
2 line.

3 THE REPORTER: 1004.

4 (Defendants' Exhibit 1004 was marked for
12:15:40 5 identification by the Certified Shorthand Reporter;
6 a copy of which is attached hereto.)

7 BY MR. BANDLOW:

8 Q These are documents I've handed to you
9 that were recently produced that appear to be
12:15:46 10 expert reports of you and Dr. Robbins, and then
11 there's also some financial information about what
12 was paid to Veritox by the U.S. Department of
13 Justice. Do you recognize those documents?

14 A Again, not specifically but they look like
12:16:02 15 our reports.

16 Q Do you know if in your opinion provided in
17 this case you relied on the ACOEM statement as a
18 basis to deny the claims being made by the family
19 members in that case?

12:16:58 20 A I don't have a specific recollection. I
21 can read it and find out.

22 So this is Mitchell?

23 Q Uh-huh.

24 A I don't find the specific reference.

12:18:16 25 These would have been produced because they said

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1 ACOEM in there. We are have relied -- there's a
2 long list of materials we relied on. And it would
3 be incorrect to say we were relying on the ACOEM
4 position statement. It's a document I wrote; it's

12:18:34 5 science I understand, but the idea -- I'm relying
6 on the science. I might quote the ACOEM statement,
7 but I'm relying on the science.

8 Q And the last documents in there, is it
9 correct Veritox was paid \$120,000 by the Department
12:19:00 10 of Justice for those services in the Mitchell case?
11 That document right there.

12 A I have no way to verify that. I could go
13 back to the record and verify it. This doesn't
14 appear to be with specific reference to any one
12:19:30 15 case. I don't know how to answer that nor --

16 Q Do you know if Veritox did more than one
17 case for the Department of Justice?

18 A We've done several cases, yes, but not all

19 of which involve mold.

12:19:56 20 Q Has anyone -- can you cite to one
21 published peer-reviewed paper that concludes that
22 mycotoxins in an indoor environment could not reach
23 a level to cause human illness besides the ACOEM
24 statement?

12:20:18 25 A The ACOEM statement doesn't say that

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1 either. I couldn't cite to any paper that says
2 that because it's not true.

3 MR. SCHEUER: Excuse me. Could I have the
4 question and answer read back, please.

12:20:28 5 (Record read as follows:

6 "QUESTION: Has anyone -- can you
7 cite to one published peer-reviewed paper
8 that concludes that mycotoxins in an indoor
9 environment could not reach a level to
10 cause human illness besides the ACOEM
11 statement?

12 "ANSWER: The ACOEM statement doesn't
13 say that either. I couldn't cite to any
14 paper that says that because it's not

12:20:26 15 true.")

16 BY MR. BANDLOW:

17 Q It could reach sufficient levels in an
18 indoor environment, but it's typically your
19 testimony it has to be extremely high levels?

12:21:04 20 A Well, we can calculate an upper limit what
21 could be present and when the upper limit is too
22 low to cause any adverse effects, then the answer
23 is, no, it's extremely unlikely that it's causing
24 any adverse effects. If you were to get to, say,
12:21:20 25 grain levels of concentration, of course, that's

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1 part of dose response; that's possible.

2 Q Has anyone replicated and peer-review
3 published the math calculations while concluding
4 human illness from exposure to inhaled mycotoxins
12:21:44 5 in water damaged buildings is highly unlikely at
6 best?

7 MR. SCHEUER: Objection; asked and
8 answered in the prior session of this deposition.

9 I'll permit the witness to answer it
12:21:52 10 again.

11 THE WITNESS: I've never seen those

12 precise words nor would I expect anyone to
13 precisely say the same thing. The idea is
14 certainly there.

12:22:04 15 MR. BANDLOW: Is this it?

16 MS. KRAMER: I think so.

17 MR. BANDLOW: No, this one. Here we go.

18 I don't have a signature page.

19 Mark that one whatever is next.

12:24:00 20 (Defendants' Exhibit 1005 was marked for
21 identification by the Certified Shorthand Reporter;
22 a copy of which is attached hereto.)

23 BY MR. BANDLOW:

24 Q The document I've handed to you is a

12:24:32 25 declaration that was filed in connection with a

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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

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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

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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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1 illnesses?

2 A Yes.

3 Q What document do you think that was?

4 A I don't remember at this point. That was
12:33:32 5 part of the case study. Just --

6 Q Do you recall a document that indicated
7 that she believed that the mold in the house caused
8 a life-threatening illness?

9 A Yes.

12:33:48 10 Q But you don't remember specifically what
11 that document was?

12 A Not at this point. We're talking about a
13 case that was eight years ago, six years ago; I
14 can't remember.

12:34:06 15 Q And is it your belief that your testimony
16 in that case, Ms. Kramer had with her insurance
17 carrier, is some basis for Ms. Kramer's feelings
18 about you in particular?

19 A Yes.

12:34:22 20 Q How is that?

21 MR. SCHEUER: Objection: vague and
22 ambiguous; incomprehensible.

23 Instruct the witness not to answer.

24 Maybe you could rephrase the question.

12:34:32 25 ///

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1 BY MR. BANDLOW:

2 Q Do you believe that she -- do you believe
3 that she believed that your testimony was adverse
4 to her in her claim against her insurance carrier?

12:34:42 5 A Yes.

6 Q Why?

7 MR. SCHEUER: Why does the witness believe
8 that she believed that?

9 MR. BANDLOW: Yes.

12:34:52 10 MR. SCHEUER: Why does the witness believe
11 that Ms. Kramer believed something?

12 Incomprehensible; vague and ambiguous.

13 If you understand that, you can answer.

14 BY MR. BANDLOW:

12:35:00 15 Q Well, she walked out of court with a check
16 for a half a million dollars and said, "Damn, I'd
17 be really rich if it weren't for that bastard
18 Kelman." Anything like that? Did anything happen
19 that made you go, Wow, she really hates me because
12:35:14 20 of what I did in this insurance lawsuit? Anything
21 like that?

22 A Um, is there any testimony that she walked
23 out of court with a half a million dollars?

24 Q Yeah, there's a judge's order to that
12:35:26 25 effect.

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1 MR. SCHEUER: That's that confidential
2 order, that confidential one.

3 THE WITNESS: I haven't seen that.

4 MR. BANDLOW: We have talked about it

12:35:30 5 millions of times in open court. It was an order
6 approved by Judge Orfield in this case.

7 BY MR. BANDLOW:

8 Q Were you made aware that she got a
9 judgment, a substantial judgment in that case?

12:35:38 10 MR. SCHEUER: Were you aware she got a
11 judgment in that case?

12 THE WITNESS: I was aware she got a
13 judgment. No, actually, I was aware there was a
14 settlement, no judgment.

12:35:50 15 BY MR. BANDLOW:

16 Q Okay. There was a settlement approved by
17 the court, were you aware of that?

18 A I thought all settlements were approved by
19 the court.

12:35:58 20 Q Actually, they're not, but were you aware
21 that that happened?

22 A I was aware that there was a settlement.

23 Q Okay. And so did you have any information
24 that led you to believe that Ms. Kramer was somehow
12:36:08 25 unhappy with your involvement in that lawsuit with

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1 her carrier?

2 A The carrier told us that she had received
3 far less than she had demanded in large part based
4 on our testimony.

12:36:26 5 Q Who at the carrier told you that?

6 A At this point, I don't remember. You're
7 talking about a case that was six or eight years
8 ago.

9 Q And your testimony was your deposition
12:36:40 10 testimony?

11 A I believe we did reports, and I don't
12 remember if I did a deposition or not, I can't -- I
13 just don't remember that case.

14 Q You sat for an entire day of deposition in
12:36:54 15 this case, don't you remember?

16 A Eight years ago? What's the date on that?
17 I don't remember when it was.

18 Q October of 2003, five years ago, do you
19 remember sitting for a deposition?

12:37:08 20 A No.

21 Q You don't recall testifying in that
22 deposition that you were not qualified to testify
23 about Ms. Kramer's daughter's particular health
24 condition; correct?

12:37:28 25 A If you're talking about -- no, I don't

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1 recall testifying to that. If you're talking about
2 cystic fibrosis, that's not a toxicologist issue.
3 I wouldn't have been testifying about cystic
4 fibrosis.

12:37:40 5 Q Your only -- your only basis for
6 concluding that Ms. Kramer was somehow unhappy with
7 your involvement in her lawsuit with her carrier
8 was the carrier supposedly told you that she was;
9 correct?

12:37:54 10 A No. The carrier told me that she got way
11 less than she demanded.

12 Q Do you remember what the difference was
13 between what she demanded and what she got, did
14 they tell you that?

12:38:06 15 A I was never told that.

16 Q Did Ms. Kramer ever confront you in any
17 way about your testimony in her case with her
18 carrier?

19 A Confront me?

12:38:14 20 Q Yeah.

21 A No.

22 Q Did you ever get any representation -- did

23 you ever hear either from her or anybody else that
24 she had stated that she was unhappy with your
12:38:26 25 testimony and that had prevented her from getting

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1 the results she wanted?

2 A No. My information came from the carrier
3 and her subsequent actions.

4 Q Is there any -- and you believe that is a
12:38:52 5 basis for her having some kind of malice towards
6 you?

7 MR. SCHEUER: Objection; vague and
8 ambiguous.

9 I mean, are you asking the witness if he
12:39:02 10 believes that it would be rational for her to feel
11 malicious towards him because of that; is that your
12 question?

13 MR. BANDLOW: No. I'm asking him if he
14 believes that because of his testimony she harbors
12:39:16 15 some ill feelings towards him.

16 THE WITNESS: Yes.

17 BY MR. BANDLOW:

18 Q Is there any other reason you believe that
19 Ms. Kramer somehow harbors some ill feelings

12:39:26 20 towards you?
21 MR. SCHEUER: Objection; this was all gone
22 into at extraordinary length at the last session of
23 the witness's deposition. There's no authority for
24 going into this again today. This is beyond the
12:39:38 25 scope of the judge's order, but I'll permit the

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1 witness to answer.

2 THE WITNESS: Her plethora of postings on
3 the internet including this press release.

4 BY MR. BANDLOW:

12:40:08 5 Q Do you know what the AIHA is?

6 A Yes.

7 Q What is that?

8 A American Institute for -- American

9 Industrial Hygiene Association.

12:40:22 10 Q What is it that organization does?

11 A It's a professional group for industrial
12 hygienists, and they actually allow anyone to join.

13 Q Do you know any members of that
14 organization?

12:40:34 15 A Many.

16 Q Are they people that you respect in the
17 medical community, scientific medical community?

18 A There's many thousands of members, so some
19 of them, yes.

12:40:52 20 Q Are you aware that Ms. Kramer is a member
21 of AIHA?

22 A I wasn't aware of that, but she's free to
23 join any organization that doesn't require
24 professional credentials, she can join.

12:41:06 25 Q And are you aware that Ms. Kramer is on

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1 the ASTM committee that's writing the guidelines
2 for mold evaluators?

3 A I give the same answer. I have heard
4 that. She's -- there's no -- no requirement for
12:41:18 5 professional credentials, so certainly she can join
6 that.

7 MR. SCHEUER: Excuse me, Counsel. How
8 much longer are you intending to go?

9 MR. BANDLOW: Not much, not much actually.

12:41:32 10 MR. SCHEUER: So skip lunch? Are we going
11 to work through lunch? Is that your plan?

12 MR. BANDLOW: Well --

13 MR. SCHEUER: That's fine with me.

14 MR. BANDLOW: Yeah. I figure if we at

12:41:44 15 least wait until about 1:15 to see where we are,

16 and if we do a little later lunch, I might be done

17 by then.

18 MR. SCHEUER: That's perfectly fine if

19 that's okay with you?

12:41:54 20 THE WITNESS: Sure.

21 MR. SCHEUER: Okay. Can we take a break

22 though?

23 MR. BANDLOW: Sure.

24 THE VIDEOGRAPHER: We're now going off the

12:42:00 25 record. The time is 12:41.

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1 (Recess taken from 12:41 p.m. until

2 1:09 p.m.)

3 THE VIDEOGRAPHER: We're now back on the

4 record. The time is 1:09.

01:09:24 5 BY MR. BANDLOW:

6 Q When the press release came out, do you

7 recall that the Oregonian Newspaper had run an

8 article about the Haynes case the day before

9 Ms. Kramer's press release came out?

01:09:44 10 MR. SCHEUER: Objection; this was asked
11 and answered in the prior session of this
12 deposition. It's beyond the scope of the order
13 allowing this deposition, but I'll permit the
14 witness to answer.

01:09:51 15 MR. BANDLOW: I don't think I've asked
16 this line of questions, but go ahead.

17 THE WITNESS: At this point, I don't
18 recall.

19 BY MR. BANDLOW:

01:09:57 20 Q What else do you recall ever seeing about
21 the Haynes case, other than the press release, if
22 anything? Have you seen any newspaper articles
23 about it or --

24 A At this point, I really don't recall
01:10:16 25 seeing anything -- at this point, there were some

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1 kind of trade -- there's a trade journal that came
2 out with some information. I don't really recall
3 anything from the Oregonian. I just don't recall.
4 I was not paying attention at the time.

01:10:43 5 Q About how many cases per year do you act

6 as an expert witness in mold-related cases?

7 A In what time frame?

8 Q Just per year, can you compute it in that
9 way, each year you've got 12? 20? 5? Do you have
01:11:33 10 any sense of that?

11 A No.

12 Q Do you know how many you got ongoing right
13 now?

14 MR. SCHEUER: This would be mold cases in
01:11:40 15 which he has been designated as an expert.

16 MR. BANDLOW: Yes. Let's start with that,
17 mold cases in which you've been designated as an
18 expert.

19 THE WITNESS: I think one.

01:11:52 20 BY MR. BANDLOW:

21 Q What about mold cases you currently have
22 right now in which you are involved in consulting
23 in some manner on it but you haven't been
24 designated as an expert?

01:12:06 25 A One or two.

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1 Q Was Dr. Sudakin a co-author of the

2 American College of Medical Toxicology's position
3 statement on mold?

4 A It's Sudakin.

01:12:48 5 Q Sudakin.

6 A And I don't know if it's a position
7 statement, but there was a publication.

8 Q And Dr. Saxon was a co-author for the
9 American Academy of Allergy, Asthma and

01:13:23 10 Immunology's position paper on mold; correct?

11 A His name is on that, yes.

12 Q So -- all right. Okay. Yes. You and
13 Dr. Hardin were co-author's of the American College
14 of Occupational Environmental Medicine position
01:14:11 15 paper on mold; correct, or position statement on
16 mold?

17 A What did you just ask me?

18 Q You and Dr. Hardin were co-authors of the
19 ACOEM position statement; correct?

01:14:19 20 MR. SCHEUER: Wait. I'm sorry, you're --
21 are you misspeaking or are we mishearing?

22 BY MR. BANDLOW:

23 Q You and Dr. Hardin were co-authors of the
24 American College of Occupational Environmental

01:14:32 25 Medicine's position statement on mold; correct?



1 MR. SCHEUER: You're asking him about the
2 ACOEM statement?

3 MR. BANDLOW: Yes.

4 MR. SCHEUER: And you're asking --

01:14:46 5 MR. BANDLOW: If he and Dr. Hardin were
6 co-authors of that.

7 MR. SCHEUER: Were two of the authors of
8 it.

9 MR. BANDLOW: Were two of the authors of
01:14:58 10 that, yes.

11 MR. SCHEUER: Okay. I think that's been
12 asked and answered several hundred times, but okay.

13 THE WITNESS: Yeah, you're choking, but
14 yes.

01:15:04 15 BY MR. BANDLOW:

16 Q And then you, Dr. Hardin and Coreen
17 Robbins were co-authors of the Manhattan Institute
18 paper; correct?

19 A Well, I don't understand why you're asking
01:15:27 20 me again.

21 MR. SCHEUER: I share the witness's
22 problem here. Isn't this -- aren't you asking
23 about stuff that we admitted in interrogatories,

24 their names are on the reports? Are you asking
01:15:45 25 something different than all that? I'm really

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1 missing what you're asking.

2 THE WITNESS: I'm confused.

3 BY MR. BANDLOW:

4 Q Let me ask you this: The American College
01:15:52 5 of Medical Toxicology's position statement on mold,
6 the ACOEM report, the Manhattan Institute report,
7 the American Academy of Allergy, Asthma and
8 Immunology's position paper, all of those were
9 co-authored by either Veritox or Dr. Andrew Saxon;
01:16:19 10 correct?

11 A Well, first of all, are you intentionally
12 mischaracterizing the ACOEM position statement as a
13 report?

14 Q No. If I said report, I misspoke. I mean
01:16:31 15 the ACOEM statement that we've talked about.

16 A Well, the authors are who the authors are.
17 Again, I'm puzzled.

18 Q Okay. Do you have any idea how many cases
19 that you've testified in in which people were

01:17:51 20 claiming some kind of injury due to exposure to
21 water damaged buildings?

22 A In total, no.

23 Q Is it in the hundreds? Is it 20?

24 A I have no idea.

01:18:07 25 Q And -- I believe I asked you this, but I

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1 want to ask it again to set up my next question:

2 Can you think of one of those cases where you

3 didn't testify that the person could not have been

4 injured by the mold?

01:18:30 5 MR. SCHEUER: Could I have that read back,
6 please.

7 (Record read as follows:

8 "QUESTION: Can you think of one

9 of those cases where you didn't testify

01:18:27 10 that the person could not have been

11 injured by the mold?")

12 MR. BANDLOW: Let me rephrase that.

13 There's too many double negatives in there.

14 BY MR. BANDLOW:

01:18:44 15 Q In all of those cases you've testified

16 that the person claiming damage from the mold that

17 the mold could not have caused that; is that
18 correct, could not have caused the health damage
19 being claimed in the case?

01:19:07 20 A Um, actually, no, that's not true.

21 Q Can you remember an occasion when you
22 testified that you believe there was a possibility
23 that the mold exposure caused a health effect in
24 the particular case?

01:19:20 25 A Oh, sure.

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1 Q When was that?

2 A Almost every one of them. Mold is
3 well-known to cause or at least have the potential
4 for causing allergies and allergic reactions. One
01:19:37 5 of the basis for hypersensitivity pneumonitis, mold
6 infections occur -- I mean, they're rare but
7 they're not unknown.

8 Q Have you ever testified in a mold case on
9 behalf of someone who was claiming they were
01:20:00 10 injured by exposure to mold?

11 MR. SCHEUER: Are you asking whether he
12 has ever been retained by someone who claims they

13 were physically injured?

14 BY MR. BANDLOW:

01:20:08 15 Q Well, I can do it in two steps.

16 Have you ever been retained as an expert
17 by anybody who claimed they were physically
18 injured -- had some health effects due to exposure
19 to mold?

01:20:21 20 A Sure.

21 Q Have you ever provided testimony
22 supporting a claim being made by someone that
23 exposure to mold caused them some health problems?

24 A Exposure to mold, yes.

01:20:35 25 Q How many times have you given that

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1 testimony?

2 A I have no idea. But I frequently said if
3 you have an allergy to mold, and you're shown -- if
4 you're shown to have an allergy to mold and the
01:20:46 5 mold is present, it's going to cause an allergic
6 reaction, good chance of causing an allergic
7 reaction.

8 Q Other than it causing an allergic
9 reaction, have you testified that the mold exposure

01:21:00 10 supports a claim of some greater health effects
11 other than normal sort of asthma reactions?

12 A Well, asthma is a different reaction. I
13 have testified it's possible for mold to cause
14 asthma. I've also testified that it's possible for
01:21:19 15 mold to cause hypersensitivity pneumonitis some
16 rare occasions on -- you can have infections.

17 Q Well, I want to make sure we don't split
18 hairs here; I understand that you've testified that
19 it's possible, but have you testified that the mold
01:21:43 20 exposure was, in fact, in that particular case
21 causing the health damages being claimed in that
22 case?

23 A Well, my testimony almost always goes to
24 the possibility or probability. I don't do
01:21:56 25 individual diagnoses.

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1 Q Have you ever testified that because of
2 the levels of mold exposure in a particular
3 environment, it was probable that the claimed
4 health damages were caused by that mold exposure?

01:22:19 5 A I can't remember specifically if the

6 person, for example, has an allergy, has been shown
7 to be allergic to a particular type of mold and
8 that mold is present, I would never say that it
9 couldn't have caused an allergic reaction.

01:22:36 10 Q Have you ever been retained as an expert
11 by someone who was claiming illness caused by mold?

12 A As an expert?

13 Q Yeah.

14 A No, because the science on mycotoxicosis
01:22:53 15 wouldn't support that, and the allergy and
16 infections would be infectious disease person and
17 an allergist.

18 Q Okay. Do you have an opinion as to why
19 there continues to be these claims asserted that
01:23:16 20 the mold is causing severe health defects?

21 MR. SCHEUER: Objection: irrelevant; not
22 calculated to lead to the discovery of admissible
23 evidence; calls for speculation.

24 Instruct the witness not to answer.

01:23:33 25 ///

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1 BY MR. BANDLOW:

2 Q Will you follow that instruction?

3 A Yes.

4 Q Have you read a book called "Doubt is

01:24:20 5 Their Product: How Industry's Assault on Science
6 Threatens Your Health"?

7 A Not that I recall.

8 Q Okay. Do you list the Manhattan Institute
9 paper on your CV?

01:24:51 10 A I do.

11 Q Have you always done so?

12 A Oh, I'm sorry, let me correct that; I do
13 not for the Manhattan Institute. I thought you
14 were going to say ACOEM.

01:25:01 15 Q Why don't you list the Manhattan Institute
16 paper on your CV?

17 A I don't think I list any of the
18 nonscientific publications that I've done,
19 including one I've -- the one's that I've furnished
01:25:14 20 for legal journals.

21 Q Can you think of those specific ones that
22 you've been paid for but you don't list on your CV
23 besides Manhattan Institute?

24 A I can't think of another publication I've
01:25:35 25 been paid to do as a work-for-hire.



1 Q How about any other papers that you've
2 done free that have been published somewhere but
3 yet you don't list them on your CV, can you think
4 of any of those?

01:25:48 5 A Right now the only one that comes to mind
6 is one that I did for a law journal on current
7 status electric magnetic field regulations. I'm
8 sure I've done others, but nothing else comes to
9 mind.

01:26:16 10 Q And you have served as an expert witness
11 in tobacco litigation; correct?

12 A Yes.

13 Q How many times have you served as an
14 expert witness for Phillip Morris?

01:26:39 15 A I don't remember who I was retained by.

16 Q Do you know if you were ever retained by
17 Phillip Morris?

18 A I don't remember.

19 Q Do you know if you were ever retained by
01:26:50 20 R.J. Reynolds as an expert witness?

21 A Again, the way they did their cases was
22 really confusing, so I have no idea.

23 Q And in cases -- tobacco cases that you've

24 been retained as an expert, has it been your expert
01:27:18 25 testimony that lung cancer death can't be caused by

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1 cigarette smoking?

2 A Oh, I think the contrary.

3 Q You've testified that you believe that
4 cigarette smoking can cause lung cancer?

01:27:37 5 A Yes.

6 Q What is that testimony based on?

7 A Science.

8 Q Your review of -- would -- would it be
9 safe to it's a similar process you undertook to
01:27:50 10 form that opinion as you did with the mold issue,
11 you reviewed the science out there and compiled
12 that together and formed your opinion?

13 A Yes. I've also been directly involved in
14 inhalation studies on tobacco smoke.

01:28:07 15 Q Have you ever testified in an individual's
16 case that it could be proven that that individual
17 got lung cancer from smoking?

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

01:28:50 20 (Record read as follows:

21 "QUESTION: Have you ever testified
22 in an individual's case that it could be
23 proven that that individual got lung cancer
24 from smoking?")

01:28:52 25 MR. SCHEUER: I object to the question as

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1 being vague and ambiguous.

2 I don't know what you mean "testified that
3 it could be proven."

4 BY MR. BANDLOW:

01:28:59 5 Q Well, meaning -- here's what I mean, sure
6 you can testify in a case that, in general, you can
7 conceive of the concept based on a number of
8 factors that smoking cigarettes could cause cancer,
9 but I'm talking about have you ever given expert
01:29:18 10 testimony in which you said, based on information
11 you've looked at regarding this particular
12 individual, I believe that there's a probability
13 that cigarette smoking caused this cancer; have you
14 ever given that kind of testimony?

01:29:31 15 A I've never been asked to do that.

16 Q Do you list inhalation studies on your CV?

17 A I'd have to go back and look. I don't
18 recall.

19 Q Do you recall providing comments on behalf
01:31:19 20 of Phillip Morris to the California EPA regarding
21 environmental tobacco smoke and low birth weight?

22 MR. SCHEUER: Objection; irrelevant.

23 I'll allow the witness to answer.

24 THE WITNESS: Um, that was a long time
01:31:36 25 ago.

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1 BY MR. BANDLOW:

2 Q 1999 while you were at Golder (phonetic).

3 A So that's nine years ago. What I recall
4 is I was asked to critique a risk assessment that
01:31:48 5 had done by, I believe, EPA, but I'm not positive
6 at this point on environmental tobacco smoke.

7 Q Was that listed on your CV?

8 A I don't list reports and critiques.

9 Q Have you ever been made aware that
01:33:08 10 Dr. Hardin said that he thought the purpose of the
11 Manhattan Institute report was for lobbying by the
12 U.S. Chamber of Commerce?

13 A No.

14 Q Do you have any belief as to why
01:34:00 15 Ms. Kramer is seeking to have a congressional
16 investigation into the conflict of interest issues?

17 MR. SCHEUER: Objection: irrelevant;
18 lacks any relevance to any issue in this case; not
19 calculated to lead to the discovery of admissible
01:34:14 20 evidence.

21 I'll instruct the witness not to answer.

22 BY MR. BANDLOW:

23 Q Will you follow that instruction?

24 A Yes.

01:34:21 25 Q Earlier in your testimony today you used

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1 the term "advocate" to refer to Ms. Kramer. Do you
2 feel that she is an advocate for sick people?

3 A No.

4 Q Why not?

01:34:54 5 MR. SCHEUER: Why --

6 BY MR. BANDLOW:

7 Q Why don't you feel she's an advocate for
8 sick people?

9 MR. SCHEUER: Or why does he feel that

01:35:03 10 she's not an advocate for sick people?
11 MR. BANDLOW: Uh-huh.
12 MR. SCHEUER: It's irrelevant, but you can
13 answer.
14 THE WITNESS: It's a bizarre way of
01:35:11 15 determining who's sick. Basically, it appears to
16 me if someone says they believe they're sick, then
17 they -- you know, she's a supporter of them, and I
18 firmly believe that there are numerous people who
19 have a belief of being ill and end up being --
01:35:31 20 seeking inappropriate treatment and being
21 misdiagnosed leaving to subsequent serious
22 illnesses because of their beliefs. So I don't
23 think she's helping sick people at all.
24 Q Do you have a belief as to why she's doing
01:35:48 25 what she's doing in connection with the mold issue?

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1 MR. SCHEUER: Objection; irrelevant.
2 I'll allow the witness to answer.
3 THE WITNESS: Was that you are or you
4 aren't?
01:36:01 5 MR. SCHEUER: I am. I am.
6 Would you the read the question back,

7 please.

8 (Record read as follows:

9 "QUESTION: Do you have a belief

01:35:47 10 as to why she's doing what she's doing in
11 connection with the mold issue?")

12 MR. SCHEUER: Question is whether you have
13 a belief.

14 THE WITNESS: I think it's a very -- it's
01:36:22 15 a misplaced belief that she's doing some good
16 coupled with some psychiatric issues that I'm just
17 not qualified to diagnose.

18 BY MR. BANDLOW:

19 Q You're not a psychiatric doctor; correct?

01:36:41 20 A I think I just said that.

21 Q So that's your personal opinion that she
22 has some kind of mental disorder?

23 A I'm sorry, you asked me my belief and I
24 stated it.

01:36:55 25 Q And that's based on what?

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1 A Her postings on the internet, her

2 misrepresentations of illness caused by mold

3 spores, her misrepresentations of very good
4 scientists involved in real research.

01:37:15 5 Q Is there any motivation you think she has
6 for her involvement in the mold issue?

7 MR. SCHEUER: You're asking --

8 BY MR. BANDLOW:

9 Q Other than what you've testified.

01:37:25 10 MR. SCHEUER: If I understand this
11 question correctly, you're asking the witness for
12 his belief as to your client's motivation?

13 MR. BANDLOW: Sure.

14 BY MR. BANDLOW:

01:37:34 15 Q Do you think she's getting rich?

16 MR. SCHEUER: That's a different question.

17 Is that the question?

18 BY MR. BANDLOW:

19 Q Do you?

01:37:41 20 MR. SCHEUER: The question is, do you
21 think she's getting rich?

22 THE WITNESS: No, I don't think that.

23 BY MR. SCHEUER:

24 Q So is there any other motivations you

01:37:48 25 believe, any other reasons that motivate her to be

1 involved in the mold issue?

2 MR. SCHEUER: As far as you know.

3 BY MR. BANDLOW:

4 Q Other than what you testified and as far
01:37:56 5 as you know.

6 A I think at one time or another we've
7 described my beliefs.

8 Q I don't think so, actually, I believe this
9 is a brand new area of questions. So indulge me
01:38:18 10 here, because I'm pretty much almost done here.
11 I've, essentially, asked you why you personally
12 believe she is so strenuously and actively involved
13 in this mold issue; I believe you told me a
14 misplaced belief that she's doing some good,
01:38:39 15 perhaps some psychiatric problems you're not
16 qualified to talk about; are there any other
17 reasons you think she's so actively involved in
18 these issues?

19 A I think we -- I described them in the SLAP
01:38:55 20 (phonetic) litigation. I think that -- I think
21 it's been presented over and over and over again,
22 and I think I've answered this question numerous
23 times.

24 Q Are you aware of any articles prepared by

01:39:30 25 Ms. Kramer that have been published in

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1 peer-reviewed journals regarding the conflict of
2 interest issue in the mold issue?

3 A Well, I think we covered those too but,
4 yes, not scientific articles, these are
01:39:45 5 commentaries. And the commentaries are not
6 peer-reviewed.

7 MR. SCHEUER: So the answer is no.

8 THE WITNESS: Well, it's a peer-reviewed
9 journal, but it's --

01:40:14 10 MR. SCHEUER: Could we have the question
11 read back, please.

12 (Record read as follows:

13 "QUESTION: Are you aware of any
14 articles prepared by Ms. Kramer that have
01:39:32 15 been published in peer-reviewed journals
16 regarding the conflict of interest issue
17 in the mold issue?")

18 MR. BANDLOW: I think he answered that.

19 BY MR. BANDLOW:

01:40:30 20 Q You have designated an expert witness in

21 this case, who is that person?

22 A Actually, his name escapes me at the
23 moment.

24 MR. SCHEUER: Corman.

01:40:48 25 THE WITNESS: Yes, Dr. Corman.

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1 BY MR. BANDLOW:

2 Q What is it you believe that Dr. Corman
3 would testify to in this matter?

4 MR. SCHEUER: Well, Counsel, we gave the
01:40:58 5 expert witness designation, do you want something
6 beyond that?

7 MR. BANDLOW: I want this witnesses
8 understanding of what Dr. Corman will offer at
9 trial.

01:41:07 10 MR. SCHEUER: If you have any
11 understanding, you can give it.

12 THE WITNESS: At this point as a -- beyond
13 the designation, I don't have any additional
14 understanding.

01:41:28 15 BY MR. BANDLOW:

16 Q Have you had conversations with Dr. Corman
17 about this lawsuit?

18 A No.

19 Q Do you know Dr. Corman?

01:41:37 20 A Not personally, no.

21 Q Have you ever spoken to him in your life?

22 A If I have, I'm not aware of that.

23 Q Do you know why it was he was the person

24 picked to be an expert witness in this case?

01:41:55 25 MR. SCHEUER: Objection; evading the

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1 attorney/client privilege.

2 BY MR. BANDLOW:

3 Q Did you suggest that he be designated as
4 an expert in this case independently of any advice

01:42:06 5 provided to you by your counsel?

6 A Independently, no, no.

7 Q Will there be anyone you intend to have
8 testify as a witness on behalf of Veritox at trial
9 other than you?

01:42:31 10 MR. SCHEUER: Oh, objection; that's

11 attorney work-product. It is irrelevant to any

12 issue in this case. It is attorney work-product.

13 We have to divulge witnesses in the joint trial

14 readiness conference.

01:42:53 15 I'll instruct the witness not to answer
16 that.

17 BY MR. BANDLOW:

18 Q To the extent -- to the extent there would
19 be someone who could testify about the effects of
01:43:21 20 the press release on Veritox, is there anyone more
21 qualified to do so than you at Veritox?

22 MR. SCHEUER: You can answer that.

23 THE WITNESS: No.

24 MR. BANDLOW: Take a five-minute break.

01:43:44 25 THE VIDEOGRAPHER: We're now going off the

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1 record. The time is 1:44.

2 (Recess taken from 1:44 p.m. until
3 1:50 p.m.)

4 THE VIDEOGRAPHER: We're now back on
01:49:36 5 record. The time is 1:50.

6 MR. BANDLOW: I don't have any further
7 questions, and at this point I will conclude the
8 deposition of Mr. Kelman for purposes of this
9 litigation.

01:49:48 10 MR. SCHEUER: I have no questions.

11 MR. BANDLOW: While we're on the record,
12 you think the transcript will be ready in about a
13 week or so?

14 THE COURT REPORTER: I can have it done in
01:50:14 15 a week.

16 MR. BANDLOW: We have an August 15th trial
17 date, so we have to coordinate with that.

18 THE REPORTER: I can have it done in a
19 week, no problem.

01:50:16 20 MR. BANDLOW: Then that should work. I
21 don't know if your client has any problems with
22 that review period.

23 MR. SCHEUER: If you get it in a week, can
24 you look it over in a week after that?

01:50:27 25 THE WITNESS: Yeah.

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1 MR. BANDLOW: Okay. Why don't we
2 stipulate that the reporter be relieved of her
3 obligation to maintain custody of the original;
4 that the original be sent to Mr. Scheuer for him to
01:50:41 5 transmit to his client. His client will have
6 whatever time prior to trial he needs to review it

7 and make any corrections he deems necessary. He
8 can sign it under penalty of perjury. And if for
9 any reason it's not signed, a certified original
01:50:56 10 can be used for all purposes at trial.

11 MR. SCHEUER: That's fine. So stipulated.

12 THE VIDEOGRAPHER: This now concludes
13 today's deposition. We're going off the record.
14 The time is 1:51.

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16 (WHEREUPON THE DEPOSITION WAS ADJOURNED AT
17 1:51 P.M.)

18 (CERTIFICATE OF DEPOSITION OFFICER
19 ATTACHED ON FOLLOWING PAGE HEREOF.)

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I do solemnly swear under penalty of perjury
that the foregoing is my deposition under oath;
are the questions asked of me and my answers thereto;
that I have read same and have made the necessary
corrections, additions, or changes to my answers that I
deem necessary.

In witness thereof, I hereby subscribe my name
this _____ day of _____, 20__.

Bruce Kelman



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CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

I, the undersigned, Certified Shorthand Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative of employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name_____.

Dated:_____

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