

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

**BRUCE J. KELMAN &
GLOBALTOX, INC.,**

Plaintiffs,

v.

**SHARON KRAMER, and DOES 1
through 20, inclusive,
Defendant.**

CASE NO. GIN044539

**Declaration of Jury Foreman, Roy
Litzenberg**

**[Assigned for All Purposes To
Hon. Lisa C. Schall, Department
31]**

Trial Date: August 18, 2008

1. My name is Roy Litzenberg. In August of 2008, I was the Jury Foreman in the trial of Kelman and GlobalTox vs. Kramer.

2. On day two of deliberation, the jury issued a written question to the judge. My recollection of the question is: "If we find that Ms. Kramer acted with actual malice as defined in the Plaintiff's Special Jury Instruction – Proof of Actual Malice (included as Attachment A) is this equivalent to answering "Yes" to Question 5 of the Special Verdict Form? (included as Attachment B)"

3. The response received from the Judge was "Yes".

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this Declaration was executed by me on this 20th day of December, 2008, in San Marcos, California.



Declaration of Jury Foreman, Mr. Roy Litzenberg

ATTACHMENT A

**PLAINTIFF'S SPECIAL JURY INSTRUCTION –
PROOF OF ACTUAL MALICE**

PLAINTIFFS' SPECIAL JURY INSTRUCTION

Proof of Actual Malice

Actual malice may be proved by circumstantial evidence. Although personal ill will by itself is not sufficient to prove actual malice, a combination of Kramer's anger, hostility toward the Plaintiffs, failure to investigate or subsequent conduct may all constitute circumstantial evidence that actual malice existed. Evidence alone of Kramer's animosity, hatred, spite or ill will toward Kelman or Globaltox does not establish actual malice.

ATTACHMENT B

SPECIAL VERDICT FORM NO. 1

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8 **Superior Court of the State of California**
9 **County of San Diego, North County Division**
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11 BRUCE J. KELMAN, GLOBALTOX, INC.,) CASE NO. GIN044539
12)
13 Plaintiffs,) **SPECIAL VERDICT FORM NO. 1**
14) **DR. KELMAN**
15 v.)
16 SHARON KRAMER, and DOES 1 through 20,)
17 inclusive,)
18 Defendants.)
19

20 Plaintiff Bruce J. Kelman claims that Defendant Sharon Kramer acted wrongly by
21 making the following statement: "Dr. Kelman altered his under oath statements on the
22 witness stand" while he testified as a witness in an Oregon lawsuit.

23 1. Did Kramer make the above statement to persons other than Kelman?

24 ☐ Yes ☐ No

25 If the answer to question 1 is yes, then proceed to question 2. If you answered no,
26 stop here, answer no further questions, and have the presiding juror sign and date this
27 form.

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1 2. Did the persons to whom the statement was made reasonably understand
2 that the statement was about Bruce Kelman?

3 — Yes — No.

4 If the answer to question 2 is yes, then proceed to question 3. If you answered no,
5 stop here, answer no further questions, and have the presiding juror sign and date this
6 form.

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8 3. Could persons who read the statement reasonably have understood it to
9 mean that Kelman had committed the crime of perjury or testified falsely while on the
10 witness stand?

11 — Yes — No.

12 If the answer to question 3 is yes, then proceed to question 4. If you answered no,
13 stop here, answer no further questions, and have the presiding juror sign and date this
14 form.

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16 4. Was the statement false?

17 — Yes — No.

18 If the answer to question 4 is yes, then proceed to question 5. If you answered no,
19 stop here, answer no further questions, and have the presiding juror sign and date this
20 form.

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22 5. Did Kelman prove by clear and convincing evidence that Kramer knew the
23 statement was false, or had serious doubts about the truth of the statement?

24 — Yes — No.

25 If the answer to question 5 is yes, then proceed to question 6. If you answered no,
26 stop here, answer no further questions, and have the presiding juror sign and date this
27 form.
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2 6. If you checked yes to all of questions 1-5 above, you may award Plaintiff
3 Kelman a monetary sum up to but not exceeding \$1.00 (one dollar and no cents).

4 Sum awarded to Plaintiff Bruce J. Kelman: _____

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6 After all verdict forms have been signed, deliver all forms to the Judge, clerk , or
7 bailiff.

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9 Date: _____, 2008

10 Presiding Juror
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