

June 15, 2006

Please forward the following information to all interested parties. Ie. Physicians, Researchers, Attorneys, Mold Victims, Health Advocates, Building Stakeholders and Regulatory Bodies.

Are you aware of the Kelly Order, April 14, 2006, Sacramento, CA? It is an issue changing significant finding that will remove 'road blocks' and allow the medical understanding of mold induced illnesses to more easily go forward.

The Kelly Ruling is a huge blow to those who are most concerned about perpetuating the litigation defense myth of serious mold illnesses do not occur from exposure within an indoor environment. The Ruling discredits the entire foundation of All the medical associations, government documents, etc, that illness from inhaling mycotoxins indoors is "not plausible, improbable and junk science". One could say those, who are more concerned of financial liability than they are of the lives and safety of others, just got a "dose" of their own medicine at a "level of which we see effects".

The significance of this Kelly Ruling as it pertains to mold litigation is:

The defense argument of "not plausible, improbable and junk science" has now been determined by the courts to be "not plausible, improbable and junk science".

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Case # 02AS04291, James Harold and D. Lee Harold, Plaintiffs vs. California Casualty Insurance Company and Westmont Construction, Inc., Defendants

Honorable Michael P. Kenny, Judge of the Superior Court of California, County of Sacramento

The Plaintiffs were represented by Peter Alfert, Attorney at Law; Michael J. Cochrane, Attorney at Law, and Karen Kahn, Attorney at Law.

The Defendant, California Casualty Insurance Company, was represented by Stephen M. Hayes, Attorney at Law, and Robert S. McLay, Attorney at Law.

The Defendant, Westmont Construction Company, was represented by Ronald E. Enabnit, Attorney at Law.

Jury award to plaintiffs: \$2.3 Million.

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Subject paper deemed not acceptable by Kelly Ruling in the case, April 14, 2006

Title: Risk from inhaled mycotoxins in indoor office and residential environments. Int J Toxicol 2004; 23: 3-10.
Robbins CA, Swenson LJ, Hardin BD (Principals of litigation defense support corp. Veritox, Inc and formerly named GlobalTox, Inc.)

Slang: Veritox, 2004

The above is the review piece that was found not to be based upon sound science and therefore not to be presented in the court before a jury. The judge found it to be a "huge leap", for PhD's to take rodent studies, apply a little math and then write a review that all human illness is not plausible from mycotoxin inhalation within an indoor environment. Dr. Robbins of Veritox, Inc., could not cite anyone else's research or review paper that made the same conclusion. The reason for this is because there are not any.

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Mold Columns  
Harris Martin Publishing  
May 25, 2006

....Defendants called Andrew Saxon, M.D., of UCLA Medical School; and Coreen A. Robbins, MHS, Ph.D., CIH of Veritox in Redmond, Wash.

Robbins countered plaintiffs' experts' opinions on mold hazards and the remediation procedures and opined that the couple could have moved back into the house after Westmont's repair work was completed.

Judge Kenney held a *Kelly-Frye* hearing before trial and limited Robbins's testimony by precluding any reference to animal studies of mold hazards.

Reviewing Robbins' deposition testimony, Judge Kenney concluded that the basis for her testimony on mycotoxins and human exposure was a literature review, which he found insufficient.

'Also, when I reviewed the DHS report from April of 2005, DHS, Department of Health Services was talking about the fact that they were unable to establish personal exposure levels at this point in time based on a lack of sufficient information, and yet Dr. Robbins is asking to take an even greater step and go beyond establishing, for example, a personal exposure level and jump to modeling, which is far more tenuous and far more unreliable even in establishing something that is as hard as a personal exposure level. So those are the difficulties I'm having with Dr. Robbins' testimony,' Judge Kenney said.

The judge said that he is familiar with the use of animal studies and derivative models for humans and that such models are commonly accepted in the scientific community, but he said he is not sure such models for mycotoxin exposure would pass a *Kelly-Frye* test for admissibility.

'My fundamental problem is in looking at it from a *Kelly Frye* standpoint I just didn't see kind of acceptance in the scientific community with regard to what she had done that would allow it to be sort of presented as such,' Judge Kenney said.

'Modeling has severe limitations, and one of the difficulties I was having here was this reliance upon animal studies to jump to a modeling conclusion generally with — again, I'm speaking from my own experience because there is nothing here in this transcript — generally one will use the data that one can receive either from animal exposure studies or other information to then input in a model to make a determination with some degree of reliability,' the judge continued. 'Here I'm not hearing any of those things. I'm hearing essentially this jump from a literature review to a postulated model to a no harm result'

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To understand why this is such a boon to move the medical science forward and why it is such a significant ruling - that dispels the myth of serious mold induced illnesses are not occurring, one has to go back to the year 2000:

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2000

Title: Health effects of mycotoxins in indoor air: a critical review. Appl Occup Environ Hyg.2000;15:773-84.

Robbins CA, Swenson, L.J., Nealley, M.L., Kelman, B.J. and Gots, R.E.

Slang: Veritox, 2000

Robbins, Swenson and Kelman - Principals in defense litigation support corp, Veritox.  
Nealley and Gots -Defense experts with International Center for Toxicology and Medicine.

Veritox 2000 is based on the same premise as the Veritox 2004 cited above. Rodents, authors added math, human illness not plausible.

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2002

The American College of Occupational and Environmental Medicine (ACOEM) Mold Statement
Title: Adverse Human Health Effects Associated with Molds in the Indoor Environment

October 27, 2002

Kelman BJ (Veritox), Hardin BD (Veritox), Saxon AJ.(University of California - UC)

Edited & published in the Journal of ACOEM, the JOEM 2003

Slang: ACOEM MS, 2002

"Levels of exposure in the indoor environment, dose-response data in animals, and dose-rate considerations suggest that delivery by the inhalation route of a toxic dose of mycotoxins in the indoor environment is highly unlikely at best, even for the hypothetically most vulnerable subpopulations."

Sole reference for the above statement:

Veritox, 2000. Reference 63

NONE of the other 83 references cited for this 'state of the art review piece' support the above conclusion.

ACOEM MS, 2002 was presented as a position statement purportedly representative of 7000 physicians' understanding of mold/mold toxin induced illness. ACOEM is made up primarily of physicians who evaluate injured workers on behalf of insurers and employers.

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2003

US Chamber of Commerce/Center for Legal Policy -Manhattan Institute Mold Statement

"Center for Legal Policy is a leading voice for reform of America's civil justice system." according to their website.

Title: A Scientific View of the Health Effects of Mold

Bryan Hardin, PhD (Veritox), Andrew Saxon MD (UC), Correen Robbins, PhD, CIH (Veritox) and Bruce J. Kelman, Ph.D., DABT (Veritox)

Slang: USCC MS, 2003

*"Thus the notion that 'toxic mold' is an insidious secret 'killer' as so many media reports and trial lawyers would claim is 'Junk Science' unsupported by actual scientific study."*

Sole references for the above statement:

Veritox, 2000 and ACOEM MS 2002

The USCC MS 2003 has been reported by the Veritox authors to be a "lay translation" of the ACOEM Mold Statement. They were 'commissioned' by the political think-tank, the Manhattan Institute to write this lay translation. The authors received \$40,000 for interpreting the national protocol writing, medical association's (ACOEM) understanding to mean that all mold illness is based upon 'Junk Science'. It was then shared with stakeholder industries (real estate, building, mortgage and insurance) in a fanfare presentation in Washington, DC, July 17, 2003.

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2003

National Association of Realtors (NAR)

Title: Moldy Claims: The Junk Science of Toxic Mold

Kelman BJ.(Veritox) Hardin BD.(Veritox) Saxon AJ.(UC)

Slang: NAR 2003

"Thus the notion that 'toxic mold' is an insidious secret 'killer' as so many media reports and trial lawyers would claim is 'Junk Science' unsupported by actual scientific study."

Sole references for the above statement:

Veritox, 2000, ACOEM MS 2002 and USCC MS 2003.

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2004

Title: Risk from inhaled mycotoxins in indoor office and residential environments. Int J Toxicol 2004; 23: 3-10.

Robbins CA, Swenson LJ, Hardin BD. (Veritox, Inc. Principals)

Slang: Veritox, 2004

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2003 to 2005

Various Government Regulatory (CDC & EPA), Medical Associations (ACAAI, SOT), Industrial Hygiene Associations (AIHA), etc. make the findings of "not plausible" citing Veritox 2000, ACOEM MS 2002, USCC MS 2003, NAR 2003 and/or Veritox 2004. These five review papers have been cited as authoritative documents by the defense in virtually every mold litigation case in the US.

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2005

Example of Impact on the Courts

Testimony of Bruce J. Kelman, President of Veritox, Inc.

Author of Veritox 2000, ACOEM MS 2002, USCC MS 2003, NAR 2003 & Co-principal Veritox 2004

February 18, 2005, Haynes vs. Adair Homes, Inc. Case No. CCO211573,  
In the Court of the State of Oregon.

"Based on the studies that you have done, the literature that you have discussed, and your experience and training, have you formed an opinion based on reasonable scientific probability or certainty as to whether or not there was enough mycotoxin in the home to have caused any illness to Mrs. Haynes, Michael Haynes, or Liam Haynes?" Dr. Kelman's answer: "Yes." The attorney: "And, what is that opinion, doctor?" Kelman: *"There could not be. I mean, the differences between the maximum dose that we could come up with and the level at which we see effects for a broad range of mycotoxins is just too great."*

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2006

American Academy of Allergy, Asthma and Immunology (AAAAI) Mold Position

Title: The medical effects of mold exposure

Bush RK, Terr A.(UC), Saxon AJ (UC) and Wood RA.

Slang: Quad AI 2006

"Calculations for both acute and subacute exposures on the basis of the maximum amount of mycotoxins found per mold spore for various mycotoxins and the levels at which adverse health effects are observed make it highly improbable that home or office mycotoxin exposures would lead to a toxic adverse health effects.1, 29

Thus we agree with the American College of Occupational and Environmental Medicine evidence-based statement and the Institute of Medicine draft, which conclude that the evidence does not support the contention that mycotoxin-mediated disease (mycotoxicosis) occurs through inhalation in nonoccupational settings."

Sole reference for the above statements:

ACOEM MS 2002 - Reference 1; Veritox 2004 - Reference 29.

Note: Saxon (UC) is an author of ACOEM MS 2002, USCC 2003, NAR 2003, & Quad AI 2006

Veritox principals are authors of Veritox 2000, ACOEM MS 2002, USCC 2003, NAR 2003 & Veritox 2004.

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2006

Robbins Order, Kelly Ruling, April 14, 2006

Veritox 2004 does not pass Kelly.

Veritox 2004 is the 'second generation' of Veritox 2000. Both 'review papers' are founded on the same premise that is now debunked as not being of sound scientific protocol to determine absence of human illness from mycotoxin inhalation indoors.

ACOEM MS 2002, USCC MS 2003, NAR MS 2003, and Quad AI MS 2006 are all founded on the Veritox 2004 or Veritox 2000.

**Statements of "*not plausible, improbable, and junk science*" within all papers are debunked by the debunking of the Veritox 2004.**

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Additional Information of Significance, 2006

The Institute of Medicine (IOM), Damp Indoor Spaces and Health Report, was a primary exhibit in the Kelly hearing that discredited the Veritox 2004.

IOM Executive Summary:

"Toxicologic studies, which examine such responses using animal and cellular models, cannot be used by themselves to draw conclusions about human health effects."

IOM Chapter 4 Mycotoxins

Summary:

"Except for a few studies on cancer, toxicologic studies of mycotoxins are acute or short-term studies that use high exposure concentrations to reveal immediate effects in small populations of animals. Chronic studies that use

lower exposure concentrations and approximate human exposure more closely have not been done except for a small number of cancer studies.”

IOM Chapter 4 Mycotoxins

Summary

Considerations in Evaluation of Evidence

“Most of the information reviewed in this chapter is derived from studies in vitro (that is studies in an artificial environment, such as a test tube or a culture medium) or animal studies. In vitro studies, as explained below, are not suitable for human risk assessment. Risk can be extrapolated from animal studies to human health effects only if chronic animal exposures have produced sufficient information to establish no-observed-adverse-effect levels (NOAELs) and lowest-observed-adverse-effect levels (LOAELs). Extrapolation of risk exposure from animal experiments must always take into account species differences between animals and humans, sensitivities of vulnerable human populations, and gaps in animal data.”

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2006

Minutes from the US Surgeon General's Workshop on Indoor Air are published

"Dr. Noreen Clark [Chair of the IOM Damp Indoor Spaces and Health Report, 2004] indicated that the report did not consider only respiratory symptoms, but that these were the symptoms for which associations were strongest. *She noted that "absence of evidence is not evidence of absence," and said that the report did not intend to dismiss the possibility of effects for which the existing evidence of association was not strong or for which evidence was not available.*"

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2006

State of California Report in Response to A.B. 284, Chapter 550, Statutes of 2001
Indoor Mold: A General Guide to Health Effects, Prevention, and Remediation. (CRB-06-001 ,
January 2006)
Kenneth W. Umbach, Ph.D., and Pamela J. Davis, R.N., P.H.N.

Page 72 "Some experts believe that the ACOEM statement understates risks and effects."

Page 75 "The question of whether health effects result from indoor exposure to mycotoxins is controversial, as stated in the text and is noted above. The conclusion in the present report that such effects are at least plausible reflects, for example ..."There is an accumulated weight of evidence linking indoor airborne mold and/or mycotoxin exposures to multisystem adverse human health effects."

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2006

Center for Science in the Public Interest  
Washington, DC

Integrity in Science Watch -- Week of 3/31/2006  
Allergy Journal Authors Failed to Disclose Conflicts of Interest

The prestigious Journal of Allergy and Clinical Immunology (JACI) last month failed to disclose two physicians' roles as insurance company defense experts in their scientific review "The Medical Effects of Mold Exposure," which downplayed risks to human health from household mold. According to court documents obtained by the Center for Science in the Public Interest, Dr. Abba I. Terr, Stanford University School of Medicine, and Dr. Andrew Saxon, University of

California at Los Angeles School of Medicine, were paid up to \$600 an hour for testimony in cases brought by homeowners alleging their illnesses were caused by mold. JACI, the journal of the American Academy of Allergy, Asthma and Immunology (AAAAI), requires authors to disclose conflicts of interest to the editor, who then has discretion in publishing them. In a letter to editor Donald Leung, CSPI urged AAAAI to make disclosure mandatory and prevent authors who fail to disclose conflicts of interest from publishing in the journal for three years.

Week of 4/24/06

#### Allergy Journal Strengthens Conflicts of Interest Disclosure Policy

The Journal of Allergy and Clinical Immunology (JACI), an Elsevier publication, will require greater financial disclosure from authors and automatically publish those disclosures, the editor said. Two mold experts, Dr. Abba Terr and Dr. Andrew Saxon, failed to disclose their roles as defense witnesses in mold exposure liability lawsuits when publishing a review in the journal earlier this year that downplayed the risks from household mold exposure. Editor Donald Leung said future author conflict of interest forms accompanying JACI submissions will now include "specific questions" about expert witnessing and the journal will "ensure that all published manuscripts will carry a conflict of interest statement regarding each author."

Week of 6/5/06

#### Environmental Journal Retracts Fraudulent Study on Chromium

[Significance: Journal of ACOEM Retracts Fraudulent Study Authored by Expert Defense Witnesses for Usage in Court]

The Journal of Occupational and Environmental Medicine [Journal of ACOEM] will retract a 1997 article on chromium written under the names of two Chinese scientists after a Wall Street Journal investigation revealed that the article was actually drafted and edited by consultants for a major chromium polluter. Chemrisk, founded and directed by Dennis Paustenbach (see <http://www.IntegrityinScience.org/>), purchased in 1995 JianDong Zhang's original data on the link between chromium-6 in drinking water and cancer in Chinese villages. Chemrisk, which had been hired by Pacific Gas and Electric, the California utility company being sued for chromium contamination, then reworked the data to show that Zhang, who objected to the publication, had reversed his conclusion on the chromium-cancer link. The JOEM retraction, signed by editor Dr. Paul Brandt-Rauf, states that the article did not comply with the journal's policy because "financial and intellectual input to the paper by outside parties was not disclosed." Since its publication, the fake article has influenced regulatory decisions on chromium, including being used by a scientific panel for a 2001 report which forced California health officials to revise a recommendation for how much chromium-6 should be allowed in drinking water.

Week of 6/12/06

#### Top Allergy Journal Will Publish Contributors' Conflicts of Interest

The nation's leading allergy journal now requires authors to publish their ties to industry whenever their articles appear in that journal. The Journal of Allergy and Clinical Immunology, the official scientific journal of the American Academy of Allergy, Asthma and Immunology, recently adopted [new guidelines](#) requiring authors to disclose consultant arrangements, stock or other equity ownership, patent licensing arrangements, and expert witness testimony. Editor-in-Chief Donald Y.M. Leung initiated the policy change after the Center for Science in the Public Interest uncovered the journal's failure to report that a review on the health risk of mold exposure had been authored by two key defense witnesses in mold liability lawsuits. (See Integrity in Science Watch, 3/31 and 4/24)

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Summary

Many people have been ill with serious mold/mycotoxin induced illnesses. They have been unable to obtain proper medical treatment prior to the time these illnesses have become progressively and irreversibly debilitating. Many physicians and citizens have been falsely told that mold does not cause serious illness, leaving the medical community and public uneducated and unaware of the true danger.

The medical misinformation promoted for the benefit of the defense in mold litigation has stifled and confused the already young field of science. It has fueled contention. The promotion of the concept "not plausible, improbable, junk science" within the medical community and the general public has been a primary cause for the lack of early detection and timely medical treatment.

This in turn, has cost stakeholders with financial interest in the moldy buildings, unnecessary billions. The misinformation, that has retarded proper medical understanding, has also caused a tremendous increase in financial responsibility for stakeholders. Increased health damages sustained equals increased resultant stakeholder liability. .

Mold itself, has not been the crux of the problem. The denial of illness in an attempt to limit liability has directly caused greater illness - and thereby has caused greater liability. The situation has been wastefully self perpetuating. The defense argument of "not plausible, improbable and junk science" has proven to be its own worst enemy.

Dr Jonathan Borak, overseer for the "peer review process" of the ACOEM Mold Statement, summed the matter up best in an email he wrote in 2002:

Email September 8, 2002
From: Jonathan Borak, Chair of the Scientific Committee, ACOEM
To: Dean Grove, Past President, ACOEM
CC: Edward Bernacki, ACOEM President 2002; Barry Eisenberg,
 Executive Director ACOEM; Tim Key, ACOEM President 2003.

"Dean et al:

I am having quite a challenge in finding an acceptable path for the proposed position paper on mold. Even though a great deal of work has gone in, it seems difficult to satisfy a sufficient spectrum of the College, or at least those concerned enough to voice their views.

I have received several sets of comments that find the current version, much revised, to still be a defense argument. On the other hand, Bryan Hardin and his colleagues are not willing to further dilute the paper. They have done a lot, and I am concerned that we will soon have to either endorse or let go. I do not want to go to the BOD and then be rejected. That would be an important violation of Bryan. I have assured him that if we do not use it he can freely make whatever other uses he might want to make. If we "officially" reject it, then we turn is efforts into garbage."

Garbage it was, based on the Veritox 2000 'review' and provided credibility by the imprimatur of ACOEM. Once the credibility was established by the ACOEM, the garbage was then spread to other purported state of the art, mold review papers.

The unscientific concept that one could take a single review of rodent studies with math applied and determine all human illness from inhaling mycotoxins indoors could never happen, took on a

life of its own and grew. It became understood that one could never become seriously ill from inhaling mold indoors.

No one seemed to remember exactly how this concept came to be. They just knew it to be true because they had read it in many authoritative "state of the art" mold review papers.

The lives, health and financial well being of thousands have been forever damaged because of it.

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And that is the Landmark Significance of the Kelly Ruling on April 14, 2006, Sacramento, California, regarding "Risk from inhaled mycotoxins in indoor office and residential environments. Int J Toxicol 2004; 23: 3-10. Robbins CA, Swenson LJ, Hardin BD. (Veritox, 2004).

The courts have found Veritox 2004 is not plausible, improbable and Junk Science.

Maybe NOW we can get this issue out of the courts and into doctors' offices where it belongs. Maybe NOW we can all stop wasting time, lives and money!

Sharon Kramer  
BBA Marketing, University of Mississippi and Advocate for Mold Victims  
760-822-8026  
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