

1 SPILLANE SHAEFFER  
2 ARONOFF BANDLOW LLP  
3 Lincoln D. Bandlow (SBN 170449)  
4 Email: lbandlow@ssablaw.com  
5 1880 Century Park East  
6 Los Angeles, CA 90067  
7 Telephone: (310) 229-9300  
8 Fax: (310) 229-9380

9 Attorney for Defendant Sharon Kramer

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

12 BRUCE J. KELMAN,  
13 GLOBALTOX, INC.,

14 Plaintiffs,

15 v.

16  
17 SHARON KRAMER, and DOES 1  
18 through 20, inclusive,  
19 Defendant.  
20

CASE NO. GIN044539

**DECLARATION OF SHARON N.  
KRAMER**

**[Assigned for All Purposes To  
Hon. Michael B. Orfield,  
Department 28]**

**Trial Date: February 22, 2008**

**DECLARATION OF SHARON N. KRAMER**

I, Sharon N. Kramer, declare as follows:

1. I am the defendant in the above-captioned action. I have personal knowledge of the facts set forth herein and if sworn as a witness I could and would testify competently thereto.

2. I hold a bachelor's degree in Business Administration from the University of Mississippi, 1977. I have approximately 25 years experience in professional sales and marketing, beginning with computer sales for NCR Corporation in my early career and culminating with Rancho Santa Fe real estate sales in my later years.

3. Since 2003, I have been an advocate and proponent for those injured by mold, who often have difficulty locating physicians properly educated to treat their illnesses and who sometimes face litigation to secure their rights, including litigation concerning workers' compensation, property/casualty and health insurance claims. In this capacity, I am involved in ongoing lobbying efforts on the federal level, which have led to a Federal Government Accountability Office ("GAO") audit into the mold issue, spearheaded by Senator Edward Kennedy. A true and correct copy of Senator Kennedy's letter dated October 20, 2006 to the Comptroller General of the GAO is filed herewith as Ex. "A." The audit encompasses several governmental agencies, including FEMA, HUD, CDC, NIH and the EPA, regarding, among other things, the role of the insurance industry and conflicts of interest among private sector medical associations that influence mold-related litigation, government policy, physician education and the standards for minimizing and mitigating mold-related exposure. In addition, my research has been the foundation for a front page Wall Street Journal article from January 9, 2007, entitled *Court of Opinion: Amid Suits Over Mold Experts Wear Two Hats – Authors of Science Paper Often Cited by Defense Also Help in Litigation* ("the WSJ Article"). A true and correct copy of the WSJ Article is filed herewith as Ex. "B." I am a recognized expert on the issue of the conflicts of interest among various individuals and organizations involved in the creation of policy in the mold arena and have recently co-authored the articles *American College of Occupational and Environmental Medicine (ACOEM): A Professional Organization In Service To Industry*, International Journal of Occupational and Environmental Health, December 2007, and *Nondisclosure of Conflicts of*

1 *Interest is Perilous to the Advancement of Science, Journal of Allergy and Clinical Immunology,*  
2 September 2006. True and correct copies of these articles are filed herewith as Exs. "C" and "D."

3 4. In early 2005, I was reviewing (as I frequently do) the website Toxlaw.com  
4 (<http://www.toxlaw.com/>), which is a forum for toxic tort professionals and others interested in toxic  
5 tort litigation, including litigation over such issues as asbestos, black mold, tobacco claims, medical  
6 implants and other such matters. I noticed a posting about a civil lawsuit entitled Haynes v. Adair  
7 Homes, Inc. ("Haynes"), Court of the State of Oregon Case No. CCV0211573. The trial was one of  
8 the first in the Northwest U.S. to result in a damages judgment for, among other things, cognitive  
9 impairment of children exposed to the toxins of mold in a newly built home. At the conclusion of  
10 the jury trial in the Haynes matter, on or about March 4, 2005, the plaintiffs in Haynes were awarded  
11 a judgment of over \$500,000 (including attorneys' fees) against the negligent builder of their  
12 defective home, which had exposed them to high levels of mold and toxins. In this posting on the  
13 Toxlaw.com website, the author had stated that one of the expert witnesses for the defendants in the  
14 Haynes case was Bruce Kelman. Dr. Kelman is president and one of six principals of the  
15 Washington state based environmental consulting and expert witness company VeriTox, Inc.  
16 (formerly known as GlobalTox, Inc.), the other plaintiff in this case. The Toxlaw.com posting stated  
17 that Kelman had been caught "lying" in his testimony during the Haynes trial. In recognition of the  
18 potential national significance of the Haynes case and its outcome, I began investigating the matter  
19 to verify whether the web posting was correct and nationally significant to mold issues. The present  
20 case arises out of the Press Release that I wrote concerning the Haynes case.

21 5. As of the time of the Haynes verdict, I was aware that Kelman was a toxicologist who  
22 frequently testifies as an expert witness on behalf of insurance companies, home builders, and other  
23 institutional interests. In such testimony, Kelman opines that it has been scientifically proven that  
24 mold toxins do not, and cannot, reach levels within an indoor environment sufficient to create an  
25 exposure risk to individuals, even among the most vulnerable of subpopulations. Kelman's  
26 opinions, and the opinions of many similar defense experts in other such indoor mold exposure  
27 cases, are generally based on a purportedly peer-reviewed scientific position paper entitled *Adverse*  
28 *Human Health Effects Associated with Molds in the Indoor Environment* that Kelman co-authored in

1 2002 for the American College of Occupational and Environmental Medicine (“ACOEM”) (“the  
2 ACOEM Report”). A true and correct copy of the ACOEM Report is filed herewith as Ex. “E.” The  
3 ACOEM Report has been highly controversial within the medical community because, among other  
4 things, it was written by three individuals, including Kelman, who often testify for the insurance  
5 companies and other defense interests in mold litigation matters. This conflict of interest involving  
6 the ACOEM Report was a primary topic of the front page WSJ Article (Ex. “B”) and the articles that  
7 I co-authored for the International Journal of Occupational and Environmental Health (Ex. “C”) and  
8 Journal of Allergy and Clinical Immunology (Ex. “D”). Indeed, the investigation of such “conflicts  
9 of interest” is also a subject of investigation in connection with the GAO audit. See Ex. “A,” p.2.

10 6. Prior to my learning of the Haynes case, I had studied the expert witness testimony of  
11 various individuals involved in the writing, peer reviewing and the litigation usage of the ACOEM  
12 Report, including but not limited to Kelman. In connection with my studies of conflicts of interest, I  
13 had obtained a transcript of Kelman’s June 22, 2004 testimony at a bench trial concerning the  
14 ACOEM Report in another mold exposure case, Kilian v. Equity Residential Trust (“Kilian”), U.S.  
15 District Court for Dist. of Arizona Case No. CIV 02-1272-PHX-FJM. During Kelman’s testimony  
16 in the Kilian case he admitted that Globaltox (VeriTox) had been paid \$40,000.00 for authoring a  
17 revised version of the ACOEM Report, entitled *A Scientific View Of The Health Effects Of Mold*, for  
18 the Manhattan Institute (“the Manhattan Institute Report”). A true and correct copy of the  
19 Manhattan Institute Report is filed herewith as Ex. “F.” The Manhattan Institute is a New York-  
20 based conservative think tank with a big business policy agenda (an agenda that would clearly be  
21 harmed by those businesses having to respond financially to the damage caused by indoor mold  
22 exposure). This partisan agenda is clearly reflected by the language of Kelman’s revised Manhattan  
23 Institute Report, which states in its concluding sentence:

24  
25 Thus, the notion that “toxic mold” is an insidious, secret “killer,” as so many  
26 media reports and trial lawyers would claim, is “junk science” unsupported by  
27 actual scientific study.  
28

1 Ex. "F" at p.65 (emphasis added). With regard to the Manhattan Institute Report, Kelman gave the  
2 following testimony at trial in the Kilian matter:

3  
4 Q. You mentioned that after the [ACOEM] published the position paper, that  
5 you were approached by the Manhattan Institute to rework or reword your  
6 research, correct?

7 A. I would characterize it – I mean, they literally asked for a lay translation of  
8 that article.

9 Q. But – Which you eventually did, correct?

10 A. Yes.

11 Q. Most of it is almost word for word the same, correct?

12 A. I – The translation is the same as the original article?

13 Q. Well, translation is an interesting word. They're both in English, correct?

14 A. Yes.

15 Q. So shall we call it the Manhattan Institute version versus the ACOEM  
16 version rather than the translation? The words are substantially similar, correct?

17 A. Well, the meaning certainly is.

18 Q. And the words are substantially similar, correct?

19 A. We tried to not include the technical terms in, unless we absolutely had to,  
20 in the Manhattan Institute, so I wouldn't characterize it as substantially the  
21 same.

22  
23 Q. And that new version that you did for the Manhattan Institute, your  
24 company, GlobalTox, got paid \$40,000, correct?

25 A. Yes. The company was paid \$40,000 for it

26  
27 See Reporter's Transcript of Proceedings from the Kilian trial, a true and correct copy of which is  
28 filed herewith as Ex. "G," at 904:16 to 906:1 (emphases added). Commencing in July 2003, the  
Manhattan Institute Report has been widely promoted by the U.S. Chamber of Commerce. Filed  
herewith as Ex. "H" is a true and correct copy of a July 17, 2003 press release of the U.S. Chamber  
of Commerce announcing its issuance of the Manhattan Institute Report.

7. The findings of the ACOEM Report and the Manhattan Institute Report are highly  
questionable and have been hotly contested because, among other things, they were prepared by  
experts with ties to the financial stakeholders in mold litigation. See, e.g., Exs. "B," "C" and "D."  
Additionally, the ACOEM Report and the Manhattan Institute Report simply applied mathematical  
extrapolations to a rodent study to conclude the implausibility of human poisoning from indoor mold

1 toxin inhalation – a questionable approach that has been rejected by the National Academy of  
2 Sciences in its 2004 publication Damp Indoor Spaces and Health. Filed herewith as Ex. “I” is a true  
3 and correct copy of the Executive Summary from said publication, which concludes that  
4 “Toxicologic studies, which examine such responses using animal and cellular models, cannot be  
5 used by themselves to draw conclusions about human health effects.” Id., p.7. Such reliance on  
6 animal studies has also been rejected by at least one court. Filed herewith as Ex. “J” is a true and  
7 correct copy of the transcript from the Sacramento Superior Court matter entitled Harold v. California  
8 Casualty Ins. Co., Case No. 02A04291 in which the Court held that “relying upon [a] literature  
9 review and then jumping to animal studies and then jumping to modeling conclusions . . . is not a  
10 generally accepted . . . approach in the scientific community . . .” Id. at 28.

11 8. In this context, the additional fact that Kelman was paid by a conservative think tank,  
12 the Manhattan Institute, for his revision – or, in Kelman’s vernacular, “lay translation” – of the  
13 ACOEM Report, taken together with the fact that the Manhattan Institute Report ended with a  
14 completely partisan conclusion (see ¶ 6, supra), further destroyed any possible claim for the scientific  
15 objectivity of the “translated” ACOEM Report. In my opinion, by accepting money from the  
16 Manhattan Institute for a “translation” of the ACOEM Report while promoting the Manhattan  
17 Institute’s big business political agenda (as reflected by the concluding sentence of the Manhattan  
18 Institute Report), Kelman had further undermined both the ACOEM Report and his own credibility as  
19 a supposedly unbiased “expert” witness.

20 9. In the Haynes case, counsel for plaintiffs, Calvin Vance, was also aware of Kelman’s  
21 testimony in the Kilian case concerning the ACOEM Report, the Manhattan Institute translation, and  
22 the \$40,000 payment to Kelman’s corporation, VeriTox. Accordingly, when Vance cross-examined  
23 Kelman he asked Kelman about the payment made by the Manhattan Institute for the revisions to the  
24 ACOEM Report. Kelman denied receiving the payment for revisions, so Vance impeached him with  
25 his prior testimony from the Kilian trial:

26 MR. VANCE: All right. And, isn’t it true that the Manhattan Institute  
27 paid GlobalTox \$40,000 to make revisions in that statement?

28 BRUCE J. KELMAN: That is one of the most ridiculous statements I  
have ever heard.

1 MR. VANCE: Well, you admitted it in the Kilian [sic] deposition, sir.  
2 BRUCE J. KELMAN: No. I did not.

3 [Mr. Vance obtains leave of court to approach the witness and shows the  
4 witness pp. 905-906 of the transcript of his testimony from the Kilian trial.  
5 Defense counsel objects and asks that Kelman be provided the entire transcript.  
6 Plaintiffs' counsel gives Kelman the entire transcript.]

7 MR. VANCE: Would you read into the record the highlighted portions  
8 of that transcript, sir?

9 BRUCE J. KELMAN: "And, that new version that you did for the  
10 Manhattan Institute, your company, GlobalTox got paid \$40,000. Correct.  
11 Yes, the company was paid \$40,000 for it."

12 See Transcript of Proceedings from the Haynes trial, a true and correct copy of which is filed  
13 herewith as Ex. "K," at 54:11 to 55:22 (emphases added).

14 10. After Vance confronted Kelman with his inconsistent prior testimony at the Kilian  
15 trial, Mr. Kelman backpedaled and prevaricated in trying to explain his inconsistent statements:

16 BRUCE J. KELMAN: We were not paid for that. In fact, the sequence  
17 was in February of 2002, Dr. Brian Harden, and [inaudible] surgeon general that  
18 works with me, was asked by American College of Occupational and  
19 Environmental Medicine to draft a position statement for consideration by the  
20 college. He contacted Dr. Andrew Saxton, who is the head of immunology at  
21 UC -- clinical immunology at UCLA and myself, because he felt he couldn't do  
22 that by himself. The position statement was published on the web in October of  
23 2002. In April of 2003 I was contacted by the Manhattan Institute and asked to  
24 write a lay version of what we had said in the ACOEM paper -- I'm sorry, the  
25 American College of Occupational and Environmental Medicine position  
26 statement. When I was initially contacted I said, "No." For the amount of  
27 effort it takes to write a paper I can do another scientific publication. They then  
28 came back a few weeks later and said, "If we compensate you for your time,  
will you write the paper?" And, at that point I said, "Yes, as a group." The  
published version, not the web version, but the published version of the  
ACOEM paper came out in the Journal of Environmental and Occupational  
Medicine in May. And, then sometime after that, I think it was in July, this lay  
translation came out. They're two different papers, two different activities. The  
-- we would have never been contacted to do a translation of a document that  
had already been prepared, if it hadn't already been prepared.

MR. VANCE: Well, your testimony just a second ago that you read into  
the records, you stated in that other case, you said, "Yes. GlobalTox was paid

1           \$40,000 by the Manhattan Institute to write a new version of the ACOEM  
2           paper.” Isn’t that true, sir?

3           BRUCE J. KELMAN: I just said, we were asked to do a lay translation,  
4           cuz the ACOEM paper is meant for physicians, and it was not accessible to the  
5           general public.

6           MR. VANCE: I have no further questions for him.

7           See Transcript of Proceedings from Haynes trial (Ex. “K”), at 56:9 to 57:25 (emphases added).

8           11.       This testimony seems to have been one of the key moments of the Haynes trial,  
9           particularly since in awarding over \$500,000 to plaintiffs the jury must not have believed Kelman’s  
10          testimony and his ultimate opinion – which was that there “could not be” sufficient mold toxins in  
11          plaintiffs’ house to have damaged them. See Ex. “K” at 29:12-30:3. When Kelman, in response to  
12          Vance’s question “isn’t it true that the Manhattan Institute paid GlobalTox \$40,000 to make  
13          revisions in that statement?,” aggressively answered “[t]hat is one of the most ridiculous statements I  
14          have ever heard” (Ex. “K” at 54:11-15), he was giving testimony that was grossly inconsistent with  
15          his testimony in the Kilian case. See Ex. “G” at 904:16 to 906:1. After the Kilian trial transcript  
16          was allowed into the record and over the defense attorney’s objections, Vance was able to impeach  
17          Kelman by having him read his prior testimony from the Kilian trial (Ex. “K” at 54:16-55:22).  
18          Following the admission of the Kilian testimony into the Haynes case, Kelman was confronted by  
19          the relationship between the overtly partisan Manhattan Institute Report and the superficially more  
20          “scientific” ACOEM Report. Thus, in his Haynes testimony, Kelman attempted to distance the two  
21          papers from each other while simultaneously having to admit their close connection. Thus, Kelman  
22          initially tried to split hairs by contending that Manhattan Institute Report was not a “revision” but  
23          was a “lay translation” of the ACOEM Report (id. at 57:9) and then by reversing field entirely and  
24          inconsistently asserting “[t]hey’re two different papers, two different activities.” Id. at 57:10.  
25          Kelman then changed his story yet again, reasserting that the Manhattan Institute Report was merely  
26          a “translation” of the ACOEM Report. Id. at 57:12 and 21.

27          12.       Shortly after the Haynes jury came in with an award of approximately \$500,000  
28          against defendant Adair Homes, I saw the post on Toxlaw.com stating that Kelman had lied in his  
                testimony. See ¶ 4, supra. Accordingly, I contacted Susan Lilliard Roberts who owns and operates  
                the website www.MoldHelp.Org, a resource center for toxic mold victims, to see if she knew



1 anything of the matter. Roberts was located in the Northwest U.S., where the Haynes trial had taken  
2 place, and I had previously given her a copy of the Kilian trial transcript (see ¶ 6, supra) because I  
3 knew that she, like many others closely involved in mold issues, would have an interest in Kelman's  
4 testimony concerning the relationship between the ACOEM Report and the Manhattan Institute  
5 Report. Roberts had been following the Haynes case and gave me the details as she understood them  
6 from third parties (she had not been in the courtroom), telling me that Kelman's testimony under  
7 cross-examination regarding the relationship between the ACOEM Report and the Manhattan  
8 Institute Report had been completely inconsistent with his testimony in the Kilian case. She also  
9 provided me with contact information for the plaintiffs in the Haynes case, Paul and Renee Haynes,  
10 as well as plaintiffs' attorney, Calvin Vance. Between March 4-8, 2005, I called all of these  
11 individuals by telephone. Both Paul Haynes and Calvin Vance had been in the Courtroom when  
12 Kelman had testified. Like Roberts, they told me that Kelman's testimony in the Haynes trial had  
13 been inconsistent with his Kilian testimony. However, based on my interviews I could not conclude  
14 with absolute certainty whether Kelman's inconsistent testimony could be construed as actual lies.  
15 Nonetheless, all of my interviews validated that, at the very least, Kelman had been forced to alter his  
16 testimony in a backpedaling effort to explain the inconsistencies between his testimony in the Haynes  
17 and Kilian matters after he had been forced to read into the record his prior testimony in the Kilian  
18 case.

19 13. Based on my sources – including the posting I had seen on Toxlaw.com, my prior  
20 research on conflicts of interest biasing the ACOEM Report, and my conversations with Paul and  
21 Renee Haynes, Calvin Vance, and Susan Lilliard Roberts – I immediately grasped the importance of  
22 issuing a press release concerning the Haynes trial, and on or about March 6, 2005, I began to draft  
23 such a press release. The case was noteworthy and a matter of substantial public interest because it  
24 had resulted in a significant damages award for the Haynes family's personal injuries due to exposure  
25 to mold toxins notwithstanding the admission into evidence of Kelman's testimony and the ACOEM  
26 Report. In particular, Kelman's backpedaling while he was under cross-examination by Vance  
27 regarding the relationship between the ACOEM Report and the Manhattan Institute Report seemed to  
28 be important news that could affect many other mold cases across the country. In my view, Kelman's

1 unsuccessful efforts to distance the two papers created substantial issues of bias that critically  
2 undermined the “scientific” credibility of both Kelman and the ACOEM Report itself. I felt that the  
3 Haynes case was a matter that the public, the medical community, and the legal community needed to  
4 know of in order to help dispel the myth that mold toxins do not cause illness.

5 14. Because no transcript had yet been prepared of Kelman’s testimony during the Haynes  
6 trial, although I considered the seemingly strong possibility that Kelman had “lied” on the witness  
7 stand, as had been reported by the Toxlaw.com posting (see ¶ 4, supra), in writing my Press Release I  
8 did not want to state or imply that Kelman had “lied” or committed perjury if that could not be  
9 validated with complete certainty. Based on my conversations with Paul Haynes and Calvin Vance,  
10 who had witnessed Kelman’s testimony in the Haynes case, it was clear that Kelman, at the very least,  
11 had backpedaled and flip-flopped – and thereby “altered” his testimony – after Vance had impeached  
12 him with the transcript of his prior testimony in the Kilian case. However, when I specifically asked  
13 Paul Haynes whether he would characterize Kelman’s testimony as lying, Haynes stated he felt this  
14 was too strong a statement. Accordingly, in an early rough draft of the Press Release, I wrote that  
15 Kelman “weasled” in his testimony, but this term seemed too offensive. “Lied” was too strong.  
16 “Clarified” was inaccurate, as Paul Haynes’ descriptions of Kelman’s backpedaling testimony after  
17 Vance had impeached him with his prior testimony in the Kilian case made it clear to me that Kelman  
18 had been attempting to obfuscate the relationship between the ACOEM Report and the Manhattan  
19 Institute Report. “Altered” was the closest polite synonym for “weasled.” “Altered” seemed the only  
20 accurate way to describe how Kelman’s testimony had vacillated on the witness stand, once he was  
21 forced by Vance’s cross-examination to describe the relationship between the purportedly scientific  
22 and unbiased ACOEM Report and the partisan Manhattan Institute Report.

23 15. Although Calvin Vance opined that I should wait for the transcript of Kelman’s  
24 testimony in the Haynes case before issuing my Press Release, I did not think that it was appropriate  
25 to wait for some unknown period of time for the transcript to be prepared. Based on my sources, I  
26 felt confident (and still do, having subsequently read the Haynes transcript that was later prepared)  
27 that I had a clear understanding of what transpired during Kelman’s testimony. As is true with most  
28 news regarding courtroom proceedings, one cannot wait in uncertainty for trial transcripts to be

1 prepared. As the saying goes, "Old news is no news." To have delayed publication of the Press  
2 Release would have diminished the timely newsworthiness of the story – and delay might have  
3 prevented additional news media outlets from further distributing the story. In light of the prolific  
4 usage of the ACOEM Report in other pending toxic mold cases across the country, I believed that it  
5 was of national significance for this story to be told in a timeframe most likely to elicit coverage.  
6 Subsequent media reports and the current GAO audit, which have followed the Press Release by  
7 directly addressing the issue of conflicts of interest biasing the ACOEM Report, have validated my  
8 belief in the national significance of this story. See Exs. "A," "B," "C" and "D."

9 16. I issued the Press Release on March 9, 2005 through the website PRWeb  
10 (<http://www.prweb.com/>), which is a leader in online news and press release distribution. As my  
11 sources for the Press Release, I relied on, among other things, the Toxlaw.com posting, my  
12 conversations with Susan Lilliard Roberts, Paul Haynes, Renee Haynes and Calvin Vance, on the  
13 transcript of Kelman's testimony at the Kilian trial, on the ACOEM Report, the Manhattan Institute  
14 Report, my prior research regarding conflicts of interest involving expert witnesses, and my  
15 educational and work training in how a concept is marketed. In relevant part, my Press Release  
16 stated as follows:

17  
18 Upon viewing documents presented by the Hayne's attorney of Kelman's  
19 prior testimony from a case in Arizona, Dr. Kelman altered his under oath  
20 statements on the witness stand. He admitted the Manhattan Institute, a  
21 national political think-tank, paid GlobalTox \$40,000 to write a position  
22 paper regarding the potential health risks of toxic mold exposure. Although  
23 much medical research finds otherwise, the controversial piece claims that  
24 it is not plausible the types of illnesses experienced by the Haynes family  
25 and reported by thousands from across the US, could be caused by "toxic  
26 mold" exposure in homes, schools or office buildings.

27 In 2003, with the involvement of the US Chamber of Commerce and ex-  
28 developer, US Congressman Gary Miller (R-CA), the GlobalTox paper was  
disseminated to the real estate, mortgage and building industries'  
associations. A version of the Manhattan Institute commissioned piece may  
also be found as a position statement on the website of a United States  
medical policy-writing body, the American College of Occupational and  
Environmental Medicine.

1 See March 9, 2005 Press Release entitled *Jury Finds 'Toxic Mold' Harmed Oregon Family, Builder's*  
2 *Arbitration Clause Not Binding* a true and correct copy of which is filed herewith as Ex. "L"  
3 (emphasis added).

4 17. Some months later, after being accused of libel by Kelman in June 2005, I obtained a  
5 copy of the March 15, 2005 transcript of Kelman's testimony from the Haynes trial, which is quoted  
6 above. See ¶¶ 9-11 and Ex. "K," supra. After reading that transcript, I was and still am of the  
7 opinion that the Press Release I authored is true and accurate. In response to Calvin Vance's cross  
8 examination during the Haynes trial, Kelman indisputably "altered his under oath statements" several  
9 times while attempting to side-step the close connection between the ACOEM Report and the  
10 Manhattan Institute Report. See Ex. "K" at 54:11-57:25. As I read the questions and responses,  
11 Vance impeached Kelman with his own testimony from the Kilian trial, so that the \$40,000 payment  
12 that Kelman had at first termed "ridiculous" he later had to admit was true. Id. Then Kelman flip-  
13 flopped between describing the Manhattan Institute Report as a "translation" and contending that the  
14 reports really constituted "two different papers, two different activities." Id.; see also ¶¶ 9-11, supra.

15 18. Indeed, Kelman is still "altering" his under oath testimony. I attended Kelman's  
16 December 20, 2007, deposition in this libel action. True and correct excerpts from the transcript of  
17 Kelman's 12/20/07 deposition in the present case are filed herewith as Ex. "M." In the present case,  
18 Kelman's December 2007 testimony is now that the Manhattan Institute Report is not a "translation"  
19 of the ACOEM Report and that he was paid \$25,000 rather than \$40,000 for the Manhattan Institute  
20 Report. Kelman Depo. (Ex. "M") at 68:16-69:8, 120:4-121:7. In contrast, in his Kilian testimony of  
21 June 2004, Kelman acknowledged that the Manhattan Institute Report was prepared at a cost of  
22 \$40,000 and was a "lay translation" of the ACOEM Report. Ex. "G" at 904:16-23 & 905:24-906:1.  
23 In his Haynes testimony of March 2005, Kelman flip-flopped by describing the Manhattan Institute  
24 Report both as a "lay translation" and a "completely separate work" from the ACOEM Report,  
25 although it still cost \$40,000. Ex. "K" at 54:11-57:25. It has become clear that Kelman repeatedly  
26 "alters" his testimony in a manner that is simply never ending.

27 19. Several years prior to writing the Press Release in 2005, I had some indirect  
28 dealings with Kelman in 2002 and 2003, when my family asserted our own mold exposure claim

1 against our insurer, and the mold remediator and laboratory hired by our insurer. This claim arose  
2 from a mold remediation project at our home that was improperly conducted, resulting in cross-  
3 contamination, which adversely affected the safety of our home for my daughter – who had been  
4 born with the genetically fatal disease of cystic fibrosis and also suffers, since early childhood  
5 from a fungal lung complication known as Allergic Broncho-Pulmonary Aspergillosis (“ABPA”).  
6 My family’s claim never went to trial and was settled on favorable terms. In fact, this Court  
7 approved the settlement that we received, which totaled approximately \$500,000 in full. True and  
8 correct copies of this Court’s Orders in Mercury Casualty Co. v. Kramer (“Mercury Casualty”)  
9 S.D.S.C. Case No. GIN 024147, filed October 9, 2003 and January 12, 2004, and the Court’s  
10 Minute Order filed October 10, 2003, are collectively filed herewith as Ex. “N.”

11 20. Kelman’s only involvement in the matter was to author a letter as a consultant for  
12 our insurer in 2002, and he was deposed in September of 2003. Neither the 2002 letter nor the  
13 2003 deposition played any role in affecting the outcome of the case. Toxicity was never an  
14 aspect of our claim. Because Kelman is only a toxicologist with a Ph.D., not a medical doctor, he  
15 at no time held himself out as qualified to testify regarding the illness of our daughter in  
16 connection with the safety of our home. During his deposition of October 2003 Kelman testified:

17  
18 A. . . . But specifically with regard to ABPA, that would not be a  
consideration I would give as a toxicologist.

19 Q. You wouldn’t feel qualified to give that?

20 A. That is correct.

21 See Transcript of the 10/01/03 deposition of Kelman in the Mercury Casualty litigation, true and  
22 correct excerpts of which are filed herewith as Ex. “O,” at 46:8-12 (emphasis added). Likewise,  
23 Kelman’s letter to David Schaffer, the attorney who represented our insurer in the Mercury  
24 Casualty matter, played no role in affecting the outcome of that case and, indeed, reached no  
25 conclusion as to the safety of our home. In this letter dated July 23, 2002, Kelman wrote:

26  
27 A physician, with detailed knowledge of the clinical condition of the  
28 child involved, must be consulted for specific determination of the safety  
of this environment for this patient.

1 See letter dated July 23, 2002, from Kelman to David Schaffer, a true and correct copy of which  
2 is filed herewith as Ex. "P" (emphasis added).

3  
4 21. Earlier in the present case, when Kelman opposed the Anti-SLAPP motion that my  
5 former counsel filed, Kelman asserted that I held personal malice for him by falsely stating in his  
6 declaration that:

7 I first learned of Defendant Sharon Kramer in mid-2003, when I was  
8 retained as an expert in a lawsuit between her, her homeowner's insurer  
9 and other parties regarding alleged mold contamination in her house. She  
10 apparently felt that the remediation work had been inadequately done,  
11 and that she and her daughter had suffered life-threatening diseases as a  
12 result. I testified that the type and amount of mold in the Kramer house  
13 could not have caused the life-threatening illnesses that she claimed.

14 See Declaration of Bruce J. Kelman filed herein on 9/16/05, ¶ 8 (emphasis added). However, as  
15 noted above, Kelman gave no such testimony in my family's case against Mercury Casualty, nor  
16 (having won a very substantial settlement) were we sour grapes litigants as portrayed to this Court  
17 by Kelman's attorney, who argued:

18 Dr. Kelman testified in a deposition that the type and amount of  
19 mold in the Kramer house could not have cause the life-threatening  
20 illnesses that Kramer claimed.

21 Apparently furious that the science conflicted with her dreams of a  
22 remodeled house, Kramer launched an obsessive campaign to destroy the  
23 reputation of Dr. Kelman and GlobalTox.

24 See Plaintiff's Opposition to Motion to Strike filed herein on 9/16/05 at 5 (emphasis added). This  
25 argument is both incorrect and unsupported, and may well reflect Kelman's outlandish assertion  
26 that "attorneys are under no obligation to tell the truth." See Kelman Depo. (Ex. "M") at 136:1-  
27 12. In fact, I do not harbor any personal animosity or other thoughts about Kelman. More to the  
28 point, I certainly in no way harbor "malice" as a legal matter, as my Press Release was not  
knowingly or recklessly false; to the contrary, as is described above, the Press Release is true and

1 accurate. My only concern was and continues to be doing what I can for families in need of  
2 assistance in coping with mold exposure issues.

3  
4 I declare under penalty of perjury of the laws of the State of California that the foregoing  
5 is true and correct and that this Declaration was executed by me on this \_\_\_\_ day of January, 2008,  
6 in Escondido, California.

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10 SHARON KRAMER  
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