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January 4, 2012

Donald E. Gardner, PhD.
Editor-in-Chief, Inhalation Toxicology
Inhalation Toxicology Associates
11 Monastery Road, West
Savannah, GA 31411

Re: Fraud on the journal and its readers

Dear Dr. Gardner:

I am a plaintiffs' attorney and have represented numerous asbestos cancer victims over the past 25 years. I am writing to disclose what I consider to be a fraud perpetrated on the journal and its readers in a series of articles whose lead author is David M. Bernstein. I present the facts to you so that you may decide for yourself whether a fraud was committed and what the appropriate response should be.

The articles at issue are:

- 1) *A Biopersistence Study following Exposure to Chrysotile Asbestos Alone or in Combination with Fine Particles*, D.M. Bernstein, K. Donaldson, U. Decker, S. Gaering, P. Kuzendorf, J.Chevalier, S.E. Holm, *Inhalation Toxicology*, 20:1009-1028 (2008);
- 2) *The pathological response and fate in the lung and pleura of chrysotile in combination with fine particles compared to amosite asbestos following short-term inhalation exposure: interim results*, D.M. Bernstein, R.A. Rogers, K. Donaldson, D. Schuler, S. Gaering, P. Kuzendorf, J.Chevalier, S.E. Holm, *Inhalation Toxicology*, 22(11):937-962 (2010);

3) *Quantification of the pathological response and fate in the lung and pleura of chrysotile in combination with fine particles compared to amosite-asbestos following short-term inhalation exposure*, D.M. Bernstein, R.A. Rogers, R. Sepulveda, K. Donaldson, D. Schuler, S. Gaering, P. Kuzendorf, J.Chevalier, S.E. Holm, *Inhalation Toxicology*, 23(7):372-391 (2011).

The first article contains a statement: "This research was supported by a grant from Georgia-Pacific, LLC." The other two articles contain the same "Declaration of Interest": "This work was supported by a grant from Georgia-Pacific, LLC." These statements of support by a "grant" are, simply put, lies. There was no grant from Georgia-Pacific. There was no support by a grant from Georgia-Pacific.

Rather, the underlying work and the articles themselves were part of a deliberately formulated Georgia-Pacific asbestos litigation strategy and were paid for pursuant to contracts between Dr. Bernstein and Georgia-Pacific in support of this effort. The documentation of these facts is undisputed and overwhelming. I attach copies of such documentation, including the contracts between Dr. Bernstein and Georgia-Pacific for this work, so you may decide for yourself. I have also sent copies of this letter to the journal's Associate Editors, to the International Committee of Medical Journal Editors ("ICMJE") and to the Committee on Publication Ethics ("COPE").

The failure to disclose the fact that this work, in the words of one of the co-authors, Stewart Holm, was "litigation-driven research" violates the journal's express Declarations of Interest policy, as well as the express policies of the ICMJE to which the journal supposedly adheres. The failure also obviously impacts readers of the journal who were deprived of knowledge of this obvious source of potential bias.

The evidence is as follows:

1) In April 2005, John Childs, Esq, was hired by Georgia-Pacific ("GP") as its first Chief Litigation counsel. (See, Holm deposition Exhibit 2, article, "Lawyer Plants Roots at Georgia-Pacific" and Stewart Holm deposition transcript, June 6, 2011 at pps. 14-20). Mr. Childs' declared, in the article about his move to GP, that "[m]y role was to develop and design an in-house defense to the asbestos litigation." (See, prior references). Stewart Holm, current GP Director of Toxicology and Chemical Management, was aware, at the time Mr. Childs joined GP, that one of Mr. Childs' roles was to "develop and design an in-house defense to the asbestos litigation." (See, Holm deposition transcript, June 6, 2011 at 20).

2) In August 2005, four months after joining GP, Mr. Childs sent a letter to Mr. Holm, confirming that Mr. Holm (who at the time was GP's Corporate Environmental Programs Manager [See, Holm deposition Exhibit 3, Holm CV]), "had been specially employed by Georgia-Pacific to perform expert consulting services in connection with pending and anticipated litigation concerning alleged exposure to asbestos." (See, Holm deposition Exhibit 1, Childs letter, August 22, 2005 and Holm deposition transcript, June 6, 2011 at pps. 14-15; 20-25). As GP's "litigation consultant", Mr. Holm was given a specific set of duties, "separate and distinct from [his] duties as a regular employee of GP." (See, Holm deposition Exhibit 1, Childs letter, August 22, 2005). Specifically, Mr. Holm's work was "directed solely by GP's in-house counsel" and Mr. Holm was told that he would "report directly to GP's in-house counsel." (See, prior reference).

3) Prior to his confirmation as GP's "litigation consultant", Mr. Holm had several meetings with Mr. Childs and other GP in-house attorneys who were working on asbestos litigation defense. (See, Holm deposition transcript, June 6, 2011 at pps. 52-70). Mr. Holm had been specifically asked "if there was a way [he] could examine if our product was causing disease." (See, prior reference at p. 58). The product in question was asbestos joint compound previously manufactured and sold by GP. (See, prior reference at p. 58-59). Mr. Holm was aware that that product had been banned in the late 1970's by the Consumer Product Safety Commission. (See, prior reference). In fulfilling his mission to see "if there was a way [he] could examine if our product was causing disease," Mr. Holm met with lawyers in Washington, D.C. who he knew "were serving as outside counsel on asbestos litigation." (See, prior reference at pps. 62-70).

4) Mr. Holm agreed that "this whole project that [he] had now been specially employed by [GP] to undertake was for litigation-driven research." (See prior reference at p. 70-71 and Holm deposition Exhibit 3, Holm CV). In that capacity he prepared "a proposal as to what activities [he] thought should be undertaken pursuant to this litigation-driven research" and presented it to GP attorneys and GP senior management, including the GP CEO, COO, CFO and General Counsel. (See, Holm deposition transcript, June 6, 2011 at pps. 71-76).

5) Prior to sharing this "litigation-driven research" proposal with the GP attorneys and GP senior management, Mr. Holm had spoken to David Bernstein, the lead author on the articles at issue here and who became one of the "outside consultants who eventually got hired for this litigation-driven research". (See, prior reference at p. 76-81).

6) Mr. Holm agreed that the third "Bernstein" paper at issue here, which had just been accepted for publication at the time he was deposed, was "a continuation of the series of studies that Bernstein has been primarily leading for this litigation-driven research project." (See, prior reference at p. 107-109).

7) In the Fall of 2005, Mr. Holm had discussions with David Bernstein about "the concept of doing specific work." (See, prior reference at p. 145-149).

8) Prior to hiring David Bernstein for the GP litigation-driven project, Mr. Holm knew Dr. Bernstein "had done work for Union Carbide in asbestos litigation-in defense" and knew his opinion about chrysotile asbestos and biopersistence in the lung from prior work Dr. Bernstein had done for both Union Carbide and a Brazilian asbestos mining company. (See, prior reference at pps. 150-155). Specifically, Mr. Holm knew, prior to GP hiring Dr. Bernstein, that Bernstein was of the opinion that chrysotile asbestos "had no effects on the lungs of the rats except for some minor macrophage observations." (See, prior reference at p. 179).

9) More directly to the point of the false "Declarations of Interest" at issue here, Mr. Holm knew that there "was no grant proposal submitted to Georgia-Pacific for Bernstein's work". (See, prior reference at p. 156). Rather, Dr. Bernstein was hired as a consultant under a contract. (See, prior reference at pps. 156-157).

10) Specifically, in January 2006, Dr. Bernstein was hired "as a scientific/medical consultant" who was committing, under the terms of his contract, "to follow the specific instructions given to him by the Georgia-Pacific attorneys." (See, prior reference at p. 162-175 and Holm deposition Exhibit 7, January 2006 contract between GP and Bernstein).

11) Two months later, in March 2006, Dr. Bernstein signed a second contract with GP in which he was hired "for tasks involving either deposition or trial testimony." (See, prior reference at pps. 175-176 and Holm deposition Exhibit 8, March 2006 contract between GP and Bernstein).

12) As of June 2011, pursuant to his contracts with GP, Dr. Bernstein had been paid \$850,000. (See, Holm deposition transcript, June 6, 2011 at p.199).

13) As of June 2011, Dr. Bernstein's co-authors, specifically, RCC (U. Decker and S. Gaering) and GSA (P. Kunzendorf), were paid \$750,000 by GP. (See, prior reference at pps. 196-197). Co-author, Rogers Imaging Corporation ("RIC")(R.A. Rogers, R. Sepulveda) was paid \$700,000 by GP. (See, prior reference at pps. 197-199). Co-author, Dr. Donaldson, had also been hired by GP as a consultant for the asbestos litigation project on an hourly basis and had been paid "from time to time" on the GP asbestos litigation project since 2006. (See, prior reference at pps. 224-233).

14) Despite the fact, that Mr. Holm, also one of the co-authors, was aware that Inhalation Toxicology required a disclosure of any potential conflict of interest, none of the above was disclosed. There was no disclosure that Dr. Bernstein was acting as an expert witness for GP (See, prior reference at p. 222). There was no disclosure that Dr. Bernstein's research was litigation-driven. (See, prior reference at p. 223). There was no disclosure that Dr. Donaldson was a paid GP litigation consultant. There was no disclosure that Mr. Holm was "specially employed" by GP as an asbestos litigation consultant. (See, prior reference at p. 223) There was no disclosure that GP was even involved in asbestos litigation. (See, prior reference at p. 222).

It is abundantly clear, that the statement contained in all 3 articles that the work/research was "supported by a grant from Georgia-Pacific" was a deliberate, intentional falsehood. No distortion of the meaning of the word "grant" can possibly accurately describe the relationship of the parties here.

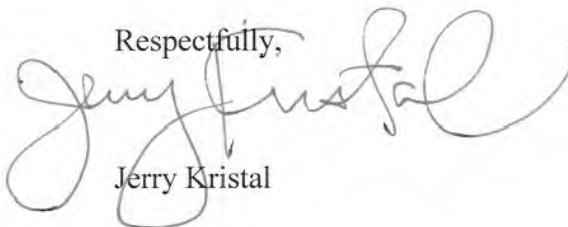
The online "Declaration of Interest" policy of the journal is exquisitely clear: "It is the policy of all Informa Pharmaceutical Science, to adhere in principle to the Conflict of Interest policy recommended by the ICMJE. All authors must disclose any financial and personal relationships with other people or organizations that could inappropriately influence (bias) their work. It is the sole responsibility of authors to disclose any affiliation with any organization with a financial interest, direct or indirect, in the subject matter or materials discussed in the manuscript (such as consultancies, employment, paid expert testimony, honoraria, ...) that may affect the conduct or reporting of the work submitted. All sources of funding are to be explicitly stated. *If uncertain as to what might be considered a potential conflict of interest, authors should err on the side of full disclosure.*" (emphasis added). Precisely the opposite occurred with respect to these three articles. The authors hid the litigation basis of their work.

The online "Declaration of Interest" policy of the journal also makes it clear that "[i]f any potential conflicts of interest are found to have been withheld following publication, the journal will proceed according to the Committee on Publication Ethics (COPE) guidance."

According to the COPE guidance "[r]etractions are also used to alert readers to cases of redundant publication (i.e. when authors present the same data in several publications), plagiarism, and *failure to disclose a major competing interest likely to influence interpretations or recommendations.*" (emphasis added).

I respectfully request that Inhalation Toxicology do what it professes it would do in circumstances such as these. Here, we have both undisputed documentation and sworn testimony from one of the authors regarding a "failure to disclose a major competing interest likely to influence interpretations or recommendations." I request that the journal issue a retraction of these 3 articles. Otherwise, the journal's clear, direct, unequivocal policies will have been completely disregarded and, in essence, mean nothing. The journal's readers and future authors need to know that the journal takes its own policies seriously. A "slap-on-the-wrist" would only invite further deceit.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jerry Kristal". The signature is written in dark ink and is positioned above the printed name "Jerry Kristal".

Jerry Kristal