

**From:** Lawrence Krauss <[REDACTED]>  
**To:** J <jeevacation@gmail.com>, nancy dahl <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft  
**Date:** Thu, 18 Oct 2018 07:25:52 +0000

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I didn't mean hold off on signing. I want to do that today. I meant hold off on release of the other university docs.

**Lawrence M. Krauss**  
**Professor**  
School of Earth & Space Exploration and Physics Department

[REDACTED]

Sent from my iPhone

On Oct 18, 2018, at 8:52 AM, J <jeevacation@gmail.com> wrote:

this deadline must be kept

On Wed, Oct 17, 2018 at 11:53 PM Lawrence Krauss <[REDACTED]> wrote:

Forwarding for all to read. I will look at prr's now. Will want to know timing of those. Will want to ask them to hold on for a week no matter what I think and if the deans stuff is there then my appeal will have to be too.

Module that the contract is looking almost ready. Glad they did the \$4k change and the counterpart signing.

**Lawrence M. Krauss**  
**Professor**  
School of Earth & Space Exploration and Physics Department

[REDACTED]

Sent from my iPhone

Begin forwarded message:

**From:** Justin Dillon <[REDACTED]>  
**Date:** October 17, 2018 at 8:40:26 PM CDT

**To:** Lawrence Krauss <[REDACTED]>  
**Subject:** Fwd: Krauss settlement agreement - revised draft

Lawrence,

Here's the latest.

As to Origins, I will defer to you. I see her point, and I think the language looks OK, but you are more attuned to the nuances of this issue than I am.

As to the mutual release, I think the language is fine, but maybe we should ask that they release your appeal with those documents, or at least agree that your releasing your appeal will not constitute disparagement. (And honestly, we may not *need* them to agree to that, since you would just be releasing a previously submitted document.) I doubt they would agree to this—they would likely say that they don't release things that people don't ask for—but we could ask. That said, I suspect that anyone who's made the public records request will reach out to you for comment—at which point you could send them the appeal. Anyway, let me know what you think about that.

Finally, as to the silly reintroduction of the deadline, I have already emailed her to say that you're on a plane to Germany and I thought we were past the point of setting fake deadlines. So although it would be nice to get it done by tomorrow, I would not stress too much about that if you need more time, given the three time zones we currently have in play.

Bottom line: if you're OK with the Origins language, I think we could sign this version. But I am, of course, happy to discuss it. I have a breakfast meeting tomorrow at 8 but should be at my desk by 9:30.

Thanks, and hope your flight was good.

Justin

Justin Dillon

KaiserDillon PLLC  
[REDACTED]

Begin forwarded message:

**From:** Kimberly Demarchi <[REDACTED]>  
**Subject:** RE: Krauss settlement agreement - revised draft  
**Date:** October 17, 2018 at 8:34:20 PM EDT  
**To:** 'Justin Dillon' <[REDACTED]>

Justin,

Attached is a revised draft agreement in clean and redline versions. My clients have authorized me to extend this offer through 5:00 [REDACTED]. Arizona time tomorrow, October 18.

The substantive changes are in two sections – the donated funds and the mutual release. Let me provide some context in the hope that it may be helpful.

With regard to the donated funds, please understand that what your client is asking for is highly unusual. Gifts to the ASU Foundation are irrevocable and the ASU Foundation does not generally return or transfer funds absent unusual circumstances. In addition, because the fund maintained by the ASU Foundation to accept gifts to support the Origins Project has had hundreds of donors over a period of nearly ten years, making a determination of how much of any particular donor's funds are available for transfer is complex and must be done with appropriate care for the Foundation's accounting obligations and its obligations toward other donors who gave to the fund and have not consented to the transfer. This is different from a research grant, which is accounted for individually and for which transfer is not uncommon as principal investigators move to different institutions. The attached draft reflects the complex and unusual nature of this request and the necessity that the Foundation make any determinations regarding the calculation of funds and regarding any requirements for the form in which it needs the donor's consent or direction regarding the transfer.

With regard to the mutual statement, we have removed the global reference to confidentiality and re-captioned this paragraph. We don't want to suggest that we're making an agreement prohibited by A.R.S. 12-720(D), which we aren't, given the specific provisions regarding non-disparaging statements and the release of public records. At this point, the provisions of the agreement doing the work are really the public records and non-disparagement provisions.

There are also a handful of non-substantive changes – adding a missing possessive apostrophe and changing the line spacing to keep the signature lines together and on a page with other text.

Also, in the spirit of compliance with what will be paragraph 5(b) if we reach agreement, I am attaching two sets of documents that the University anticipates releasing in response to pending public records requests at or near the time of the release of the public statement (should we reach agreement). Under our public records statute, we have been able to hold off on making these responses during the pending proceedings, but once we make a public statement we won't be able to hold onto them and still comply with a requirement of prompt disclosure. Given the requirements of Rule 4.2, I don't think I can send these to your client directly (as we contemplate would be the case for any future disclosures once the agreement is signed), so I am providing them to you instead.

I look forward to your response.

Best wishes,  
Kim

**Kimberly A. Demarchi**



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**From:** Justin Dillon <[REDACTED]>  
**Sent:** Tuesday, October 16, 2018 7:41 AM  
**To:** Kimberly Demarchi <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft

Kim,

Thanks for the quick response. And yes, I think that change makes a lot of sense.

Justin

Justin Dillon

KaiserDillon PLLC

On Oct 16, 2018, at 10:39 AM, Kimberly Demarchi <[REDACTED]> wrote:

Justin,

I think I understand where you're going with these revisions, and I will follow up with my clients.

One quick clarifying question, though. Should the paragraphs be broken up as follows, rather than having the sentence "Only...." as part of subparagraph (b)?

4. If, in the next 90 days, any of the following donors to the ASU Foundation to support the Origins Project makes a request to transfer funds (outlined below) to another nonprofit organization, ASU will not oppose the transfer of funds and will request that the ASU Foundation make the requested transfer:

(a) All funds from major donors (those who contributed or pledged \$5,000 or more, including multiple donations from a single family) since January 1, 2017;

(b) unexpended funds from single major donors in excess of \$300,000 since 2010. Professor Krauss will provide a list directly to the ASU Foundation of the donors that, to his knowledge, fall in these categories, and the ASU Foundation will be solely responsible for confirming its validity, and if necessary reporting back to Professor Krauss with names added or removed from this list.

Only requests from these individuals or groups will be considered for transfer. It is expected that this list will include fewer than 20 donors, and based on the estimates available at the current time of ASU Foundation funds not expended as of October 2018, it is expected that the total available funds for this purpose will not be less than \$1 million dollars, and not more than \$1.3 million dollars. However, the ASU Foundation shall be solely responsible for providing an accounting of the amount of funds available for transfer under this arrangement.

Thanks,  
Kim

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**From:** Justin Dillon <[REDACTED]>  
**Sent:** Tuesday, October 16, 2018 7:20 AM  
**To:** Kimberly Demarchi <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft

Kim,

Attached is my redline back. I made only two changes—one small change making clear that the agreed-upon public statement will be released "by ASU," and one big change about the Origins money. I think it might make sense for us to discuss this by phone. I completely understand ASU's money-is-fungible concerns, but I think this gets around it (especially since this money was donated for the Origins Project, and there is no more Origins

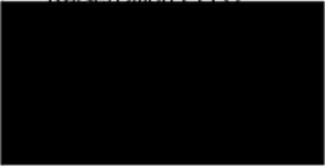
Project). In any event, please let me know what you think. As you might imagine, this is a very important issue for Professor Krauss.

Thanks,

Justin

Justin Dillon

KaiserDillon PLLC



On Oct 15, 2018, at 9:31 PM, Kimberly Demarchi <[REDACTED]> wrote:

Thanks, Justin. That's fine.

**Kimberly A. Demarchi**



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**From:** Justin Dillon <[REDACTED]>  
**Sent:** Monday, October 15, 2018 5:17 PM  
**To:** Kimberly Demarchi <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft

Thanks, Kim. Given the lateness of the hour here and Professor Krauss's travel schedule, I will get back to you tomorrow about this.

Justin Dillon

KaiserDillon PLLC



On Oct 15, 2018, at 8:00 PM, Kimberly Demarchi <[REDACTED]> wrote:

Justin,

I've attached a revised agreement for your review. As you've requested, I've revised the disclaimer obligation to extend to any ASU employee, rather than just the Participating Employees. I've also made some

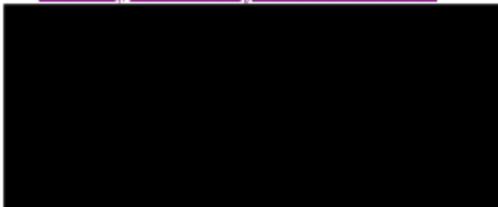
grammatical and clarifying revisions to that sentence.

I've also now gotten the information needed to respond on the proposed terms regarding donors who gave money to the ASU Foundation for the Origins Project. As it turns out, there are hundreds of unique donors, many of whom have given small amounts of money over the last ten years. Agreeing to unravel exactly how much of each of those donors' money is left at this point in time just is not feasible. However, the University is willing to agree that it would not oppose a request from the Black Family Foundation to transfer any of its donations that remain unspent and would request that the ASU Foundation honor the request. The ASU Foundation would of course have to have final responsibility for calculating the amount of funds unspent and available for transfer. I've made those revisions on the attached as well.

Please let me know your thoughts.

Best wishes,  
Kim

**Kimberly A. Demarchi**  
[Profile](#) | [Add me to your address book](#)



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**From:** Justin Dillon <[REDACTED]>  
**Sent:** Monday, October 15, 2018 8:52 AM  
**To:** Kimberly Demarchi <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft

Kim,

I think what you propose is fine, but I think the word "Participating" in the last sentence is a typo. I think ASU is agreeing to, if asked, make the disavowal statement regarding any ASU employee (Participating or not) who purports to speak on ASU's behalf, right? That doesn't mean suppression, of course—just disavowal. Let me know what you think.

Also, Prof. Krauss is flying to Mexico today, so just to manage your own timing concerns, I suspect we won't be inking this until tomorrow. He should be fine once he's settled into the hotel.

Thanks, and feel free to call me if you'd like to discuss anything else.

Justin

Justin Dillon

KaiserDillon PLLC



On Oct 15, 2018, at 1:11 AM, Kimberly Demarchi <[REDACTED]> wrote:

Justin,

I've reviewed your revisions, and I have some concerns about the non-disparagement provision. One of them (in the text preceding the lettered provisions) is just grammatical, but the others are substantive.

ASU can't bind the participating employees not to speak in their private capacities. The most we can agree is that we will respond if they speak in a way that suggests they're speaking for ASU, and clarify that they are not doing so. We also can and have proposed to agree to bind the relevant administrators who would, by virtue of their positions, be deemed to speak on behalf of the University.

In addition, while I'm sensitive to your concerns about the difficulty of defining media, I think we can agree that the need for such correction would only be necessary for statements that were in a public context.

I've tried to address both of those issues (along with the odd grammar) in this version of the non-disparagement provision:

Non-Disparagement. Except as provided by law, the parties agree that they will refrain from making any statements that are disparaging of the other. This means that: (a) Krauss will refrain from making any statements that are disparaging of ASU and the President, the Executive Vice-President and Provost, the Dean of the College of Liberal Arts and Sciences, the Dean of Natural Sciences of the College of Liberal Arts and Sciences, the Director of the School of Earth and Space Exploration, and the employees who participated in the ASU Office of Equity and Inclusion investigation (all collectively referred to hereafter as the "Participating Employees") and (b) the President, the Executive Vice-President and Provost, the Dean of the College of Liberal Arts and Sciences, the Dean of Natural Sciences of the College of Liberal Arts and Sciences, and the Director of the School of Earth and Space Exploration will refrain from making any statements that are disparaging of Krauss. For purposes of this provision, a "disparaging statement" is any statement related to this personnel review process intended to impugn the integrity of the individuals and institutions identified in this paragraph or any statement that is intended to adversely affect their reputational interests. If any of the Participating Employees makes a disparaging statement about Krauss to the media or in another public context that could reasonably be perceived as speaking on behalf of ASU, then, if asked to comment, ASU will respond that the Participating Employee spoke on their own behalf and not on behalf of ASU. Releasing factual information, or producing records in response to a public records request, will not constitute a violation of this provision.

Please let me know your thoughts.

Also, please keep in mind that I'm still waiting for some information on the donor provision and whether we can agree to what you've requested. I will know more about that tomorrow.

Kim

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**From:** Justin Dillon <[REDACTED]>  
**Sent:** Sunday, October 14, 2018 5:52 PM  
**To:** Kimberly Demarchi <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft

Kim,

I apologize, but I accidentally attached the wrong version. This correct version omits "due to Krauss's decision to retire" from Paragraph 2, makes a parallel change in Paragraph 1, capitalizes Agreement, and

fixes a few typos.

Thanks,

Justin

Justin Dillon

KaiserDillon PLLC



On Oct 14, 2018, at 4:32 PM, Justin Dillon <[REDACTED]> wrote:

Kim,

My redline is attached. I think this should address our various concerns, but please let me know what you think.

Thanks,

Justin

Justin Dillon

KaiserDillon PLLC



On Oct 13, 2018, at 9:19 PM, Kimberly Demarchi <[REDACTED]> wrote:

Justin,

I'm still conferring with my clients, but I have some feedback to give you now, which is reflected in the attached draft.

First, the revisions to the non-disparagement provisions you've proposed aren't going to work on our end. Not only is ASU too large to effectively guarantee compliance by everyone at the University, but we have strong protections in both University policy and state law for free speech by faculty, staff, and

students in their private capacity. That's why the original draft specified particular individuals in leadership positions as the ones bound by the provisions, rather than the entire University. The attached version has some revisions that I hope address your client's concerns while being feasible on our end.

Second, I've taken out the references to Professor Krauss being a Physics professor as well as in SESE. As a technical matter, ASU faculty only have a single home department, even when they periodically (or regularly) teach in other departments, and Professor Krauss's appointment was as faculty in SESE. I've attached his appointment letter so you can see. We'll need to use the correct language in the agreement and any public statement. If [REDACTED] prefer for the public statement to just say he has resigned his position as a professor (without specifying the department), that would be fine too – I've made that change in the attached so you can see what the statement looks like without referencing the specific department.

Lastly, the feedback I've gotten so far about the list of donors has included some concerns about the catchall provision you proposed (unspecified donors who went on an expedition). We're looking into the feasibility of that on our end, and in the interim I've taken the catchall provision out. If there's more specificity you can provide about how many donors are in this catchall category, or more names for the list, that may be helpful.

Would you let me know your client's position on these issues, and I'll present the final agreement for approval by ASU leadership?

Thanks,  
Kim

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**From:** Justin Dillon <[REDACTED]>  
**Sent:** Friday, October 12, 2018 2:45 PM  
**To:** Kimberly Demarchi <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft

Kim,

Here's my redline. If ASU will agree to this, we are prepared to sign today. Please feel free to call me at [REDACTED] if you would like to discuss anything.

Thanks,

Justin

Justin Dillon

KaiserDillon PLLC  
[REDACTED]

On Oct 12, 2018, at 4:04 PM, Kimberly Demarchi <[REDACTED]> wrote:

Here's the Word document. I've reached out about the extension and will get back to you.

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**From:** Justin Dillon <[REDACTED]>  
**Sent:** Friday, October 12, 2018 12:56 PM  
**To:** Kimberly Demarchi <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft

Also, would you mind sending this to me in Word so I can redline as needed?

Thanks,

Justin

Justin Dillon

KaiserDillon PLLC  
[REDACTED]

On Oct 12, 2018, at 3:08 PM, Kimberly Demarchi <[REDACTED]> wrote:

Justin,

I'm writing to follow up on our conversation and correspondence yesterday regarding the proposed settlement.

ASU is willing to agree that any funds donated by the Brown Foundation that remain unspent may be transferred from the ASU Foundation to another non-profit organization, if the Brown Foundation so directs. At this point, I've been able to determine that there is a total of \$1,209,479.32 on deposit with the ASU Foundation for the Origins Project's operating expenses. Some of that may be from other donors, so it is possible that not all of it would be transferred. But whatever is attributable to the Brown Foundation would be transferred, provided that the Brown Foundation directs the ASU Foundation to do so and tells it what nonprofit should receive the funds.

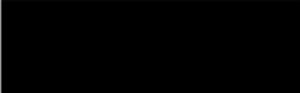
Although I do not agree with your analysis, we will agree to remove the reference to the ADEA from the release paragraph, which should put an end to the discussion regarding whether it is necessary to provide your client with a review period or the option to revoke.

ASU is not willing to extend the retirement date beyond May 2019 or make additional payments, nor is it willing to transfer the funds in its local accounts to another institution.

I have attached a revised agreement along these lines. I am available for discussion as needed.

Best wishes,  
Kim

**Kimberly A. Demarchi**  
[REDACTED]



<Krauss settlement agreement - 2018-10-12 Revision.pdf>

<Krauss Settlement Agreement - 2018-10-12 Revision.docx>

<Krauss Settlement Agreement - 2018-10-13 Revision.docx><0766\_001.pdf>

<Krauss Settlement Agreement - 2018-10-13 Revision--KD redline 430 pm EDT.docx>

<Krauss Settlement Agreement - 2018-10-15 Revision.docx>

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please note

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