

**From:** Lawrence Krauss <[REDACTED]>  
**To:** Justin Dillon <[REDACTED]>, nancy dahl <[REDACTED]>  
**Cc:** Lawrence Krauss <[REDACTED]>  
**Subject:** Re: Krauss settlement agreement - revised draft  
**Date:** Sun, 14 Oct 2018 05:43:46 +0000

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Actually this is not bad... better than I thought it would be. I am sad that they discovered the omission about OEI in the disparagement clause, because that was a big omission that I was happy to exploit. I am very happy they accepted the factual information part of it, but I had meant a comma to go there.. to make it clear that releasing factual information is separate from a public records request.. so I want a comma in there. Regarding the donors I can get a list by tomorrow..

The other thing I am worried about is whether my retirement letter is part of the contract or is taken as disparagement. One way around this is to make disparagement a public statement..

So, as a basis for the call tomorrow, I would suggest the final changes..

1. in clause 6.. second line make it "making any public statements"
2. in clause 6 Since they added the OEI employees to one side, they should add them to the other side, in part b.. so add their language to that side.
3. in clause 6 put a comma after factual information in the last sentence
4. I don't understand why it is just 'participating employees', I.e. OEI employees.. I think it should be Employees...

Thus, the non-disparagement clause should read: **(changes in bold)**

Except as provided by law, the parties agree that they will refrain from making any **public** statements that are disparaging of the other. For purposes of this provision, "parties" mean: (a) Krauss will refrain from making any statements that are disparaging of ASU and the President, the Executive Vice-President and Provost, the Dean and the Dean of Natural Sciences of the College of Liberal Arts and Sciences, and the Director of the School of Earth and Space Exploration, and the employees who participated in the ASU Office of Equity and Inclusion investigation (the "Participating Employees") and (b) the President, the Executive Vice-President and Provost, and the Dean and the Dean of Natural Sciences of the College of Liberal Arts and Sciences, and the Director of the School of Earth and Space Exploration **and the employees who participated in the ASU Office of Equity and Inclusion investigation (the "Participating Employees")** will refrain from making any statements that are disparaging of Krauss. For purposes of this provision, a "disparaging statement" is any statement 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** Employee who is still employed by ASU makes a disparaging statement about Krauss to the news media that could reasonably be perceived as speaking on behalf of ASU, then, if asked to comment by the same media, 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 would not constitute a violation of this provision.

In clause 4.. I will try and put a list, or simply say the number of donors.. to be listed explicitly later by Dr. Krauss.. I would also require some other minor changes.. **(changes in bold)** to be

To the extent any of the funds donated by any of the Origins Donors have not yet been expended and remain on deposit with the ASU Foundation, if any of the Origins Donors **agree to a request to** direct the ASU Foundation to transfer the remaining funds from its donation to another nonprofit organization **chosen by Dr. Krauss**, ASU will not object to the transfer. **The University and Dr. Krauss will agree to the language in a form that will be sent to Origins Donors with such a request within 30 days of the signing of this agreement.**

or something like that...

Those are my thoughts so far.. Looking forward to talking tomorrow..

LMK

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

On Oct 13, 2018, at 7:56 PM, Justin Dillon <[REDACTED]> wrote:

The latest. Let's talk tomorrow. How's 12:45 Eastern?

Justin Dillon

KaiserDillon PLLC  
1401 K St. NW  
Suite 600  
Washington, DC 20005  
[REDACTED]

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**From:** Kimberly Demarchi <[REDACTED]>  
**Sent:** Saturday, October 13, 2018 9:19:47 PM  
**To:** Justin Dillon  
**Subject:** RE: Krauss settlement agreement - revised draft

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 he'd 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 202-421-5298 if you would like to discuss anything.

Thanks,

Justin

Justin Dillon  
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1401 K Street NW  
Suite 600  
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[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

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Suite 600  
Washington, DC 20005  
[REDACTED]  
[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**  
[Profile](#) | [Add me to your address book](#)

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

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