

From: Lawrence Krauss <[REDACTED]>

To: J <jeevacation@gmail.com>

Cc: nancy dahl <[REDACTED]>

Subject: Fwd: Lawrence Krauss conciliation agreement

Date: Thu, 11 Oct 2018 19:43:10 +0000

Attachments: Krauss_settlement_agreement_-_2018-10-11_Revisions.pdf

Inline-Images: image001.png

Begin forwarded message:

From: Justin Dillon <[REDACTED]>

Subject: Fwd: Lawrence Krauss conciliation agreement

Date: October 11, 2018 at 12:17:30 PM PDT

To: Lawrence Krauss <[REDACTED]>

She emailed back (I was just working through my emails after a meeting and saw it). See attached. Bottom line, they're not giving you another year with pay and don't think they have to pay you until the Superior Court appeal is done. I want to check that and will call you in a few minutes after I've done that.

Justin Dillon

KaiserDillon PLLC
1401 K Street NW
Suite 600
Washington, DC 20005

[REDACTED]

Begin forwarded message:

From: Kimberly Demarchi <[REDACTED]>

Subject: RE: Lawrence Krauss conciliation agreement

Date: October 11, 2018 at 2:52:23 PM EDT

To: 'Justin Dillon' <[REDACTED]>

Justin,

Thank you for responding with your proposals so quickly. I've discussed them with my clients, and the responses appear below in blue, interlineated with your email.

I've also attached a redlined version of the agreement.

I am generally available today until about 5:30 Arizona time to discuss as needed.

Take care,
Kim

Kimberly A. Demarchi

[Profile](#) | [Add me to your address book](#)



[2929 North Central Avenue](#)
[21st Floor](#)



From: Justin Dillon [<mailto:> ]
Sent: Wednesday, October 10, 2018 7:33 PM
To: Kimberly Demarchi
Subject: Lawrence Krauss conciliation agreement

Kim,

Thank you for agreeing to extend the deadline for the conciliation process until Friday. I have spoken with Professor Krauss, and our counteroffer is outlined below. In the spirit of actually getting this done, I am not inflating it or tinkering with things that I would normally tinker with (most notably, the public statement)—this is a reasonable offer that I hope ASU will take and that we can quickly paper.

Settlement Agreement: Please remove “and the marital community.” While Professor Krauss will agree (in Paragraph 6) to waive all claims that his wife, heirs, etc., might bring, she’s not a party to this agreement. I have literally never seen any settlement agreement that tries to bind a non-party spouse. It smacks of coverture.

We have removed the language, which as written served only to remind the parties of the application of community property law.

Recitals: Please change “ASU’s concerns” to “both parties’ concerns.” Professor Krauss’s continued employment is something that concerns him, too.

We have made the requested change.

Paragraph 1:

- Professor Krauss would like an additional one year of salary (through May 16, 2020), payable in one lump sum no later than May 16, 2019. As I mentioned on the phone, under ABOR, ASU has no choice but to keep paying him until the appeals process is done—and that includes even going to Superior Court, which will almost certainly take until May of next year, if not longer.

Under ABOR 6-201(J)(1)(a), the termination of a tenured faculty member (and the associated obligation to continue paying compensation) takes effect once the internal process has completed and the president has made a final decision. The obligation to pay does not extend through any external appeal process under the Judicial Review of Administrative Procedures Act (i.e., the appeal to Superior Court). ASU will not agree to an additional year of compensation on top of its already expressed willingness to extend compensation through the end of the Spring 2019 semester.

- Under ABOR, *can* ASU keep him on administrative leave once this process is over (and the agreement would indeed end it)?  not sure it can. If you look at it and agree, then we could change this to say that he will be reinstated but will not teach classes, perform any official duties, etc., after the effective date of the agreement.

This type of leave is probably more accurately described as “leave with pay,” which is the terminology used in ABOR 6-201(J)(3). I’ve changed it accordingly.

Paragraph 3:

- As long as he’s employed by ASU, he should get to keep his ASU property. He also has untold amounts of data he’s accrued over his time there. Please change the date to “May 16, 2019.”

We have made this change.

Paragraph 4(b):

- It should be provide notice “to” Krauss, not “of” Krauss.

We have made this change.

Paragraph 5:

- Please delete “contained in the records of ASU.” I think we just need to exclude factual information; this addition would create a weird situation in which ASU could destroy the records. And Professor Krauss also has records, of course—it’s not just ASU. I think what we care about is that people are free to talk about facts—they just can’t disparage when they do that.

I’ve revised the language to make clear that disclosing public records doesn’t constitute a violation of the non-disparagement provision.

Paragraph to add:

- Professor Krauss, as he’s said to Dean Kenney, would like to have ASU transfer the funds he raised for Origins and his research funds to a new place. Dean Kenney told Professor Krauss today that ASU is looking into logistics but is willing to do it, pending logistics. We can talk about the specific language to accomplish that, but it would look something like this: “ASU will agree to transfer all Origins Project funds held by the ASU Foundation and Professor Krauss’s remaining research funds to a nonprofit of Professor Krauss’s choosing within 30 days of Professor Krauss’s designating said nonprofit, which he will do no later than May 16, 2019.” He estimates that the ASU Foundation should have around \$1.5 million and that there should be roughly \$100,000-\$150,000 of remaining research funds.

Based on our investigations to date, there appear to be some funds in the possession of the ASU Foundation that were designated by donors to the Origins Project. There do not appear to be any active research grants for which Professor Krauss is the primary investigator. The University does not have the authority to transfer funds donated to the ASU Foundation for a specific purpose, nor to transfer research grants (to the extent there are any outstanding grants) without the consent of the granting agency. With that said, the University would not oppose a transfer of research grants to another institution pursuant to the guidelines of the granting agency, and it is our understanding that such transfers often take place when the primary investigator moves from one institution to another. I’ve not added anything to the agreement regarding outstanding grants since that would seem to be controlled by the granting agency (if there are any such funds outstanding).

Finally, here is a link to the EEOC’s website regarding the Older Workers Benefit Protection Act: <https://www.eeoc.gov/eeoc/history/35th/thelaw/owbpa.html>.

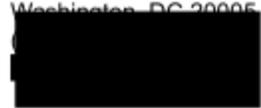
Please let me know when you'd like to schedule a time to talk tomorrow. I have a sentencing in federal court on Friday, so I would like to get as far as we can tomorrow and then, if we can reach an agreement, simply deal with papering logistics on Friday.

Thanks,

Justin

Justin Dillon

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Suite 600
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Lawrence M. Krauss

Professor

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