

EXHIBIT 66

**TO DECLARATION OF WENDY L. DEVINE
IN SUPPORT OF NUVASIVE, INC.'S
OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

NUVASIVE, INC., a Delaware
corporation,

Plaintiff,

vs.

CASE NO. 18-cv-00347-CAB-MDD

ALPHATEC HOLDINGS, INC., a
Delaware corporation, and
ALPHATEC SPINE, INC., a
California corporation,

Defendants.

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF PATRICK S. MILES

December 19, 2019

9:06 a.m.

12235 El Camino Real, Suite 200

San Diego, California

REPORTED BY:

Colleen M. Peterman

CSR No. 7882

<p style="text-align: right;">Page 38</p> <p>1 understand it, that would fall under the auspices of</p> <p>2 "kluge" in my vernacular.</p> <p>3 Q. Are there kluge retractors?</p> <p>4 MS. WICKRAMASEKERA: Objection. Vague.</p> <p>5 THE WITNESS: There's kluge everything.</p> <p>6 BY MR. TRIPODI:</p> <p>7 Q. Did NuVasive have, at the time of your</p> <p>8 departure, kluge retractors?</p> <p>9 A. Yeah.</p> <p>10 Q. In what way?</p> <p>11 A. Oh. You're talking about, you know, a volume</p> <p>12 of different types of retractors. If you want to get</p> <p>13 very specific, I'm happy to talk spec- --</p> <p>14 Q. Let's talk about XLIF retractors --</p> <p>15 A. Okay.</p> <p>16 Q. -- the MaXcess retractors.</p> <p>17 A. And so I want you to be very, very specific,</p> <p>18 because there were -- there were multiple iterations of</p> <p>19 MaXcess. And so some of them were kluge and hence</p> <p>20 required additional engineering or additional work.</p> <p>21 Q. What kind of engineering?</p> <p>22 A. There was a rack on some of them that were</p> <p>23 sticky. And so just purely the process by which you</p> <p>24 open a retractor was underwhelming. It was not</p> <p>25 reflective of a precise medical tool.</p>	<p style="text-align: right;">Page 40</p> <p>1 Please continue.</p> <p>2 A. Okay. I appreciate your interest, 'cause I'm</p> <p>3 telling you, it's fascinating.</p> <p>4 Q. I'm here to get your story, Mr. Miles --</p> <p>5 A. It's fascinating. And I'm going to give</p> <p>6 you --</p> <p>7 Q. -- and I want you to tell it.</p> <p>8 A. They're great stories.</p> <p>9 Q. I'm here to find out why you left a company</p> <p>10 you spent 17 years with.</p> <p>11 A. I thought -- I thought -- I thought you were</p> <p>12 supposed to enable me to talk and not interrupt me. I</p> <p>13 thought that was part of the agreement.</p> <p>14 Q. I want to hear your story. Tell me.</p> <p>15 A. You don't, because you're talking over me.</p> <p>16 Q. Tell me.</p> <p>17 MS. WICKRAMASEKERA: Is there a question?</p> <p>18 Can you repeat the question.</p> <p>19 What's the question?</p> <p>20 BY MR. TRIPODI:</p> <p>21 Q. Why did you leave for Alphatec?</p> <p>22 A. Because the CEO had no idea what he was doing.</p> <p>23 He created a terrible environment, that was the</p> <p>24 antithesis of what the company was founded upon. That's</p> <p>25 why I left.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. And that was kluge.</p> <p>2 A. Well, you know, I don't know if I'd consider</p> <p>3 it kluge or, you know, less elegant function.</p> <p>4 Q. Anything else about -- you said that hence</p> <p>5 required additional engineering or additional work.</p> <p>6 Besides what you already identified, anything</p> <p>7 else?</p> <p>8 A. If there's -- if there's specifics that you</p> <p>9 want me to address, I'm happy to. You know, I was there</p> <p>10 for 17 years. And so I was there from zero dollars</p> <p>11 and -- and exited around a billion. So there was a lot</p> <p>12 of stuff that went on through that entire period. And</p> <p>13 so I'm doing my best to recollect the specifics --</p> <p>14 Q. What --</p> <p>15 A. Don't interrupt me.</p> <p>16 Q. No. Okay.</p> <p>17 A. And -- and -- however, you're asking for a lot</p> <p>18 of information in ways that I can avoid. And I'm doing</p> <p>19 my best not to avoid, but I want you to be precise so</p> <p>20 that I can --</p> <p>21 Q. My question, Mr. Miles, was at the time of</p> <p>22 your departure.</p> <p>23 A. Let me finish. I'm not done yet. I'm not</p> <p>24 done yet. I'm not done yet.</p> <p>25 Q. My question was at the time of your departure</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. When did you come to that conclusion?</p> <p>2 A. I came to it on -- the first time I came to it</p> <p>3 was on April 2nd of 2015.</p> <p>4 Q. And why does that date stick in your mind?</p> <p>5 A. It sticks in my mind because my best friend</p> <p>6 was fired, and he called him a predator.</p> <p>7 Q. And who was that?</p> <p>8 A. Greg Lucier called my friend a predator.</p> <p>9 Q. Alex Lukianov?</p> <p>10 A. Yes, Alex Lukianov.</p> <p>11 Q. Was he a predator?</p> <p>12 MS. WICKRAMASEKERA: Objection.</p> <p>13 THE WITNESS: This is the -- it's really</p> <p>14 nonsense. Really.</p> <p>15 BY MR. TRIPODI:</p> <p>16 Q. Well, you brought it up.</p> <p>17 A. I'm -- no, I didn't. I said this is what was</p> <p>18 described to me from a -- from -- from the new guy who</p> <p>19 was supposed to run the company, who I -- so let's take</p> <p>20 this in the proper context.</p> <p>21 I work with somebody all the way back to</p> <p>22 Memphis, Tennessee, in the -- in the -- in the '90s, and</p> <p>23 I work another 15 years with the guy. And I got to tell</p> <p>24 you. Having 15 years with that person, or more, would</p> <p>25 suggest I have a greater insight as to the -- the</p>

Page 46

1 mistaken about.

2 Q. For example?

3 A. Things that emanated through his management of

4 the company.

5 Q. What do you mean by that?

6 A. Oh, an example would be, you know, regarding

7 the -- here's an example. Do you have consulting

8 agreements with surgeons? Yes. You know, do the

9 surgeons who consult use our products? Yes. Why don't

10 you pay all the surgeons?

11 Like, nonsensical things that seemed to be odd

12 to me of someone of his stature in terms of his stature

13 within the community. So there were oddities that would

14 reflect in my thinking, what is with this guy? He

15 presents himself as being a very assembled guy but

16 doesn't understand the dynamics of the specific industry

17 that we're participating in.

18 Q. Did you explain that to him when he brought it

19 up?

20 A. I clearly did, yes.

21 Q. Okay. Did you set him straight?

22 A. I did my best to.

23 MS. WICKRAMASEKERA: Objection.

24 BY MR. TRIPODI:

25 Q. And do you think he listened?

Page 47

1 MS. WICKRAMASEKERA: Objection. Calls for

2 speculation.

3 THE WITNESS: Doubtfully. But, you know,

4 again, you and I are talking in generalities. I didn't

5 have the level of influence on Mr. Lucier that I would

6 have hoped in terms of somebody being a 25-year veteran

7 of the industry and him being a one-year or less than a

8 one-year veteran of the industry. I didn't have that

9 level of influence on him that I hoped.

10 BY MR. TRIPODI:

11 Q. So he was relatively new to spine?

12 A. It wasn't relatively. He was completely new.

13 Q. Okay. And was he reliant on you in any way

14 for his understanding moving forward?

15 MS. WICKRAMASEKERA: Objection. Vague, calls

16 for speculation.

17 THE WITNESS: Yeah. The -- yeah. I couldn't

18 tell you what he was reliant upon.

19 BY MR. TRIPODI:

20 Q. If you had to describe his management style,

21 what word or words would you use?

22 MS. WICKRAMASEKERA: Objection. This is

23 vague.

24 MR. TRIPODI: Ms. Wickramasekera --

25 MS. WICKRAMASEKERA: Yeah.

Page 48

1 MR. TRIPODI: -- objection to form will be

2 fine.

3 MS. WICKRAMASEKERA: Okay. Thanks, Paul.

4 It's vague.

5 BY MR. TRIPODI:

6 Q. Okay.

7 A. So repeat the question.

8 Are you asking me what his management style

9 was?

10 Q. Yeah. What was his management style?

11 MS. WICKRAMASEKERA: Same objection.

12 THE WITNESS: I'd say inconsistent.

13 BY MR. TRIPODI:

14 Q. So was he -- was he an operations guy?

15 Does that term mean anything to you?

16 A. He claimed to be. He claimed to be.

17 Q. What does that mean, "operations"?

18 A. The way I understand it?

19 Q. Yes.

20 A. An operations guy to me would be someone who

21 understands the manufacturing of the product, that

22 understands the distribution of the product, understands

23 the quality elements of the product, a myriad of

24 operational related -- you know, what does it take to

25 get a product through a design process into a product

Page 49

1 through the FDA, you know, out of the manufacturing

2 process, on a shelf, into the operating room, back from

3 the operating room. All of those elements that would

4 suggest operations.

5 Q. And is that something that you already

6 understood, operations?

7 A. I had a lot of experience there.

8 Q. Can we contrast operations to, say, Alex

9 Lukianov's management style?

10 What kind of style did Alex have?

11 MS. WICKRAMASEKERA: Objection. Vague.

12 THE WITNESS: Yeah. I don't -- I guess I --

13 I don't understand the characterization of operations

14 style.

15 Is it -- you're saying that Lucier was a --

16 was a sound operator? Is that what you're --

17 BY MR. TRIPODI:

18 Q. No. We just talked about what it meant to be

19 focused on operations.

20 A. Uh-huh.

21 Q. How did that contrast with the way that

22 Mr. Lukianov ran the company?

23 MS. WICKRAMASEKERA: Objection. Vague, calls

24 for a narrative.

25 THE WITNESS: I would say there were some similarities.

<p style="text-align: right;">Page 50</p> <p>1 problems under Mr. Lukianov as Mr. Lucier, which</p> <p>2 ultimately drove their style by which they approached</p> <p>3 operations, if that's what we're talking about,</p> <p>4 operations.</p> <p>5 BY MR. TRIPODI:</p> <p>6 Q. Okay. Thank you for clarifying.</p> <p>7 What was Alex Lukianov's approach to</p> <p>8 operations, and how did it differ from Mr. Lucier's?</p> <p>9 MS. WICKRAMASEKERA: Objection. Vague.</p> <p>10 THE WITNESS: Not -- not profoundly different</p> <p>11 in terms of just the specifics as it relates to</p> <p>12 operations.</p> <p>13 BY MR. TRIPODI:</p> <p>14 Q. Anything else that was different?</p> <p>15 MS. WICKRAMASEKERA: Objection. Vague.</p> <p>16 THE WITNESS: Anything else that was --</p> <p>17 BY MR. TRIPODI:</p> <p>18 Q. About their management style.</p> <p>19 MS. WICKRAMASEKERA: Vague.</p> <p>20 THE WITNESS: It's like asking if you and I</p> <p>21 have different personalities. I -- I know we do. And</p> <p>22 so the dynamic becomes, what's the difference between</p> <p>23 Paul and Pat? You know, it becomes a difficult one to</p> <p>24 answer. Like, if there's specifics that you're</p> <p>25 interested in, I'm thrilled to tell you, but --</p>	<p style="text-align: right;">Page 52</p> <p>1 for me.</p> <p>2 And it came in the form of small things, you</p> <p>3 know, lying about -- for years in the company, a very</p> <p>4 cultural, very important element of our company was to</p> <p>5 take a spine exam. And so everybody in the entire</p> <p>6 company had to take the spine exam. And it was a</p> <p>7 requirement to take the spine exam. And everybody took</p> <p>8 it.</p> <p>9 And, you know, he claimed to the company that</p> <p>10 he took it and got a hundred. And everybody knew he</p> <p>11 didn't take it.</p> <p>12 And so there were dynamics like that, that</p> <p>13 when you look at the lead of a company when there --</p> <p>14 there becomes ridiculous incongruencies like that, what</p> <p>15 happens is -- is there appears to be more and more and</p> <p>16 more. And so there becomes the initiation of a lack of</p> <p>17 trust.</p> <p>18 BY MR. TRIPODI:</p> <p>19 Q. And so you had a developing lack of trust as</p> <p>20 of the time that you spoke with him in April of 2015?</p> <p>21 A. I just thought my initial interaction with</p> <p>22 him, independent of him being a board member, I thought</p> <p>23 him calling my friend a predator was out of bounds. And</p> <p>24 it was the first indication that I thought, you know</p> <p>25 what? We have -- we have trouble coming. And so it</p>
<p style="text-align: right;">Page 51</p> <p>1 BY MR. TRIPODI:</p> <p>2 Q. So you observed Mr. Lukianov for about</p> <p>3 17 years at NuVasive?</p> <p>4 A. Yeah, in that realm.</p> <p>5 Q. Okay. And you told me that you did not think</p> <p>6 that Mr. Lucier had a very good management style; right?</p> <p>7 You found fault with it; is that right?</p> <p>8 MS. WICKRAMASEKERA: Objection. Misstates his</p> <p>9 testimony.</p> <p>10 THE WITNESS: Yeah. You stated that, you</p> <p>11 know, whether it was --</p> <p>12 BY MR. TRIPODI:</p> <p>13 Q. Did you find fault with it?</p> <p>14 A. Did I find fault with his style?</p> <p>15 Q. Yes.</p> <p>16 A. I found fault with his substance and his</p> <p>17 style.</p> <p>18 Q. Okay. Let's be more specific.</p> <p>19 In addition to what we've discussed on the</p> <p>20 record, what else did you find fault with?</p> <p>21 MS. WICKRAMASEKERA: Objection to the form of</p> <p>22 the question.</p> <p>23 THE WITNESS: One of the things that I found</p> <p>24 troubling was incongruence between -- between what he</p> <p>25 stated and what he did. And it was -- it was a problem</p>	<p style="text-align: right;">Page 53</p> <p>1 was -- it was me reading the tea leaves.</p> <p>2 Q. And just to be clear, but you didn't say</p> <p>3 anything to him about that comment at that time; right?</p> <p>4 A. People say things all the time that I disagree</p> <p>5 with. And sometimes I feel the need to correct them,</p> <p>6 when I feel like I'm going to have some influence on</p> <p>7 their view. Other people, when I know that I'm not</p> <p>8 going to have influence, I don't believe I'm going to</p> <p>9 have influence, I don't.</p> <p>10 In his case, I didn't expect to have a hell of</p> <p>11 a lot of influence. He just ran my best friend out of a</p> <p>12 company that we worked together for 17 years. If you</p> <p>13 think I'm going to sit on the front lawn of the -- of</p> <p>14 The Inn at Rancho Santa Fe and argue with him about what</p> <p>15 predator means, it just seems a little outlandish.</p> <p>16 Q. So when Mr. Lukianov left, was Mr. Lucier</p> <p>17 appointed interim CEO?</p> <p>18 A. He was.</p> <p>19 Q. By whom?</p> <p>20 A. The board.</p> <p>21 Q. And was he chairman of the board at the time,</p> <p>22 or just a board member?</p> <p>23 A. I don't specifically recall. You could look</p> <p>24 back at the notes. It -- you know, it didn't make any</p> <p>25 difference to me.</p>



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.