

## **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.

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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

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1 understand it, that would fall under the auspices of  
2 "kluge" in my vernacular.  
3 Q. Are there kluge retractors?  
4 MS. WICKRAMASEKERA: Objection. Vague.  
5 THE WITNESS: There's kluge everything.  
6 BY MR. TRIPODI:  
7 Q. Did NuVasive have, at the time of your  
8 departure, kluge retractors?  
9 A. Yeah.  
10 Q. In what way?  
11 A. Oh. You're talking about, you know, a volume  
12 of different types of retractors. If you want to get  
13 very specific, I'm happy to talk spec- --  
14 Q. Let's talk about XLIF retractors --  
15 A. Okay.  
16 Q. -- the MaXcess retractors.  
17 A. And so I want you to be very, very specific,  
18 because there were -- there were multiple iterations of  
19 MaXcess. And so some of them were kluge and hence  
20 required additional engineering or additional work.  
21 Q. What kind of engineering?  
22 A. There was a rack on some of them that were  
23 sticky. And so just purely the process by which you  
24 open a retractor was underwhelming. It was not  
25 reflective of a precise medical tool.

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1 Q. And that was kluge.  
2 A. Well, you know, I don't know if I'd consider  
3 it kluge or, you know, less elegant function.  
4 Q. Anything else about -- you said that hence  
5 required additional engineering or additional work.  
6 Besides what you already identified, anything  
7 else?  
8 A. If there's -- if there's specifics that you  
9 want me to address, I'm happy to. You know, I was there  
10 for 17 years. And so I was there from zero dollars  
11 and -- and exited around a billion. So there was a lot  
12 of stuff that went on through that entire period. And  
13 so I'm doing my best to recollect the specifics --  
14 Q. What --  
15 A. Don't interrupt me.  
16 Q. No. Okay.  
17 A. And -- and -- however, you're asking for a lot  
18 of information in ways that I can avoid. And I'm doing  
19 my best not to avoid, but I want you to be precise so  
20 that I can --  
21 Q. My question, Mr. Miles, was at the time of  
22 your departure.  
23 A. Let me finish. I'm not done yet. I'm not  
24 done yet. I'm not done yet.  
25 Q. My question was at the time of your departure

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1 Please continue.  
2 A. Okay. I appreciate your interest, 'cause I'm  
3 telling you, it's fascinating.  
4 Q. I'm here to get your story, Mr. Miles --  
5 A. It's fascinating. And I'm going to give  
6 you --  
7 Q. -- and I want you to tell it.  
8 A. They're great stories.  
9 Q. I'm here to find out why you left a company  
10 you spent 17 years with.  
11 A. I thought -- I thought -- I thought you were  
12 supposed to enable me to talk and not interrupt me. I  
13 thought that was part of the agreement.  
14 Q. I want to hear your story. Tell me.  
15 A. You don't, because you're talking over me.  
16 Q. Tell me.  
17 MS. WICKRAMASEKERA: Is there a question?  
18 Can you repeat the question.  
19 What's the question?  
20 BY MR. TRIPODI:  
21 Q. Why did you leave for Alphatec?  
22 A. Because the CEO had no idea what he was doing.  
23 He created a terrible environment, that was the  
24 antithesis of what the company was founded upon. That's  
25 why I left.

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1 Q. When did you come to that conclusion?  
2 A. I came to it on -- the first time I came to it  
3 was on April 2nd of 2015.  
4 Q. And why does that date stick in your mind?  
5 A. It sticks in my mind because my best friend  
6 was fired, and he called him a predator.  
7 Q. And who was that?  
8 A. Greg Lucier called my friend a predator.  
9 Q. Alex Lukianov?  
10 A. Yes, Alex Lukianov.  
11 Q. Was he a predator?  
12 MS. WICKRAMASEKERA: Objection.  
13 THE WITNESS: This is the -- it's really  
14 nonsense. Really.  
15 BY MR. TRIPODI:  
16 Q. Well, you brought it up.  
17 A. I'm -- no, I didn't. I said this is what was  
18 described to me from a -- from -- from the new guy who  
19 was supposed to run the company, who I -- so let's take  
20 this in the proper context.  
21 I work with somebody all the way back to  
22 Memphis, Tennessee, in the -- in the -- in the '90s, and  
23 I work another 15 years with the guy. And I got to tell  
24 you. Having 15 years with that person, or more, would  
25 suggest I have a greater insight as to the -- the

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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?

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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.

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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

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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 similar

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1 problems under Mr. Lukianov as Mr. Lucier, which  
2 ultimately drove their style by which they approached  
3 operations, if that's what we're talking about,  
4 operations.  
5 BY MR. TRIPODI:  
6 Q. Okay. Thank you for clarifying.  
7 What was Alex Lukianov's approach to  
8 operations, and how did it differ from Mr. Lucier's?  
9 MS. WICKRAMASEKERA: Objection. Vague.  
10 THE WITNESS: Not -- not profoundly different  
11 in terms of just the specifics as it relates to  
12 operations.  
13 BY MR. TRIPODI:  
14 Q. Anything else that was different?  
15 MS. WICKRAMASEKERA: Objection. Vague.  
16 THE WITNESS: Anything else that was --  
17 BY MR. TRIPODI:  
18 Q. About their management style.  
19 MS. WICKRAMASEKERA: Vague.  
20 THE WITNESS: It's like asking if you and I  
21 have different personalities. I -- I know we do. And  
22 so the dynamic becomes, what's the difference between  
23 Paul and Pat? You know, it becomes a difficult one to  
24 answer. Like, if there's specifics that you're  
25 interested in, I'm thrilled to tell you, but --

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1 BY MR. TRIPODI:  
2 Q. So you observed Mr. Lukianov for about  
3 17 years at NuVasive?  
4 A. Yeah, in that realm.  
5 Q. Okay. And you told me that you did not think  
6 that Mr. Lucier had a very good management style; right?  
7 You found fault with it; is that right?  
8 MS. WICKRAMASEKERA: Objection. Misstates his  
9 testimony.  
10 THE WITNESS: Yeah. You stated that, you  
11 know, whether it was --  
12 BY MR. TRIPODI:  
13 Q. Did you find fault with it?  
14 A. Did I find fault with his style?  
15 Q. Yes.  
16 A. I found fault with his substance and his  
17 style.  
18 Q. Okay. Let's be more specific.  
19 In addition to what we've discussed on the  
20 record, what else did you find fault with?  
21 MS. WICKRAMASEKERA: Objection to the form of  
22 the question.  
23 THE WITNESS: One of the things that I found  
24 troubling was incongruence between -- between what he  
25 stated and what he did. And it was -- it was a problem

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1 for me.  
2 And it came in the form of small things, you  
3 know, lying about -- for years in the company, a very  
4 cultural, very important element of our company was to  
5 take a spine exam. And so everybody in the entire  
6 company had to take the spine exam. And it was a  
7 requirement to take the spine exam. And everybody took  
8 it.  
9 And, you know, he claimed to the company that  
10 he took it and got a hundred. And everybody knew he  
11 didn't take it.  
12 And so there were dynamics like that, that  
13 when you look at the lead of a company when there --  
14 there becomes ridiculous incongruencies like that, what  
15 happens is -- is there appears to be more and more and  
16 more. And so there becomes the initiation of a lack of  
17 trust.  
18 BY MR. TRIPODI:  
19 Q. And so you had a developing lack of trust as  
20 of the time that you spoke with him in April of 2015?  
21 A. I just thought my initial interaction with  
22 him, independent of him being a board member, I thought  
23 him calling my friend a predator was out of bounds. And  
24 it was the first indication that I thought, you know  
25 what? We have -- we have trouble coming. And so it

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1 was -- it was me reading the tea leaves.  
2 Q. And just to be clear, but you didn't say  
3 anything to him about that comment at that time; right?  
4 A. People say things all the time that I disagree  
5 with. And sometimes I feel the need to correct them,  
6 when I feel like I'm going to have some influence on  
7 their view. Other people, when I know that I'm not  
8 going to have influence, I don't believe I'm going to  
9 have influence, I don't.  
10 In his case, I didn't expect to have a hell of  
11 a lot of influence. He just ran my best friend out of a  
12 company that we worked together for 17 years. If you  
13 think I'm going to sit on the front lawn of the -- of  
14 The Inn at Rancho Santa Fe and argue with him about what  
15 predator means, it just seems a little outlandish.  
16 Q. So when Mr. Lukianov left, was Mr. Lucier  
17 appointed interim CEO?  
18 A. He was.  
19 Q. By whom?  
20 A. The board.  
21 Q. And was he chairman of the board at the time,  
22 or just a board member?  
23 A. I don't specifically recall. You could look  
24 back at the notes. It -- you know, it didn't make any  
25 difference to me

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