

**EXHIBIT 1 TO NUVASIVE, INC.'S  
NOTICE OF LODGMENT OF WITNESS  
DEPOSITION DESIGNATION CLIP REPORTS**

NuVasive v. Alphatec - Video

Howell, Kelli (Vol. 01) - 06/01/2018

1 CLIP (RUNNING 00:08:27.112)

Good morning, Ms. Howell. ...



KH-ALL FINAL 14 SEGMENTS (RUNNING 00:08:27.112)

1. PAGE 6:09 TO 6:10 (RUNNING 00:00:01.916)

09 Q. Good morning, Ms. Howell.
10 A. Good morning.

2. PAGE 14:01 TO 14:06 (RUNNING 00:00:13.725)

00014:01 When did you join NuVasive?
02 A. In November of 1999.
03 Q. And when did you meet Mr. Miles?
04 A. In December of 2000.
05 Q. When did Mr. Miles become employed by
06 NuVasive?

3. PAGE 14:09 TO 15:11 (RUNNING 00:01:32.875)

09 THE WITNESS: I believe it was in January
10 of 2001.
11 BY MR. TRIPODI II:
12 Q. If you would, could you briefly describe
13 your role as an employee of NuVasive from the time
14 you arrived in 1991 until --
15 A. 1999.
16 Q. Excuse me. 1999. My mistake. From 1999
17 through September of 2016.
18 A. So I was hired in 1999 as a project
19 manager. I fairly quickly transitioned that
20 responsibility from project management to a
21 research-specific role, to a manager of clinical
22 research and education. So included surgeon
23 education and premarket and post-market research.
24 Through that role, evolved and was
00015:01 promoted into successive titles within the same
02 scope as director of research and education, senior
03 director of research, vice president of research
04 and education. I may not know the exact titles of
05 each of those, but successively through vice
06 president, most recently vice president of
07 clinical -- vice president of research and health
08 informatics was my last title.
09 Q. Over that period of time, you became very
10 familiar with NuVasive's products and procedures,
11 correct?
12 A. Yes.

4. PAGE 21:08 TO 21:21 (RUNNING 00:00:41.849)

08 Q. Were you surprised that Pat Miles wanted
09 to go to Alphatec in September of 2016?
10 A. I was surprised.
11 Q. Why?
12 A. Because, leading up to that time,
13 Alphatec did not have a very good reputation in the
14 space. Again, products that were not very
15 competitive enough to pay attention to, they had a
16 negative reputation in the space for business
17 practices, for their sales structure.
18 I understood that they were having

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19 financial difficulties and were at the verge of  
20 bankruptcy when they sold their international  
21 business to Globus. It was a company in hardship.

**5. PAGE 32:09 TO 32:14 (RUNNING 00:00:24.626)**

09 What was your understanding of Alphatec's  
10 financial condition in March of 2017?

11 A. I would say none. I was aware in 2016 of  
12 financial hardships where they were considering  
13 going bankrupt. I was not -- it was not something  
14 I was thinking about in 2017.

**6. PAGE 98:10 TO 98:22 (RUNNING 00:00:48.689)**

10 Q. In your view, you're employed by  
11 NuVasive. Did you come to a conclusion that  
12 NuVasive had, in fact, the best clinical outcomes  
13 because it had the best equipment and procedure?

14 A. I would say I definitely believed that it  
15 had the best solution. And that is very much a  
16 collective it is a best solution of the assembly of  
17 the technologies, but also the research done to  
18 make improvements to it, the way that we educated.  
19 The full package of how we were able to get  
20 reproducible results and make a very rote  
21 procedure, I think that that was and still is the  
22 best option on the market.

**7. PAGE 194:17 TO 194:19 (RUNNING 00:00:07.801)**

17 Q. I would like to go ahead and mark as  
18 Exhibit 5 a document entitled "Extreme Lateral  
19 Interbody Fusion XLIF, Second Edition."

**8. PAGE 195:02 TO 195:03 (RUNNING 00:00:05.727)**

02 THE WITNESS: I recognize this as a  
03 chapter in the second edition of the book.

**9. PAGE 195:05 TO 195:16 (RUNNING 00:00:37.667)**

05 Q. And what -- this book, "Extreme Lateral  
06 Interbody Fusion," what is that, and who is  
07 responsible for creating it?

08 A. There were several people responsible for  
09 creating it. I was involved in its development.  
10 This again is the second edition of the book.  
11 There was a first edition that I was also involved  
12 with, engaging surgeons to participate as authors  
13 of each of the chapters.

14 Q. And, in fact, you are an author of  
15 Chapter 1, correct?

16 A. I am.

**10. PAGE 195:23 TO 196:02 (RUNNING 00:00:23.004)**

23 Q. Do you believe Chapter 1 to be accurate?

24 A. I will say that I must have at the time.  
25 I have not re-read it in many years, with my  
00196:01 current knowledge to be critical of it today. But  
02 at the time of its writing, I did.

**11. PAGE 197:16 TO 198:10 (RUNNING 00:01:08.981)**

16 Q. On the top of page 8, the paragraph  
17 states, "Since that time, the MaXcess retractor  
18 system for minimally disruptive spine surgery was  
19 developed to overcome the disadvantages of working  
20 through tubular portals, which in the lateral

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21 approach may also inadvertently put pressure on  
22 nerves with the psoas -- within the psoas by  
23 radially expanding the exposure."

24 Do you agree with that statement?

25 A. I do. The explanation of that is that --  
00198:01 and particularly the use of the word "may" was  
02 related to it depends on the size.

03 So with a tube, the only way to get  
04 bigger is to put in a bigger tube. If you were  
05 wanting to, say, increase your visualization or  
06 provide a bigger exposure to put a spacer through  
07 it, then you would need a bigger tube. And that is  
08 where we get into that question of are you  
09 unnecessarily making the exposure bigger from top  
10 to bottom, when you don't really need that.

**12. PAGE 198:25 TO 200:02 (RUNNING 00:01:36.272)**

25 Q. If you turn to page 9, the paragraph  
00199:01 right before the references says, "The XLIF  
02 procedure has revolutionized how interbody fusions  
03 can be performed more safely and with significantly  
04 less morbidity."

05 Do you agree with that statement?

06 A. Yes. In the context of in comparison to  
07 other more traditional procedures, it was  
08 definitely revolutionizing.

09 Q. And it says, "As other devices purported  
10 to be designed for lateral approach surgery become  
11 available, it is important to rely on the  
12 experience that has carried this evolution and the  
13 design features and technique details that  
14 consistently result in superior safety and clinical  
15 outcomes."

16 Do you agree with that?

17 A. I think that what we believed at the time  
18 to be the first and only, let alone the optimal  
19 procedure, was, again, getting back to the idea of  
20 other companies needing -- or having the burden of  
21 proof to compare themselves to this; that as early  
22 entrants to this market, and really developers of  
23 this market, that we believed we knew what was  
24 important to the procedure, and if anyone was going  
25 to dispute that or try to make things better, that  
00200:01 they were going to need to prove that to be the  
02 case.

**13. PAGE 200:03 TO 200:03 (RUNNING 00:00:01.330)**

03 Q. Is that a "yes"?

**14. PAGE 200:06 TO 200:17 (RUNNING 00:00:42.650)**

06 THE WITNESS: Not exactly. I think that,  
07 you know, the statement, as reads outside of that  
08 context, is very definitive. I think in -- given  
09 the history since that time and the position of  
10 XLIF lateral in that space, there have been other  
11 examples where other companies' solutions have been  
12 successful.

13 And so it is not as though it was  
14 impossible, but there is the burden of proof. And  
15 I think that what NuVasive did a great job of --  
16 again, my own bias is associated with that -- but  
17 was in validating it through clinical research.