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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

HONORABLE MICHAEL M. ANELLO, DISTRICT JUDGE

MEDTRONIC SOFAMOR DANEK, USA, .
ET AL., .CASE NO. 08-CV-1512-MMA
PLAINTIFF, .
V. . SEPTEMBER 7, 2011.
NUVASIVE, INC., . WEDNESDAY, 1:30 P.M.
DEFENDANT. . TRIAL - DAY SIX
.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF: LUKE L. DAUCHOT, ESQ.
NIMALKA WICKRAMASEKERA, ESQ.
SHARRE LOTFOLLAHI, ESQ.
ALEXANDER F. MACKINNON, ESQ.
MICHAEL DOBSZEWICZ, ESQ.
KIRKLAND & ELLIS, LLP
JEFF SCHWARTZ, ESQ.
DEWEY & LEBOEUF

FOR THE DEFENDANTS: FRANK SCHERKENBACH, ESQ.
JOHN M. FARRELL, ESQ.
TODD G. MILLER, ESQ.
JONATHAN J. LAMBERSON, ESQ.
NEIL WARREN, ESQ.
KEELEY I. VEGA, ESQ.

COURT REPORTER: JULIET Y. EICHENLAUB, CSR
USDC CLERK'S OFFICE
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REPORTED BY STENOTYPE, TRANSCRIBED BY COMPUTER



1 SORRY I HAVEN'T MET YOU BEFORE. I JUST WANT TO THANK YOU FOR
2 HELPING BRING LATERAL ACCESS SURGERY TO THE SPINAL SURGERY
3 INDUSTRY, THAT THE THINGS YOU'VE BEEN ABLE TO DO HAVE BEEN
4 REALLY QUITE DRAMATIC AND HELPFUL TO ALL OF US." THEN HE
5 COMPLIMENTED ME ON WHAT SOLAS HAS DONE, THE SOCIETY OF LATERAL
6 ACCESS SURGERY. I DON'T KNOW IF YOU ALL HAVE HEARD ANYTHING
7 ABOUT THAT, AND HIS COMMENT TO ME WAS WE WANTED TO DO SOMETHING
8 SIMILAR WITH MEDTRONICS, AND HE WANTED TO HAVE MY INPUT WITH
9 THAT.

10 Q. THANK YOU. NO FURTHER QUESTIONS.

11 THE COURT: ANY RECROSS?

12 MR. DAUCHOT: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP
14 DOWN.

15 NEXT WITNESS FOR NUVASIVE.

16 MR. MILLER: YOUR HONOR, NUVASIVE CALLS DR. JOHN
17 BRANTIGAN:

18 THE COURT: ALL RIGHT.

19 COME ON UP FRONT HERE, SIR. WHEN YOU GET UP HERE,
20 RAISE YOUR RIGHT HAND, AND WE'LL SWEAR YOU IN.

21 THE CLERK: DO YOU SOLEMNLY SWEAR THE TESTIMONY YOU
22 SHALL GIVE IN THE CAUSE NOW BEFORE THIS COURT SHALL BE THE
23 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU
24 GOD?

25 THE WITNESS: I DO.

1 THE CLERK: PLEASE TAKE THE WITNESS STAND. STATE
2 YOUR FULL NAME FOR THE RECORD AND SPELL IT PLEASE.

3 THE WITNESS: JOHN W. BRANTIGAN, B-R-A-N-T-I-G-A-N.

4 DIRECT EXAMINATION

5 BY MR. MILLER:

6 Q. GOOD AFTERNOON, DR. BRANTIGAN.

7 A. GOOD AFTERNOON.

8 Q. WHAT IS YOUR OCCUPATION?

9 A. I WAS A ORTHOPEDIC SPINAL SURGEON. I'M NOW
10 RETIRED.

11 Q. ARE YOU HERE TODAY TO TALK ABOUT THE BRANTIGAN
12 IMPLANTS AND HOW YOU CAME TO DEVELOP AND INVENT THOSE
13 IMPLANTS?

14 A. YES, I AM.

15 Q. COULD YOU PLEASE BRING UP DX5118?

16 WHAT DO WE SEE HERE, DOCTOR?

17 A. THAT'S A PHOTOGRAPH OF THREE OF THE IMPLANTS OF MY
18 OVAL CAGE DESIGN. THOSE ARE THE COMMON, SMALL, MEDIUM AND
19 LARGE SIZES.

20 Q. YOU TOLD US YOU'RE A RETIRED ORTHOPEDIC SURGEON.
21 WHEN DID YOU STOP PERFORMING SURGERY?

22 A. 2004.

23 Q. HOW MANY YEARS DID YOU CARE FOR SURGICAL PATIENTS?

24 A. WELL, STARTING WITH MY INTERNSHIP IN 1970, STOPPING
25 IN 2004. THAT'S 34 YEARS.

1 Q. OVER THE COURSE OF YOUR CAREER, HOW MANY SPINE
2 SURGERIES DID YOU DO?

3 A. WELL OVER 3,000.

4 Q. WHY DID YOU STOP PERFORMING SURGERY?

5 A. MY CAREER WAS A LITTLE DIFFERENT FROM SOME SURGEONS
6 IN THAT I WAS DEVELOPING THESE IMPLANTS FOR SPINE SURGERY. IN
7 2004, I WAS DOING A CLINICAL PRACTICE, BUT I WAS DOING A LOT OF
8 TEACHING, AND I FELT THAT IT WAS MORE IMPORTANT TO WORK AND
9 DESCRIBE THE TECHNIQUE AND THE OUTCOMES WITH THIS VARIETY OF
10 IMPLANTS FOR SPINAL SURGERY. SO I SPENT MY TIME DOING
11 WRITING.

12 Q. AND DID YOU END UP WRITING A BOOK?

13 A. YES, I DID.

14 Q. IS DX5153 INTERVERTEBRAL FUSION USING CARBON FIBER
15 REINFORCED POLYMER IMPLANTS YOUR BOOK?

16 A. YES, IT IS.

17 Q. WHEN WAS YOUR BOOK PUBLISHED?

18 A. 2006.

19 Q. DID OTHER SURGEONS CONTRIBUTE TO THE WRITING OF THIS
20 BOOK?

21 A. YES, THEY DID.

22 Q. WHO WERE THEY?

23 A. I RECRUITED AS MY CO-EDITOR DR. CARL LAURYSSSEN. I
24 COME FROM AN ORTHOPEDIC SPINE BACKGROUND. CARL COMES FROM A
25 NEURO SURGICAL SPINE BACKGROUND. SO HIS PERSPECTIVE WAS VERY

1 IMPORTANT. I ALSO HAD 50 CO-AUTHORS, MOST OF THEM FROM ALL
2 AROUND THE WORLD, WHO HAD EXTENSIVE EXPERIENCE, AND THEY WROTE
3 CHAPTERS SHARING THEIR EXPERIENCE WITH THESE IMPLANTS.

4 Q. ARE YOUR IMPLANTS -- ARE THE IMPLANTS THAT YOU
5 DEVELOPED AND INVENTED, THE ONES THAT WE SAW PREVIOUSLY, THE
6 OVAL CAGES, ARE THEY STILL SOLD TODAY?

7 A. YES, THEY ARE.

8 Q. WHO SELLS THEM?

9 A. DEPUY SPINE.

10 Q. IS THAT PART OF JOHNSON AND JOHNSON?

11 A. YES.

12 Q. HOW MANY PATIENTS HAVE HAD SURGERIES USING YOUR OVAL
13 IMPLANT?

14 A. WELL OVER 100,000.

15 Q. I'D LIKE TO TALK ABOUT YOUR SURGICAL EDUCATION AND
16 EXPERIENCE AS A SURGEON IN THE 1970S AND EARLY '80S THAT LED
17 YOU TO DEVELOP THOSE OVAL IMPLANTS. LET'S START WITH WHERE DID
18 YOU GRADUATE FROM MEDICAL SCHOOL?

19 A. I GRADUATED FROM JOHNS HOPKINS UNIVERSITY IN 1970.

20 Q. AFTER GETTING YOUR M.D. DEGREE, WHERE DID YOU GET
21 YOUR FIRST SURGICAL TRAINING?

22 A. I DID A SURGICAL INTERNSHIP AT THE UNIVERSITY OF
23 MINNESOTA AND MINNEAPOLIS.

24 Q. WHY THE UNIVERSITY OF MINNESOTA?

25 A. THEY HAD A WORLD-FAMOUS SURGERY TRAINING PROGRAM THAT

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