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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
4 HONORABLE MICHAEL M. ANELLO, DISTRICT JUDGE
5

6
7 _____)
8 MEDTRONIC SOFAMOR DANEK, USA) CASE NO. 08 CV 1512-MMA
9 ET AL.,)
10 PLAINTIFF,)
11 VS.) SEPTEMBER 1, 2011
12 NUVASIVE, INC.,) THURSDAY, 9:00 AM
13 DEFENDANT.) TRIAL - DAY THREE
14 _____)

15
16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 APPEARANCES:

18 FOR THE PLAINTIFF: LUKE L. DAUCHOT, ESQ.
19 NIMALKA WICKRAMASEKERA, ESQ.
20 SHARRE LOTFOLLAHI, ESQ.
21 ALEXANDER F. MACKINNON, ESQ.
22 MICHAEL DOBSZEWICZ, ESQ.
23 KIRKLAND & ELLIS, LLP

24 JEFF SCHWARTZ, ESQ.
25 DEWEY & LEOEUF

26 FOR THE DEFENDANT: FRANK SCHERKENBACH, ESQ.
27 TODD G. MILLER, ESQ.
28 JONATHAN J. LAMBERSON, ESQ.
29 NEIL WARREN, ESQ.
30 KEELEY I. VEGA, ESQ.
31 FISH & RICHARDSON, P.C.

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1 THOSE?

2 MR. DAUCHOT: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU ARE
4 ALL DONE. YOU CAN STEP DOWN.

5 DO WE HAVE ANOTHER WITNESS READY?

6 MR. DAUCHOT: YES, YOUR HONOR. FOR THE NEXT
7 WITNESS, WE CALL MR. ALEX LUKIANOV.

8 EXAMINATION OF ALEXIS V. LUKIANOV

9 THE COURT: ALL RIGHT.

10 WHY DON'T WE TAKE A 15 MINUTE BREAK AND JUST COME BACK
11 15 MINUTES FROM NOW, WHATEVER TIME THAT IS. OKAY?

12 (SHORT RECESS TAKEN)

13 THE CLERK: REMAIN SEATED AND COME TO ORDER.

14 THE COURT: OUR RECORD CAN REFLECT EVERYBODY IS
15 BACK AND WE'RE NOW READY FOR THE NEXT WITNESS.

16 COME ON UP FORWARD, SIR. WHEN YOU GET UP HERE, WE'LL
17 HAVE YOU RAISE YOUR RIGHT HAND AND SWEAR YOU IN.

18 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

19 DO YOU SOLEMNLY SWEAR THAT THE EVIDENCE YOU SHALL GIVE
20 IN THE CAUSE NOW BEFORE THE COURT IS THE TRUTH, THE WHOLE
21 TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

22 THE WITNESS: YES, I DO.

23 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
24 RECORD AND SPELL IT, PLEASE.

25 THE WITNESS: ALEXIS V. LUKIANOV, ALEXIS, MIDDLE

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1 INITIAL V, LUKIANOV.

2 THE COURT: THANKS. GO AHEAD, MR. DAUCHOT.

3 DIRECT EXAMINATION

4 BY MR. DAUCHOT:

5 Q GOOD MORNING, MR. LUKIANOV?

6 A GOOD MORNING.

7 Q WE HAVE MET BEFORE?

8 A YES.

9 Q THAT IS WHEN I TOOK YOUR DEPOSITION IN THE CASE WHEN
10 YOU WERE UNDER OATH AND GAVE SOME TESTIMONY, IS THAT RIGHT?

11 A YES. THAT'S CORRECT.

12 Q NOW AS OF -- IT IS TRUE, ISN'T IT NOT, THAT AS OF
13 FEBRUARY 2001, ONE OF YOUR CORPORATE DEVELOPMENT OBJECTIVES
14 WAS TO, AND I QUOTE, IDENTIFY NEW PRODUCTS TO BROADEN THE
15 OFFERING AND OBTAIN A PRODUCT OR SYSTEM ENHANCING THE FUSION
16 TECHNIQUE?

17 A PERHAPS. I'M NOT SURE WHAT YOU ARE REFERRING TO
18 EXACTLY, AS FAR AS A DOCUMENT.

19 Q THE FACT IS, AS OF 2001, YOU HAD NO SURGICAL PROCEDURE
20 THAT WAS TO YOUR SATISFACTION, AM I CORRECT?

21 A IN 2001, AT THAT POINT IN TIME, WE WERE REALLY IN THE
22 PROCESS OF STILL DEVELOPING XLIF.

23 Q IN 2001 YOU WERE STILL IN THE PROCESS OF DEVELOPING
24 XLIF?

25 A THAT'S RIGHT.

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1 Q DO YOU KNOW THAT THE XLIF NAME DID NOT COME UP UNTIL,
2 IT CAME UP IN JANUARY 31, 2001 THEREABOUTS, YOU TRADEMARKED
3 THE NAME?

4 A YES.

5 Q OKAY.

6 A BUT IT WAS NOT FULLY DEVELOPED UNTIL 2003, SO THERE
7 WERE ITERATIONS OF XLIF ALONG THE WAY, BUT FULL DEVELOPMENT
8 AND LAUNCH OF IT TOOK PLACE IN 2003.

9 Q NOW YOU NEEDED, AGAIN JUST TO MAKE SURE WE'RE ALL CLEAR
10 HERE, AS OF FEBRUARY 2001, ONE OF YOUR BUSINESS OBJECTIVES
11 WAS TO OBTAIN A PRODUCT OR SYSTEM ENHANCING THE FUSION
12 TECHNIQUE, AM I CORRECT?

13 A AGAIN, I'M NOT SURE WHICH DOCUMENT YOU ARE REFERRING
14 TO.

15 Q ALL RIGHT. LET'S PUT UP PX 3002, PLEASE. PAGE 75,
16 PLEASE, DAVID? PX 3002-75. CAN YOU BLOW THAT UP.

17 NOW, DAVE CAN YOU FLIP BACK TO THE FRONT PAGE,
18 PLEASE. BLOW THAT UP.

19 THIS IS THE PRESENTATION YOU GAVE FEBRUARY 13,
20 2001, RIGHT MR. LUKIANOV?

21 A THAT'S WHAT IT LOOKS LIKE, YES.

22 Q 2001 STRATEGIC DIRECTION MEETING?

23 A THAT'S WHAT IT SAYS.

24 Q ALL RIGHT. NOW, PX 300-2-75, YOU HAVE CORPORATE
25 DEVELOPMENT OBJECTIVES, DO YOU SEE THAT?

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1 A YES.

2 Q AND NOW AN OBJECTIVE IS A GOAL, CORRECT?

3 A RIGHT.

4 Q AND YOU HAD THE THIRD GOAL, "OBTAIN A PRODUCT OR SYSTEM
5 ENHANCING THE FUSION TECHNIQUE?"

6 A CORRECT.

7 Q AND I TAKE IT THAT AS OF THAT TIME, YOU DID NOT HAVE A
8 PRODUCT OR SYSTEM THAT ENHANCED THE FUSION TECHNIQUE, SINCE
9 THAT WAS AN OBJECTIVE AS OF FEBRUARY 2001, IS THAT A FAIR
10 POINT OR NOT?

11 A NO. WE DID HAVE A PRODUCT, MOST CERTAINLY.

12 Q SO WHY DO YOU HAVE AS AN OBJECTIVE, THE NEED TO OBTAIN
13 ONE?

14 A IT'S A PROCESS OF ITERATION, IT'S TO ADVANCE IT.

15 Q CAN WE GO TO PX 3002-101 -- WELL, STRIKE THE QUESTION.
16 AS OF THIS POINT IN TIME, 2001, YOU DID SAY THAT NUVASIVE
17 MUST GROW FASTER, AM I CORRECT?

18 A I ALWAYS SAY THAT. I'M SURE THAT'S TRUE.

19 Q AND YOUR QUESTION WAS HOW CAN YOU GROW NUVASIVE AT A
20 FASTER PACE, AM I CORRECT?

21 A I WOULD ASSUME SO, YES.

22 Q AND AS OF FEBRUARY 2001, YOU BELIEVED THAT NUVASIVE
23 NEEDED TO CREATE A NEW SOURCE OF REVENUE, AM I CORRECT?

24 A NOT EXACTLY SURE WHAT YOU ARE REFERRING TO.

25 Q ALL RIGHT. CAN WE TURN TO PX 3002-106? BLOW THAT UP

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