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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. . AUGUST 31, 2011
NUVASIVE, INC., . WEDNESDAY, 1:30 P.M.
DEFENDANT. . TRIAL - DAY TWO
.

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
880 FRONT STREET, ROOM 4290
SAN DIEGO, CALIFORNIA 92101
JULIET_EICHENLAUB@CASD.USCOURTS.GOV

REPORTED BY STENOTYPE, TRANSCRIBED BY COMPUTER



1 ANSWER: YES.

2 QUESTION: WHAT DID YOU THINK?

3 ANSWER: I THOUGHT IT WAS AN INTERESTING START. THE
4 NOTION OF TRYING TO NOT ONLY STIMULATE A NERVE BUT MONITOR
5 THE LOCATION OF THAT NERVE OR THE PROXIMITY OF THAT NERVE
6 WAS ONE OF THE GOALS OF NUVASIVE'S WORK, AS LEAST AS FAR
7 AS I WAS INVOLVED IN IT. AND THIS WAS -- THIS WAS VERY
8 EARLY WORK, BUT IT WAS HEADED IN THAT DIRECTION."

9 MS. WICKRAMASEKERA: AND THAT'S THE END OF THE
10 TRANSCRIPT, YOUR HONOR.

11 THE COURT: ALL RIGHT. THANK YOU, DR. FOLEY. YOU
12 DID A VERY GOOD JOB.

13 THE WITNESS: THANK YOU.

14 MS. WICKRAMASEKERA: I'D JUST LIKE TO ADD THAT DURING
15 THESE VIDEO CLIPS, WE SAW THE FOLLOWING EXHIBITS: PX305,
16 PX2490, PX2491, PX2493, AND PX2492.

17 THE COURT: ALL RIGHT.

18 MS. WICKRAMASEKERA: THANK YOU.

19 THE COURT: NEXT WITNESS.

20 MR. DAUCHOT: YOUR HONOR, FOR OUR NEXT WITNESS, WE
21 CALL MR. PATRICK MILES.

22 **PATRICK MILES, PLAINTIFF'S WITNESS, TESTIFIED AS FOLLOWS:**

23 THE CLERK: PLEASE RAISE YOUR RIGHT HAND. DO YOU
24 SOLEMNLY SWEAR THAT THE TESTIMONY YOU SHALL GIVE IN THE CAUSE
25 NOW BEFORE THE COURT IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING

1 BUT THE TRUTH, SO HELP YOU GOD?

2 THE WITNESS: I DO.

3 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
4 RECORD AND SPELL IT PLEASE.

5 THE WITNESS: PATRICK MILES. LAST NAME, M-I-L-E-S.
6 FIRST NAME, P-A-T-R-I-C-K.

7 THE COURT: THANKS, MR. MILES. GO AHEAD AND HAVE A
8 SEAT. MR. DAUCHOT?

9 DIRECT EXAMINATION

10 BY MR. DAUCHOT:

11 Q. THANK YOU, YOUR HONOR.

12 MR. MILES, GOOD AFTERNOON.

13 A. GOOD AFTERNOON.

14 Q. THIS IS THE FIRST TIME WE MET?

15 A. FIRST TIME YOU AND I MET?

16 Q. YES.

17 A. I BELIEVE SO.

18 Q. YOU'VE BEEN DEPOSED IN THIS CASE BEFORE, THOUGH?

19 A. I HAVE.

20 Q. I THINK MY COLLEAGUE, MS. WICKRAMASEKERA, DID THAT.
21 DO YOU REMEMBER THAT?

22 A. I DO.

23 Q. YOU BEGAN WORKING FOR NUVASIVE IN JANUARY 2001; AM I
24 RIGHT?

25 A. YES.

1 Q. AND YOU -- THAT'S WHEN MR. VALENTINE ALSO JOINED THE
2 COMPANY; CORRECT?

3 A. IT IS.

4 Q. AND YOU LEFT MEDTRONIC SOFAMOR DANEK IN APRIL OF
5 2000; IS THAT ABOUT RIGHT?

6 A. I BELIEVE SO; YEAH, LEFT MEDTRONIC.

7 Q. AND WHEN YOU LEFT MEDTRONIC SOFAMOR DANEK, YOUR
8 PRINCIPAL AREA OF WORK WAS WHAT WE CALL MINIMALLY INVASIVE
9 SPINE SURGERY DEVICES; AM I RIGHT?

10 A. YES; IT WAS THAT AND CERVICAL SPINE SURGERY.

11 Q. AND WHEN YOU WORKED ON MINIMALLY INVASIVE SPINE
12 SURGERY DEVICES FOR SOFAMOR DANEK, YOU DID SO WITH DR. FOLEY;
13 AM I CORRECT?

14 A. YES, I DID.

15 Q. AND YOU ALSO WORKED WITH MR. MELKENT; AM I RIGHT?

16 A. NOT DIRECTLY.

17 Q. INDIRECTLY?

18 A. INDIRECTLY, YES.

19 Q. INDIRECTLY. ALL RIGHT.

20 AND YOU ALSO WORKED WITH MR. BOYD?

21 A. NOT COMMONLY.

22 Q. UNCOMMONLY?

23 A. IF THAT'S THE WAY YOU'D LIKE TO CHARACTERIZE IT. I
24 DIDN'T SEE HIM VERY OFTEN.

25 Q. OKAY.

1 BUT YOU DID WORK WITH HIM FROM TIME TO TIME?

2 A. HE WAS WITH THE SAME COMPANY, YES. I DON'T RECALL,
3 FROM TIME TO TIME.

4 Q. AND MR. BOYD IS NOW A CONSULTANT TO NUVASIVE?

5 A. YES.

6 Q. ALL RIGHT.

7 NOW, NUVASIVE COMMERCIALY LAUNCHED XLIF IN OCTOBER
8 2003; AM I RIGHT?

9 A. YES.

10 Q. AND I TAKE IT THAT YOU WERE INVOLVED IN THAT RELEASE,
11 THAT PUBLIC LAUNCH?

12 A. UH-HUH, YES, I WAS.

13 Q. AND I ASSUME YOU DID THAT WHEN YOU FELT THAT THE
14 ENTIRE XLIF SYSTEM WAS READY TO LAUNCH FOR THE PUBLIC; FAIR
15 STATEMENT?

16 A. WE LAUNCHED IT WHEN WE FELT IT WAS A SAFE AND
17 REPRODUCIBLE PROCEDURE.

18 Q. YOU LAUNCHED IT WHEN YOU THOUGHT IT WAS SAFE AND WHEN
19 YOU THOUGHT IT WAS REPRODUCIBLE, RIGHT?

20 A. YES.

21 Q. NOW, YOUR POSITION IS THAT NEUROVISION WAS KEY TO
22 THAT; AM I RIGHT?

23 A. YES.

24 Q. ALL RIGHT.

25 NOW, DO YOU RECALL -- WELL, LET'S TAKE A STEP BACK.

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