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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, )  
 )  
VS. ) DECEMBER 16, 2011  
 )  
NUVASIVE, INC., ) FRIDAY, 9:00 AM  
 )  
DEFENDANT. ) BENCH TRIAL  
\_\_\_\_\_) VOLUME 1

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 DEFENDANT: FRANK SCHERKENBACH, ESQ.  
TODD G. MILLER, ESQ.  
JONATHAN J. LAMBERSON, ESQ.  
NEIL WARREN, ESQ.  
KEELEY I. VEGA, ESQ.  
FISH & RICHARDSON, P.C.

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USDC, SOUTHERN DISTRICT OF CA  
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1 WITH THE ANTEROLATERAL INCISION, THE BIG OPEN POSITION, PEEL  
2 BACK THE PSOAS MUSCLE AND THEN ENTER THE DISC SPACE  
3 COMPLETELY LATERAL. OKAY? THAT'S A FOR EXAMPLE AND THAT'S  
4 WHAT HE'S REFERRING TO. EXCUSE ME.

5 Q SO HE WASN'T REFERRING TO APPROACHING -- AND WE'VE  
6 COVERED THAT. THAT'S FINE. MY ONLY POINT IS THIS. WHEN  
7 WE'RE TALKING ABOUT JUST BECAUSE YOU HAVE A PATIENT ON THE  
8 SIDE ON THE OPERATING TABLE AND YOU DECIDE TO CUT A PATIENT  
9 FROM THE SIDE, OKAY? DOESN'T MEAN THAT YOU'RE GOING TO BE  
10 PERFORMING A DIRECT LATERAL, AM I CORRECT?

11 A WELL, YOU MIGHT END UP ANTEROLATERAL. IT JUST DEPENDS  
12 ON WHAT KIND OF ANATOMY YOU ARE TRYING TO APPROACH.

13 Q THERE YOU GO. SO WHEN WE TALK ABOUT AND ANTEROLATERAL  
14 SO IN ANTEROLATERAL, I THINK THIS WAS YOUR TESTIMONY AT  
15 TRIAL IS BASICALLY --

16 A YOU KNOW, YOU HAVE A MUCH BETTER MEMORY THAN I DO, BUT  
17 GO AHEAD.

18 Q THAT'S ALL RIGHT. I'M YOUNGER. ANTEROLATERAL MEANS  
19 OBLIQUE TO THE CENTER?

20 A WELL, TECHNICALLY ANTEROLATERAL WOULD MEAN ANY ANGLE  
21 OFF A DIRECT STRAIGHT MIDLINE 90-DEGREE APPROACH.

22 Q SURE. BUT DURING TRIAL, WE WERE DISTINGUISHING BETWEEN  
23 THE ANTEROLATERAL AND THE DIRECT LATERAL?

24 A CORRECT. THAT'S EXACTLY RIGHT. AS YOU ILLUSTRATE UP  
25 THERE, THAT'S CORRECT.

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1 Q SURE. AND WHAT YOU WERE SAYING IS WHEN YOU WERE  
2 CUTTING THE PATIENT OR PUTTING THE PATIENT ON THE SIDE AND  
3 YOU ARE MAKING A LATERAL INCISION, OKAY? THE AIM VERY WELL  
4 COULD BE APPROACHING IT ANTERO Laterally AS OPPOSED TO  
5 DIRECT LATERAL?

6 A FAIR POINT. AND COULD BE, IF I JUST BE SPECIFIC, AIM  
7 COULD BE TO INSERT THE IMPLANT ANTEROLATERAL OR DIRECT  
8 LATERAL.

9 Q OKAY. WE'RE ON THE SAME PAGE. SO CAN WE TURN TO DX  
10 5885? PAGE EIGHT. CAN YOU BLOW UP FOR ME, DAVID, ON THE  
11 SECOND COLUMN, THE PARAGRAPH ENTITLED "POSITIONING".

12 OKAY. NOW IT STATES IN THE SECOND SENTENCE OR  
13 FIRST SENTENCE, FOR APPROACHES TO THE LOWER THREE LUMBAR  
14 INTERVERTEBRAL DISCS, PATIENTS ARE PLACED SUPINE ON THE  
15 OPERATING TABLE, RIGHT?

16 A THAT'S WHAT IT SAYS.

17 Q AND YOU'VE TESTIFIED THAT LOWER THREE LUMBAR  
18 INTERVERTEBRAL DISCS MEANS TO YOU, THE L FOUR, L FIVE AND  
19 THE L FIVE S-1?

20 A WELL, HE IS SAYING THE LOWER THREE LUMBER DISCS. THE  
21 LOWER THREE LUMBAR DISCS ARE NOT ONLY TO ME BUT EVERYBODY  
22 ELSE HOPEFULLY, L3-4, L4-5 AND L5 S1.

23 Q THAT'S WHAT I JUST SAID.

24 A NO. I THINK YOU SAID L FOUR AND L5 S-1.

25 Q BUT YOU CONSIDER L3 AND L4 TO BE UPPER?

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1 Q OKAY. NOW CAN WE GO BACK TO DX 5885, PAGE EIGHT? THE  
2 POSITIONING PART.

3 NOW ON THE SECOND SENTENCE HE STATES, FOR RARE  
4 UPPER LUMBAR FUSIONS, THEY, THEY BEING THE PATIENTS, ARE  
5 PLACED IN THE LATERAL POSITION WITH THE LEFT LOIN UPPERMOST.  
6 RIGHT?

7 A YES.

8 Q OKAY. NOW GIVEN YOUR PRIOR TESTIMONY, THAT STATEMENT  
9 DOES NOT TELL YOU HOW THE IMPLANT IS IMPLANTED IN THE  
10 VERTEBRAL SPACE, CORRECT?

11 A CORRECT. IT WOULDN'T TELL YOU EXACTLY HOW THE IMPLANT  
12 IS PLACED IN THE DISC SPACE BUT IT CERTAINLY GIVING YOU THE  
13 ORIENTATION OF THE PATIENT, YES, FOR THE APPROACH, FOR THE  
14 ACCESS.

15 Q ACCORDING TO YOUR PRIOR TESTIMONY, THAT STATEMENT IS  
16 COMPLETELY CONSISTENT WITH THE INSERTION OF AN IMPLANT FROM  
17 ANTEROLATERAL SO JUST OFF THE MIDLINE OF THE FRONT OF THE  
18 DISC SPACE. THAT WAS YOUR TESTIMONY HERE, CORRECT.

19 A YES. AND I WOULD JUST AGAIN TO BE PRECISE, THE  
20 APPROACH TO THE LUMBAR SPINE WITH A PATIENT IN A LATERAL  
21 DECUBITUS OR A SIDE POSITION, WOULD PERMIT YOU TO, ACTUALLY  
22 YOU CAN GO STRAIGHT ANTERIORLY BUT NOT VERY CONVENIENTLY,  
23 WOULD PERMIT YOU FAIRLY CONVENIENTLY TO PUT AN IMPLANT IN  
24 ANTERO LATERALLY OR IF YOU PEEL BACK THE PSOAS MUSCLE  
25 DIRECTLY LATERALLY.

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