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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) | CASE NO. 08 CV 1512-MMA |
| ET AL.,) | |
| PLAINTIFF,) | |
| VS.) | SEPTEMBER 1, 2011 |
| NUVASIVE, INC.,) | THURSDAY, 9:00 AM |
| DEFENDANT.) | TRIAL - DAY THREE |
| _____) | |

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.

ELIZABETH CESENA, CSR 12266, (619) 237-0100

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1 NERVES BUT ALSO TO IDENTIFY WHICH DIRECTION THEY WERE
2 LOCATED IN FROM WHERE THE SURGEON WAS?

3 A IT FOUND THE NERVE, BUT IT DIDN'T HAVE THE CAPACITY TO
4 TELL DIRECTIONALLY, YOU KNOW, WHERE THE NERVE WAS.

5 Q IS DIRECTIONALITY SOMETHING ADDED LATER?

6 A YES.

7 Q AND IS THAT IN NEUROVISION TODAY?

8 A YES. BUT FUNDAMENTALLY, IT GOES BACK TO, HOW DO YOU
9 CONTINUE TO IMPROVE AND CREATE RESOLUTION SO YOU CREATE
10 SAFETY AND REPRODUCIBILITY.

11 Q WOULD YOU SAY THE USE OF NEUROVISION, NERVE MONITORING
12 TECHNOLOGY HAS BEEN IMPORTANT TO THE SUCCESS OF XLIF?

13 A YES.

14 Q I THINK YOU TOLD US THAT DR. PIMENTA, WHEN HE WAS FIRST
15 DOING HIS DIRECT LATERAL APPROACHES, HE WASN'T USING NERVE
16 MONITORING, RIGHT?

17 A HE WAS NOT.

18 Q SO YOU CAN DO THESE PROCEDURES WITHOUT NERVE
19 MONITORING?

20 A BECAUSE YOU CAN DOESN'T MEAN YOU SHOULD AND WHAT HAPPEN
21 IS THERE ARE ANATOMIC SAFE ZONES. THERE ARE PLACES IN THE
22 PSOAS WHERE THE NERVES AREN'T SUPPOSED TO BE, BUT ALL OF US
23 ARE ANATOMICALLY DIFFERENT SO MY PREFERENCE, IF I HAD THE
24 SURGERY IS TO KNOW WHERE THE NEURO ELEMENTS ARE.

25 Q HAVE YOU HAD REQUESTS FROM HOSPITALS OR CUSTOMERS TO

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1 SELL THEM IMPLANTS COROENT, ETC, TO DO DIRECT LATERAL
2 SURGERY, BUT THEY SAY, "WE DON'T WANT TO USE NEUROVISION"?

3 A YES.

4 Q HOW DO YOU RESPOND TO THOSE REQUESTS?

5 A WE HAVE SUCH A CONFIDENCE IN THE VERIFICATION IN THE
6 SAFETY AND REPRODUCIBILITY, A VERY ROTE, STEP ONE, STEP TWO,
7 STEP THREE, TECHNIQUE THAT WHEN WE DO IT, IS WE DRIVE THEM
8 TO SELL THE PROCEDURE, NOT SPECIFIC ELEMENTS OF THE
9 PROCEDURE.

10 Q SO YOU SAY NO TO SOME CUSTOMERS?

11 A ABSOLUTELY.

12 Q EVEN THOUGH YOU COULD MAKE MORE MONEY IF YOU JUST SOLD
13 THEM THE IMPLANTS?

14 A YOU CAN DO SHORT TERM PHENOMENA. OUR VISION IS WE
15 CREATE VALUE. WE GET PAID REFLECTIVE OF THE VALUE AND THE
16 VALUE IS ONLY DONE WHEN YOU DO GOOD WORK AND YOU CREATE
17 SAFETY AND REPRODUCIBILITY. TO MAKE A LITTLE MONEY ON A
18 SINGLE EXPERIENCE IS NOT A BUSINESS.

19 Q IS NUVASIVE OR DOCTORS WHO USED NUVASIVE TECHNOLOGY
20 DONE STUDIES OF HOW OFTEN IT IS THEY ENCOUNTER A NERVE USING
21 THE NEURO VISION TECHNOLOGY?

22 A ABSOLUTELY.

23 Q WHAT ARE THOSE NUMBERS LIKE?

24 A IT'S IN THE 80 TO 90 PERCENT RANGE.

25 SO IT'S NICE TO KNOW WHEN SOMETHING IS THERE AND

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1 SINCE YOU ARE DEALING WITH FEWER NERVES IN THE ANTERIOR SIDE
2 OF THE PSOAS THAN IN THE POSTERIOR, YOU KNOW THAT A NUMBER
3 OF SURGEONS USED FREEHAND TO WORM THEIR WAY OR VISUALIZE
4 THEIR WAY THROUGH THE PSOAS TO GET TO THE DISC SPACE. YOU
5 KNOW THAT?

6 A YES, A LONG TIME AGO. WELL, BEFORE THIS, ACTUALLY.

7 Q AND MARRYING NEUROVISION WITH DR. PIMENTA'S SURGICAL
8 APPROACH WAS GOOD MARKETING?

9 A WELL, THE WHOLE POINT OF THIS SLIDE IS THAT WE PUT
10 TOGETHER THE COMPLETE STRATEGY.

11 YOU ASKED ME BEFORE IF DR. PIMENTA HAD DISCOVERED
12 XLIF PRIOR, AND I SAID NO, BECAUSE HE WAS DOING A
13 RETROPERITONEAL APPROACH AT 90 DEGREES, BUT WE HADN'T PUT
14 THE WHOLE THING TOGETHER OF MAXCESS IMPLANTS, THE ENTIRE
15 PACKAGE WITH ADVANCED NEURO MONITORING.

16 Q CAN WE GO TO PX0121, PLEASE? CAN YOU BLOW THAT UP,
17 JUST THE TOP PART?

18 WE SAW THIS DOCUMENT YESTERDAY, MR. LUKIANOV, IN
19 THE COURTROOM. IT'S A DOCUMENT DATED MAY 6TH --

20 A I WASN'T IN THE COURTROOM YESTERDAY.

21 Q NO, I KNOW. I DIDN'T SAY YOU. I SAID, "WE SAW THIS
22 DOCUMENT YESTERDAY."

23 A I THOUGHT YOU SAID I SAW IT.

24 Q WE ALL HAVE, THE JURORS HAVE.

25 SO IT'S A DOCUMENT DATED JUNE 6, 2008.

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