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

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MEDTRONIC V. NUVASIVE, 9/7/11

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DR. STEPHEN RAYMOND		1348	1368	1376
DR. WILLIAM DOUGLAS SMITH	1380	1423	1438	
DR. JOHN W. BRANTIGAN	1443			

1 Q. COULD YOU DESCRIBE THE BAK CAGE?

2 A. THE BAK CAGE IS A CYLINDRICAL DEVICE THAT WAS
3 INSERTED EITHER FROM THE BACK, WHICH IS THIS DIRECTION, OR FROM
4 THE FRONT, WHICH WAS THAT DIRECTION. AND THEY WERE CIRCULAR
5 DOWL SHAPED STRUCTURES THAT WERE INSERTED THROUGH A BIG DRILL
6 HOLE IN THE DISC SPACE. THE DRILL HOLE CUT DEEPLY INTO THE
7 VERTEBRAL BODY ABOVE AND BELOW, AND THEY WERE SIDE BY SIDE.

8 Q. IN THIS TIME FRAME, LATE 1980S, EARLY 1990S, WHICH
9 ARTIFICIAL SPINE IMPLANTS WERE YOU AWARE OF THAT WERE IN USE
10 FOR INTERBODY FUSION SURGERY?

11 A. IN THAT TIME FRAME, THERE WERE SEVERAL PEOPLE THAT
12 WERE WORKING DILIGENTLY TO DEVELOP INTERBODY FUSION DEVICES.
13 IN ADDITION TO MINE, DR. STEVE KUSLICH WAS DEVELOPING THE BAK
14 CAGE; CHARLIE RAY WAS DEVELOPING THE RAY FUSION CAGE; GEORGE
15 BAGBY WAS DEVELOPING A DEVICE FOR USE IN RACE HORSES; AND
16 JURGEN HARMS FROM GERMANY WAS DEVELOPING A SURGICAL MESH MADE
17 OF TITANIUM THAT DID THE SAME THING.

18 Q. IN THE 1993 TO 1995 TIME PERIOD, DID YOU TEACH AT
19 MEETINGS WHERE INTERBODY FUSION DEVICES WERE THE MAIN TOPIC OF
20 CONVERSATION?

21 A. YES, I DID.

22 Q. ABOUT HOW MANY OF THESE MEETING DID YOU TEACH AT?

23 A. ABOUT FOUR OR FIVE IN THOSE EARLY YEARS.

24 Q. WHO WERE THE OTHER INSTRUCTORS OR PRESENTERS AT THESE
25 MEETINGS?

1 Q. WHY DID YOU THINK THAT?

2 A. BECAUSE WE HAD NUMEROUS MEETINGS WHERE THE PEOPLE
3 INVOLVED IN THIS DEVELOPMENT ALL KNEW EACH OTHER.

4 MR. DAUCHOT: OBJECTION. HE IS A FACT WITNESS NOT AS
5 AN EXPERT.

6 THE COURT: WELL, I THINK HE'S TELLING US ABOUT HIS
7 OWN EXPERIENCE AND HIS OWN KNOWLEDGE AT THIS TIME. SO
8 OVERRULED AT THIS POINT. GO AHEAD.

9 THE WITNESS: BUT ALSO I AND COLLEAGUES WORKING WITH
10 ACROMED HAD HAD THE EXPERIENCE OF USING MY OVAL IMPLANTS FOR
11 LATERAL INTERBODY FUSION STARTING IN 1990, FIVE YEARS BEFORE
12 DR. MICHAELSON FILED HIS PATENT APPLICATION.

13 BY MR. MILLER:

14 Q. DID YOU EVENTUALLY LEAVE YOUR POSITION AT CREIGHTON
15 UNIVERSITY?

16 A. YES, I DID.

17 Q. WHEN WAS THAT?

18 A. 1997.

19 Q. WHAT DID YOU DO NEXT?

20 A. I JOINED A GROUP IN SAN ANTONIO, SOUTH TEXAS
21 ORTHOPAEDIC AND SPINAL SURGERY ASSOCIATES.

22 Q. HOW LONG DID YOU REMAIN IN THAT PRACTICE?

23 A. UNTIL 2004.

24 Q. WAS THAT A FAIRLY BUSY PRACTICE?

25 A. YES, IT WAS.

1 Q. WHO TOOK THIS PICTURE?

2 A. I DID.

3 Q. WHEN?

4 A. THAT WAS IN 1991 AFTER WE FORMALIZED THE STANDARD
5 DIMENSIONS.

6 Q. HOW DID YOU COME UP WITH THE SHAPE OF THE IMPLANT?

7 A. THE SHAPE, THE OVAL SHAPE, IS SIZED AND SHAPED TO FIT
8 THE INTERVERTEBRAL SPACE WHERE THE DISC IS.

9 Q. WHEN DID YOU BEGIN DEVELOPING THESE IMPLANTS?

10 A. ABOUT 1988.

11 Q. WHO MANUFACTURED THE IMPLANTS THAT WE SEE IN
12 DTX5118?

13 A. THOSE WERE MADE BY ACROMED CORPORATION IN
14 CLEVELAND.

15 Q. DID THE FDA APPROVE THESE IMPLANTS?

16 A. THEY WERE APPROVED IN 2003.

17 Q. WHEN WAS YOUR OVAL IMPLANTS, THESE IMPLANTS IN 5118,
18 WHEN WAS IT FIRST USED IN THE UNITED STATES?

19 A. JULY OF 1990.

20 Q. WERE THESE IMPLANTS AVAILABLE IN COUNTRIES OTHER THAN
21 THE UNITED STATES IN THE EARLY 1990S?

22 A. YES.

23 Q. WHERE?

24 A. WE MADE THEM AVAILABLE IN EUROPE IN 1991 AND
25 AUSTRALIA IN ABOUT 1992.

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