

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

Civil Action No. 01-2373

MEDTRONIC SOFAMOR DANEK, INC. )

Plaintiff, )

v. )

GARY K. MICHELSON, M.D., and )  
KARLIN TECHNOLOGY, INC., )

Defendants. )

GARY K. MICHELSON, M.D., and )  
KARLIN TECHNOLOGY, INC., )

Counterclaimants, )

v. )

MEDTRONIC SOFAMOR DANEK, INC., )

Counterdefendant. )

GARY K. MICHELSON, M.D., )

Third Party Plaintiff, )

v. )

SOFAMOR DANEK HOLDINGS, INC., )

Third Party Defendant. )

GARY K. MICHELSON, M.D., and )  
KARLIN TECHNOLOGY, INC., )

Counterplaintiffs, )

v. )

MEDTRONIC SOFAMOR DANEK, INC., )  
and MEDTRONIC, INC )

Counterdefendants. )

FILED IN OPEN COURT  
DATE: 9/28/04  
TIME: 10:30 AM  
INITIALS: JPW

JURY VERDICT FORM

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We, the jury in the above entitled action, find the following special verdict on the following questions submitted to us:

**LIABILITY DETERMINATIONS**

**PURCHASE AGREEMENT (Trial Ex. 2; Juror Binder Vol. 1, Tab 2)**

Question No. 1: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the Purchase Agreement by failing to use its reasonable best efforts as that obligation is described and limited (Section 4.5 of the Purchase Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 2: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek made a decision not to use its reasonable best efforts as that obligation is described and limited (Section 4.5 of the Purchase Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

If the answer to Question No. 1 or Question No. 2 above is "Yes," go on to Question No. 3. If the answers to both Question No. 1 and Question No. 2 above are "No," then skip Question No. 3 and go to Question No. 4.

Question No. 3: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the Purchase Agreement by refusing to return the non-threaded Medical Device and Technology when Dr. Michelson exercised the option to purchase them (Section 4.5 of the Purchase Agreement)?

11/A

Answer: Yes \_\_\_ No \_\_\_

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 4: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the Purchase Agreement by failing to provide proper patent notices (Section 4.6 of the Purchase Agreement)?

Answer: Yes  No \_\_\_

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 5: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the Purchase Agreement by failing to engage in dispute resolution (Section 12.15 of the Purchase Agreement)?

Answer: Yes  No \_\_\_

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 6: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the Purchase Agreement by violating the implied covenant of good faith and fair dealing?

Answer: Yes  No \_\_\_

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 7: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Dr. Michelson breached the Purchase Agreement by competing with Medtronic Sofamor Danek, either directly or indirectly, with respect to the Technology and the Medical Device (Section 3.2 of the Purchase Agreement)?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

Question No. 8: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Dr. Michelson breached the Purchase Agreement by failing to cooperate in all respects with Medtronic Sofamor Danek to ensure Medtronic Sofamor Danek's quiet enjoyment of the Technology and the Medical Device (Section 3.2 of the Purchase Agreement)?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

Question No. 9: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Dr. Michelson breached the Purchase Agreement by failing to give written notice and an opportunity to cure any alleged breach (Sections 12.6 and 12.14 of the Purchase Agreement)?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

Question No. 10: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Dr. Michelson breached the Purchase Agreement by violating the implied covenant of good faith and fair dealing?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

**LICENSE AGREEMENT (Trial Ex. 1; Juror Binder Vol. 1, Tab 1)**

Question No. 11: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the License Agreement by failing to use its reasonable best efforts as that obligation is described and limited (Section 4.4 of the License Agreement)?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 12: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek made a decision not to use its reasonable best efforts as that obligation is described and limited (Section 4.4 of the License Agreement)?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

If the answer to Question No. 11 or Question No. 12 above is "Yes," go on to Question No. 13. If the answers to both Question No. 11 and Question No. 12 are "No," then skip Question No. 13 and go to Question No. 14.

Question No. 13: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the License Agreement by refusing to return the threaded Medical Device and Technology when Karlin Technology exercised the option to purchase (Section 4.4 of the License Agreement)? *N/A*

Answer: Yes \_\_\_ No \_\_\_

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 14: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the License Agreement by failing to provide proper patent notices (Section 4.5 of the License Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 15: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the License Agreement by failing to allow inspection, examination, audit, and copying of records (Section 6 of the License Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 16: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the License Agreement by failing to engage in dispute resolution (Section 13.15 of the License Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 17: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the License Agreement by failing to maintain patent rights in Dr. Michelson's inventions by seeking extension of U.S. Patent No. 6,264,656 (sometimes referred to as the '656 patent) (Section 7 of the License Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 18: Has Karlin Technology proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the License Agreement by granting an improper sublicense to Osteotech (Section 2.2 of the License Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 19: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Karlin Technology breached the License Agreement by competing with Medtronic Sofamor Danek, either directly or indirectly, with respect to the Technology and the Medical Device (Section 3.2 of the License Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Karlin Technology.]

Question No. 20: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Karlin Technology breached the License Agreement by failing to cooperate in all respects with Medtronic Sofamor Danek to ensure Medtronic Sofamor Danek's quiet enjoyment of the Technology and the Medical Device (Section 3.2 of the License Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Karlin Technology.]

Question No. 21: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Karlin Technology breached the License Agreement by failing to give written notice and an opportunity to cure any alleged breach (Sections 13.6 and 13.14 of the License Agreement)?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Karlin Technology.]

Question No. 22: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Karlin Technology breached the License Agreement by violating the implied covenant of good faith and fair dealing?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Karlin Technology.]

**THREE-PARTY AGREEMENT (Trial Ex. 3; Juror Binder Vol. 1, Tab 3)**

For Questions 23 - 26, Medtronic Sofamor Danek has admitted that it is responsible for the obligations of Sofamor Danek Holdings, Inc. ("Sofamor Danek Holdings") under the January 18, 2001 Agreement (the "Three-Party Agreement").

Question No. 23: Has Dr. Michelson proven by a preponderance of the evidence that Sofamor Danek Holdings breached the Three-Party Agreement by failing to allow inspection of records (in accordance with Section 2.6 of the Three-Party Agreement and Section 4.6 of the Danek License Agreement, Trial Ex. 4)?

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Sofamor Danek Holdings.]

Question No. 24: Has Dr. Michelson proven by a preponderance of the evidence that Sofamor Danek Holdings breached the Three-Party Agreement by failing to provide proper name attribution to Dr. Michelson on its MultiLock-related products and literature (Section 2.11 of the Three-Party Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Sofamor Danek Holdings.]

Question No. 25: Has Dr. Michelson proven by a preponderance of the evidence that Sofamor Danek Holdings breached the Three-Party Agreement by failing to provide proper patent marking on its products (Section 2.11 of the Three-Party Agreement)?

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Sofamor Danek Holdings.]

**CONFIDENTIALITY AGREEMENTS (Trial Exs. 62, 63A-63G)**

Question No. 26: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek breached the February 3, 1998 Mutual Confidentiality Agreement as referenced, extended, continued, and supplemented?

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

**MISAPPROPRIATION CLAIM**

Question No. 27: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek misappropriated any of Dr. Michelson's trade secrets relating to the threaded and tapered implant invention (sometimes referred to as the "threaded frusto-conical implant")?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

**TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS  
CLAIMS**

Question No. 28: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek intentionally interfered with any prospective business relationship between Dr. Michelson and another third party?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 29: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic, Inc. intentionally interfered with any prospective business relationship between Dr. Michelson and another third party?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic, Inc.]

Question No. 30: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic, Inc. intentionally interfered with the proposed global agreement between Dr. Michelson, Karlin Technology and Medtronic Sofamor Danek?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic, Inc.]

Question No. 31: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic, Inc. acted in a way that was contrary to Medtronic Sofamor Danek's economic interest in intentionally interfering with the proposed global agreement between Dr. Michelson, Karlin Technology and Medtronic Sofamor Danek?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic, Inc.]

Question No. 32: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic, Inc. employed wrongful means in intentionally interfering with the proposed global agreement between Dr. Michelson, Karlin Technology and Medtronic Sofamor Danek?

Answer: Yes \_\_\_ No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic, Inc.]

**PATENT INFRINGEMENT CLAIMS**

**THE '155 PATENT (Trial Ex. 6; Juror Binder Vol. 1, Tab 6)**

Question No. 33: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek infringed any of the following asserted claims of U.S. Patent No. 6,080,155 (sometimes referred to as the '155 patent), which include the steps of positioning a guard with an extension into the disc space, forming an opening through the guard, and inserting an implant into the opening?

[A "Yes" answer below is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

**AFFINITY™ Cervical Threaded Cage System:**

Claim 1 of '155 patent: Yes  No

Claim 66 of '155 patent: Yes  No

Claim 72 of '155 patent: Yes  No

**Anterior instrumentation System:**

Claim 1 of '155 patent: Yes  No

Claim 66 of '155 patent: Yes  No

Claim 72 of '155 patent: Yes  No

INTER FIX™ Threaded Fusion Device System:

Claim 1 of '155 patent: Yes  No

Claim 66 of '155 patent: Yes  No

Claim 72 of '155 patent: Yes  No

LT-CAGE™ Lumbar Tapered Fusion Device System:

Claim 1 of '155 patent: Yes  No

Claim 66 of '155 patent: Yes  No

Claim 72 of '155 patent: Yes  No

Infuse™ Bone Graft/LT-CAGE™ Lumbar Tapered Fusion Device System:

Claim 1 of '155 patent: Yes  No

Claim 66 of '155 patent: Yes  No

Claim 72 of '155 patent: Yes  No

Tapered Laparoscopic System:

Claim 1 of '155 patent: Yes  No

Cylindrical Endoscopic System:

Claim 1 of '155 patent: Yes  No

Bone Dowel Instrumentation System Surgical Technique:

Claim 1 of '155 patent: Yes  No

Reduced Profile Instrumentation System:

Claim 1 of '155 patent:            Yes             No

Claim 66 of '155 patent:            Yes             No

Claim 72 of '155 patent:            Yes             No

Posterior Instrumentation System:

Claim 1 of '155 patent:            Yes             No

Precision-Graft Burr™ Guide System:

Claim 1 of '155 patent:            Yes             No

Precision-Graft™ Anterior Impacted Instrumentation System:

Claim 1 of '155 patent:            Yes             No

Tangent Posterior Discectomy & Grafting Instrumentation System:

Claim 1 of '155 patent:            Yes             No

**THE '498 PATENT (Trial Ex. 7; Juror Binder Vol. 1, Tab 7)**

Question No. 34: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek infringed any of the following asserted claims of U.S. Patent No. 6,270,498 (sometimes referred to as the '498 patent), which include a guard with a disc penetrating extension?

[A "Yes" answer below is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

**AFFINITY™ Cervical Threaded Cage System:**

Claim 1 of '498 patent: Yes  No

**Anterior Instrumentation System:**

Claim 1 of '498 patent: Yes  No

Claim 68 of '498 patent: Yes  No

**INTER FIX™ Threaded Fusion Device System:**

Claim 1 of '498 patent: Yes  No

Claim 68 of '498 patent: Yes  No

**LT-CAGE™ Lumbar Tapered Fusion Device System:**

Claim 1 of '498 patent: Yes  No

Claim 68 of '498 patent: Yes  No

Infuse™ Bone Graft/LT-CAGE™ Lumbar Tapered Fusion Device System:

Claim 1 of '498 patent: Yes  No

Claim 68 of '498 patent: Yes  No

Tapered Laparoscopic System:

Claim 1 of '498 patent: Yes  No

Cylindrical Endoscopic System:

Claim 1 of '498 patent: Yes  No

Bone Dowel Instrumentation System:

Claim 1 of '498 patent: Yes  No

Reduced Profile Instrumentation System:

Claim 1 of '498 patent: Yes  No

Claim 68 of '498 patent: Yes  No

Posterior Instrumentation System:

Claim 1 of '498 patent: Yes  No

Precision-Graft Burr™ Guide System:

Claim 1 of '498 patent: Yes  No

Precision-Graft™ Anterior Impacted Instrumentation System:

Claim 1 of '498 patent:

Yes

No

Tangent Posterior Discectomy & Grafting Instrumentation System:

Claim 1 of '498 patent:

Yes

No

**THE '909 PATENT (Trial Ex. 8; Juror Binder Vol. 1., Tab 8)**

Question No. 35: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek infringed any of the following asserted claims of U.S. Patent No. 5,977,909 (sometimes referred to as the '909 patent), which include a tapered distractor?

[A "Yes" answer below is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

**Anterior Instrumentation System:**

Claim 1 of '909 patent: Yes  No

Claim 45 of '909 patent: Yes  No

**Bone Dowel Instrumentation System:**

Claim 1 of '909 patent: Yes  No

Claim 45 of '909 patent: Yes  No

**Precision-Graft Burr™ Guide System:**

Claim 1 of '909 patent: Yes  No

**Precision-Graft™ Anterior Impacted Instrumentation System:**

Claim 1 of '909 patent: Yes  No

**THE '412 PATENT (Trial Ex. 9; Juror Binder Vol. 1, Tab 9)**

Question No. 36: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek infringed claim 27 of the U.S. Patent No. 6,210,412 (sometimes referred to as the '412 patent), which includes the steps of distracting, forming a bore, and inserting a frusto-conical implant?

[A "Yes" answer below is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

AFFINITY™ Cervical Threaded Cage System:

Claim 27 of '412 patent: Yes  No

LT-CAGE™ Lumbar Tapered Fusion Device System:

Claim 27 of '412 patent: Yes  No

Infuse™ Bone Graft/LT-CAGE™ Lumbar Tapered Fusion Device System:

Claim 27 of '412 patent: Yes  No

Tapered Laparoscopic System:

Claim 27 of '412 patent: Yes  No

**THE '139 PATENT (Trial Ex. 10; Juror Binder Vol. 1, Tab 10)**

Question No. 37: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek infringed claim 1 of U.S. Patent No. 6,440,139 (sometimes referred to as the '139 patent), which includes a milling block and a bone cutting device?

[A "Yes" answer below is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Precision-Graft Burr™ Guide System: Yes  No

Precision-Graft™ Anterior Impacted Instrumentation System: Yes  No

Question No. 38: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek infringed claim 113 of U.S. Patent No. 6,440,139 (sometimes referred to as the '139 patent), which includes the steps of placing a milling block, removing bone from one vertebral body, and removing bone from the other adjacent vertebral body?

[A "Yes" answer below is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Precision-Graft Burr™ Guide System: Yes  No

Precision-Graft™ Anterior Impacted Instrumentation System: Yes  No

**THE '214 PATENT (Trial Ex. 11; Juror Binder Vol. 1, Tab 11)**

Question No. 39: Has Dr. Michelson proven by a preponderance of the evidence that Medtronic Sofamor Danek infringed any of the following asserted claims of U.S. Patent No. 6,159,214 (sometimes referred to as the '214 patent), which include a milling block and a bone removal device?

[A "Yes" answer below is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Precision-Graft Burr™ Guide System:

Claim 1 of '214 patent: Yes  No

Claim 74 of '214 patent Yes  No

Precision-Graft™ Anterior Impacted Instrumentation System:

Claim 74 of '214 patent Yes  No

**WILLFULNESS CLAIM**

Question No. 40: If you found that Medtronic Sofamor Danek infringed any claims of the patents identified in Question Nos. 33 - 39 above, has it been proven by clear and convincing evidence that Medtronic Sofamor Danek's infringement was willful?

'155 Patent:	Yes _____	No <input checked="" type="checkbox"/>
'498 Patent:	Yes _____	No <input checked="" type="checkbox"/>
'909 Patent:	Yes _____	No <input checked="" type="checkbox"/>
'412 Patent:	Yes _____	No <input checked="" type="checkbox"/>
'139 Patent:	Yes _____	No <input checked="" type="checkbox"/>
'214 Patent:	Yes <input checked="" type="checkbox"/>	No _____

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

## LICENSE AND ESTOPPEL

Question No. 41: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that at any time before May 9, 2001 Dr. Michelson gave Medtronic Sofamor Danek permission to use Dr. Michelson's technology including his post-agreement inventions?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

Question No. 42: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that at any time before May 9, 2001 Medtronic Sofamor Danek relied on Dr. Michelson's permission to use Dr. Michelson's post-agreement inventions?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

Question No. 43: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that the January 25, 2002 letter from Dr. Michelson's attorney and the follow-up correspondence constitute an affirmative grant of permission by Dr. Michelson for Medtronic Sofamor Danek to make, use or sell systems that infringe his asserted patents (i.e., the '155, '498, '909, '412, '214, and '139 patents) during the course of the lawsuit?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

Question No. 44: Has Medtronic Sofamor Danek proven by a preponderance of the evidence that Medtronic Sofamor Danek relied on the January 25, 2002 letter from Dr. Michelson's attorney and the follow-up correspondence to believe that it had received an affirmative grant of permission by Dr. Michelson for Medtronic Sofamor Danek to make, use or sell systems that infringe his asserted patents during the course of the lawsuit?

Answer: Yes \_\_\_\_\_ No

[A "Yes" answer is in favor of Medtronic Sofamor Danek; a "No" answer is in favor of Dr. Michelson.]

**COMBINED LIABILITY AND DAMAGES CLAIMS WITH  
RESPECT TO ROYALTIES**

**ROYALTIES CLAIMS UNDER THE PURCHASE AGREEMENT**

These questions relate to both liability and damages concerning Dr. Michelson's contention that Medtronic Sofamor Danek should have paid royalties on certain products that Dr. Michelson contends are royalty bearing (Medtronic Sofamor Danek contends that they are not) under the Purchase Agreement. These questions also relate to Dr. Michelson's further contention that Medtronic Sofamor Danek underpaid royalties on certain admitted royalty bearing products under the Purchase Agreement.

Question No. 45: With respect to each category below, please determine for each category whether Dr. Michelson has proven by a preponderance of the evidence that (1) any product or system is royalty bearing as defined in the Agreements; (2) whether Medtronic Sofamor Danek owes additional royalties on any royalty bearing system or product; and (3) what, if any, additional royalties are owed to Dr. Michelson.

[“Yes” answers in the columns below are in favor of Dr. Michelson;  
“No” answers are in favor of Medtronic Sofamor Danek.]

<u>Product or System</u>	Subpart (1) Mark "Yes" if the category below is either a royalty- bearing product or system.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelson?
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	
(a) Bryan Cervical Disc:	✓	—	✓	—	\$ <u>1,659,093</u>
(b) Boomerang:	✓	—	✓	—	\$ <u>444,109</u>
(c) Cement Restrictor:	✓	—	✓	—	\$ <u>5,544,604</u>
(d) Cornerstone Bone:	✓	—	✓	—	\$ <u>7,851,059</u>
(e) Cornerstone Carbon:	✓	—	✓	—	\$ <u>933,611</u>

["Yes" answers in the columns below are in favor of Dr. Michelson;  
 "No" answers are in favor of Medtronic Sofamor Danek.]

Product or System	Subpart (1) Mark "Yes" if the category below is either a royalty- bearing product or system.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelson?
	Yes	No	Yes	No	
(f) Cornerstone PEEK/HSR:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>605,154</u>
(g) Failure to Include Positive Fees from Cornerstone Bone:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>3,496,141</u>
(h) Failure to Include Positive Fees from Tangent:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>6,320,774</u>
(i) Hydrosorb Mesh:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>910,625</u>
(j) Infuse*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ <u>-0-</u>
(k) Interfix RP*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ <u>-0-</u>
(l) LT Cage, Lordotec, Novus LT*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ <u>-0-</u>
(m) MetRx:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>1,853,109</u>
(n) Pyramesh:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>9,664,885</u>
(o) Pyrametrix Plus:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>92,849</u>
(p) Shipping and Handling:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>192,760</u>
(q) Tangent:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>13,328,642</u>
(r) Telamon:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>4,409,836</u>
(s) Verte-Stack:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>14,583</u>

\* Alternative damage claim.

**ROYALTIES CLAIMS UNDER THE LICENSE AGREEMENT**

These questions relate to both liability and damages concerning Karlin Technology's contention that Medtronic Sofamor Danek should have paid royalties on certain products that Karlin Technology contends are royalty bearing (Medtronic Sofamor Danek contends that they are not) under the License Agreement. These questions also relate to Karlin Technology's further contention that Medtronic Sofamor Danek underpaid royalties on certain admitted royalty bearing products under the License Agreement.

Question No. 46: With respect to each category below, please determine for each category whether Karlin Technology has proven by a preponderance of the evidence that (1) any product or system is royalty bearing as defined in the Agreements (2) whether Medtronic Sofamor Danek owes additional royalties on any royalty bearing system or product; and (3) what, if any, additional royalties are owed to Karlin Technology. [With respect to categories (a), (d), (g) and (h) because these are admitted royalty bearing products, please do not provide any answer in the first column titled Subpart (1), but you must provide answers in the second column titled Subpart (2) and, if applicable, in the third column titled Subpart (3). For all of the other categories, which are (b), (c), (e), (f), (i), (j) and (k), please provide answers for all three columns titled Subparts (1), (2), and if applicable (3).]

["Yes" answers in the columns below are in favor of Karlin Technology;  
 "No" answers are in favor of Medtronic Sofamor Danek.]

Product or System	Subpart (1) Mark "Yes" if the category below is either a royalty-bearing product or system.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Karlin Technology?
	Yes	No	Yes	No	
(a) Affinity:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>122,173</u>
(b) BCP:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>748,763</u>

["Yes" answers in the columns below are in favor of Karlin Technology;  
 "No" answers are in favor of Medtronic Sofamor Danek.]

Product or System	Subpart (1) Mark "Yes" if the category below is either a royalty- bearing product or system.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Karlin Technology?
	Yes	No	Yes	No	
(c) BMP:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>47,248</u>
(d) Bone Dowels:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>356,310</u>
(e) Failure to Include Positive Fees from Osteofil:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>3,341,820</u>
(f) Infuse:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>3,612</u>
(g) Interfix:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>1,139,546</u>
(h) LT Cage:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>115,964</u>
(i) Mastergraft:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>637,169</u>
(j) Osteofil:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>4,289,427</u>
(k) Shipping and Handling:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>436,913</u>

**ROYALTIES CLAIMS UNDER THE THREE-PARTY AGREEMENT**

For Question 47, Medtronic Sofamor Danek has admitted that it is responsible for the obligations of Sofamor Danek Holdings Under the Three-Party Agreement.

These questions relate to both liability and damages concerning Dr. Michelson's contention that Medtronic Sofamor Danek should have paid royalties on certain products that Dr. Michelson contends are royalty bearing (Medtronic Sofamor Danek contends that they are not) under the Three-Party Agreement. These questions also relate to Dr. Michelson's further contention that Medtronic Sofamor Danek underpaid royalties on certain admitted royalty bearing products under the Three-Party Agreement.

Question No. 47: With respect to each category below, please determine for each category whether Dr. Michelson has proven by a preponderance of the evidence that (1) any product or system is royalty bearing as defined in the Agreements; (2) whether Medtronic Sofamor Danek owes additional royalties on any royalty bearing system or product; and (3) what, if any, additional royalties are owed to Dr. Michelson.

["Yes" answers in the columns below are in favor of Dr. Michelson;  
"No" answers are in favor of Sofamor Danek Holdings.]

<u>Product or System</u>	Subpart (1) Mark "Yes" if the category below is either a royalty-bearing product or system.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelson?
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	
(a) Additional MultiLock Items:	✓	—	✓	—	\$ <u>62,379</u>
(b) Cornerstone MultiLock:	✓	—	✓	—	\$ <u>2,728,122</u>

["Yes" answers in the columns below are in favor of Dr. Michelson;  
 "No" answers are in favor of Sofamor Danek Holdings.]

Product or System	Subpart (1) Mark "Yes" if the category below is either a royalty-bearing product or system.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelson?
	Yes	No	Yes	No	
(c) Failure to Include Positive Fees from Cornerstone MultiLock:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>1,122,346</u>
(d) Shipping and Handling:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>116,527</u>

Question No. 47.1: With respect to "ATLANTIS" please determine if Dr. Michelson has proven by a preponderance of the evidence that it is covered by an issued claim of a Multi-Lock patent.

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 47.2: With respect to "Atlantis Vision" please determine if Dr. Michelson has proven by a preponderance of the evidence whether it is the same as anterior cervical products marketed by Medtronic Sofamor Danek on January 18, 2001 as the "ATLANTIS".

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

If you answered Question No. 47.2 "No," then go on to answer Question No. 47.3. If you answered Question No. 47.2 "Yes," then do not answer Question No. 47.3 and go on to Question No. 48.

Question No. 47.3 With respect to "Atlantis Vision" please determine if Dr. Michelson has proven by a preponderance of the evidence that it is covered by an issued claim of a Multi-Lock patent.

Answer: Yes  No

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

## ROYALTIES CLAIM UNDER THE TSRH-B AGREEMENT

For Question No. 48, Medtronic Sofamor Danek has admitted that it is responsible for the obligations of SDGI Holdings, Inc. under the November 2, 1999 Agreement (the "TSRH-B Agreement").

These questions relate to both liability and damages concerning Dr. Michelson's contention that Medtronic Sofamor Danek should have paid royalties on certain products that Dr. Michelson contends are royalty bearing (Medtronic Sofamor Danek contends that they are not) under the TSRH-B Agreement. These questions also relate to Dr. Michelson's further contention that Medtronic Sofamor Danek underpaid royalties on certain admitted royalty bearing products under the TSRH-B Agreement.

Question No. 48: With respect to the category below, please determine whether Dr. Michelson has proven by a preponderance of the evidence that (1) any product or system is royalty bearing as defined in the Agreements; (2) whether Medtronic Sofamor Danek owes additional royalties on any royalty bearing system or product; and (3) what, if any, additional royalties are owed to Dr. Michelson.

["Yes" answers in the columns below are in favor of Dr. Michelson;  
"No" answers are in favor of SDGI Holdings, Inc..]

<u>Product or System</u>	Subpart (1) Mark "Yes" if the category below is either a royalty- bearing product or system.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelson?
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	
(a) Cage Removal:	<u>✓</u>	<u>    </u>	<u>✓</u>	<u>    </u>	<u>\$ 3,235</u>

**COMBINED LIABILITY AND DAMAGES CLAIMS  
WITH RESPECT TO DEDUCTIONS**

These questions relate to both liability and damages concerning Dr. Michelson's and Karlin Technology's contentions that Medtronic Sofamor Danek should not have taken certain deductions in calculating royalties under the Purchase Agreement, License Agreement, and Three-Party Agreement.

Question No. 49: With respect to each category below, please determine for each category whether Dr. Michelson or Karlin Technology has proven by a preponderance of the evidence that (1) the category is an improper deduction under the Agreements, (2) Medtronic Sofamor Danek owes additional royalties based on the improper deduction, and (3) what, if any, additional royalties are owed to Dr. Michelson or Karlin Technology.

**PURCHASE AGREEMENT**

[“Yes” answers in the columns below are in favor of Dr. Michelson;  
“No” answers are in favor of Medtronic Sofamor Danek.]

Product or System	Subpart (1) Mark "Yes" if the category below is an improper deduction.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelson or Karlin Technology?
	Yes	No	Yes	No	
(a) Service Fees from Cornerstone Bone:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>2,909,693</u>
(b) Service Fees from Precision:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>428,059</u>
(c) Service Fees from Tangent:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>332,265</u>
(d) Third Party Commissions:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>428,399</u>

## LICENSE AGREEMENT

["Yes" answers in the columns below are in favor of Dr. Michelson;  
"No" answers is in favor of Medtronic Sofamor Danek.]

<u>Product or System</u>	Subpart (1) Mark "Yes" if the category below is an improper deduction.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelton or Karlin Technology?
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	
(a) Service Fees from Bone Dowels:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>4,399,767</u>
(b) Service Fees from Osteofil:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>3,960,306</u>
(c) Third Party Commissions:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>1,298,309</u>

## THREE-PARTY AGREEMENT

["Yes" answers in the columns below are in favor of Dr. Michelson;  
"No" answers is in favor of Sofamor Danek Holdings.]

<u>Product or System</u>	Subpart (1) Mark "Yes" if the category below is an improper deduction.		Subpart (2) Does Medtronic Sofamor Danek owe additional royalties?		Subpart (3) What, if any, additional royalties are owed to Dr. Michelton or Karlin Technology?
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	
(a) Service Fees from Cornerstone MultiLock:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>961,713</u>
(b) Third Party Commissions:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ <u>706,414</u>

## DAMAGES CLAIMS

### DAMAGES CLAIMS OF DR. MICHELSON/KARLIN TECHNOLOGY

Enter for each question below, the amount of damages, if any, Dr. Michelson and/or Karlin Technology have proven.

### DAMAGES CLAIMS FOR BREACH OF THE PURCHASE AGREEMENT

Question No. 50: If you answered "Yes" to either Question No. 1 or Question No. 2 and then you answered "Yes" to Question No. 3 (regarding the reasonable best efforts provisions of the Purchase Agreement), what amount of damages, if any, do you award for this breach? [If you answered both Question No. 1 and Question No. 2 "No," then do not answer this question.]

\$ NIA

Question No. 51: If you found that Medtronic Sofamor Danek breached the Purchase Agreement by failing to provide proper patent notices [that is, if you answered Question No. 4 "Yes"], then Dr. Michelson is entitled to an award of nominal damages of one dollar because specific actual damages could not be proven. Please indicate your award of nominal damages in the amount of one dollar to Dr. Michelson in the space provided below if you answered Question No. 4 "Yes." [If you answered Question No. 4 "No," then do not answer this question.]

\$ 1.<sup>00</sup>

Question No. 52: If you found that Medtronic Sofamor Danek breached the dispute resolution provisions of the Purchase Agreement [that is, if you answered Question No. 5 "Yes"], then Dr. Michelson is entitled to an award of nominal damages of one dollar because specific actual damages could not be proven. Please indicate your award of nominal damages in the amount of one dollar to Dr. Michelson in the space provided below if you answered Question No. 5 "Yes." [If you answered Question No. 5 "No," then do not answer this question.]

\$ 1.<sup>00</sup>

Question No. 53: If you found that Medtronic Sofamor Danek breached the implied covenant of good faith and fair dealing in the Purchase Agreement [that is, if you answered Question No. 6 "Yes"], what amount of damages, if any, do you award for this breach? [If you answered Question No. 6 "No," then do not answer this question.]

\$ 4,743,000

## DAMAGES CLAIMS FOR BREACH OF THE LICENSE AGREEMENT

For Question No. 54, the Court has already found that Medtronic Sofamor Danek breached the License Agreement by improperly deducting employee commissions and rebates from royalty payments. Medtronic Sofamor Danek contends it has cured any breach by compensating Karlin Technology for any monetary damage suffered.

Question No. 54: What amount of damages, if any, do you award?

- (a) Employee Commissions: \$ 107,471
- (b) Rebates: \$ 232,338

Question No. 55: If you answered "Yes" to either Question No. 11 or Question No. 12 and then you answered "Yes" to Question No. 13 (regarding the reasonable best efforts provisions of the License Agreement), what amount of damages, if any, do you award for this breach? [If you answered both Question No. 11 and Question No. 12 "No," then do not answer this question.]

\$ N/A

Question No. 56: If you found that Medtronic Sofamor Danek breached the License Agreement by failing to provide proper patent notices [that is, if you answered Question No. 14 "Yes"], then Karlin Technology is entitled to an award of nominal damages of one dollar because specific actual damages could not be proven. Please indicate your award of nominal damages in the amount of one dollar to Karlin Technology in the space provided below if you answered Question No. 14 "Yes." [If you answered Question No. 14 "No," then do not answer this question.]

\$ 1.00

Question No. 57: If you found that Medtronic Sofamor Danek breached its obligations to allow inspection, examination, audit, and copying of records under the License Agreement [that is, if you answered Question No. 15 "Yes"], what amount of damages, if any, do you award for this breach? [If you answered Question No. 15 "No," then do not answer this question.]

\$ 570,493

Question No. 58: If you found that Medtronic Sofamor Danek breached the dispute resolution provisions of the License Agreement [that is, if you answered Question No. 16 "Yes"], then Karlin Technology is entitled to an award of nominal damages of one dollar because specific actual damages could not be proven. Please indicate your award of nominal damages in the amount of one dollar to Karlin Technology in the space provided below if you answered Question No. 16 "Yes." [If you answered Question No. 16 "No," then do not answer this question.]

\$ 1.00

Question No. 59: If you found that Medtronic Sofamor Danek breached its obligations under the License Agreement by failing to maintain patent rights in Dr. Michelson's inventions by failing to seek extension of the '656 patent [that is, if you answered Question No. 17 "Yes"], what amount of damages if any do you award for this breach? [If you answered Question No. 17 "No," then do not answer this question.]

\$ 15,412,186

Question No. 60: If you found that Medtronic Sofamor Danek breached the License Agreement by giving an improper sublicense to Osteotech [that is, if you answered Question No. 18 "Yes"], what amount of damages if any do you award for this breach? [If you answered Question No. 18 "No," then do not answer this question.]

\$ 190,000

## DAMAGES CLAIMS FOR BREACH OF THE THREE-PARTY AGREEMENT

For Questions 61 - 63, Medtronic Sofamor Danek agrees that it is responsible for the obligations of Sofamor Danek Holdings under the Three-Party Agreement.

Question No. 61: If you found that Sofamor Danek Holdings breached its obligations to allow inspection of records under the Three-Party Agreement and the Danek License Agreement [that is, if you answered Question No. 23 "Yes"], what amount of damages if any do you award for this breach? [If you answered Question No. 23 "No," then do not answer this question.]

\$     -0-    

Question No. 62: If you found that Sofamor Danek Holdings breached the Three-Party Agreement by failing to provide name attribution to Dr. Michelson on its MultiLock-related products and literature [that is, if you answered Question No. 24 "Yes"], then Dr. Michelson is entitled to an award of nominal damages of one dollar because specific actual damages could not be proven. Please indicate your award of nominal damages in the amount of one dollar to Dr. Michelson in the space provided below if you answered Question No. 24 "Yes." [If you answered Question No. 24 "No," then do not answer this question.]

\$     1.00

Question No. 63: If you found that Sofamor Danek Holdings breached the Three-Party Agreement by failing to properly patent mark its products [that is, if you answer Question No. 25 "Yes"], then Dr. Michelson is entitled to an award of nominal damages of one dollar because specific actual damages could not be proven. Please indicate your award of nominal damages in the amount of one dollar to Dr. Michelson in the space provided below if you answered Question No. 25 "Yes." [If you answered Question No. 25 "No," then do not answer this question.]

\$ 1.00

**DAMAGES CLAIM FOR BREACH OF THE CONFIDENTIALITY AGREEMENT**

Question No. 64: If you found that Medtronic Sofamor Danek breached the February 3, 1998 Mutual Confidentiality Agreement as referenced, extended, continued, and supplemented [that is, if you answered Question No. 26 "Yes"], then Dr. Michelson is entitled to an award of nominal damages of one dollar because specific actual damages could not be proven. Please indicate your award of nominal damages in the amount of one dollar to Dr. Michelson in the space provided below if you answered Question No. 26 "Yes." [If you answered Question No. 26 "No," then do not answer this question.]

\$ 1.<sup>00</sup>

## DAMAGES CLAIM FOR MISAPPROPRIATION

Question No. 65: If you found that Medtronic Sofamor Danek misappropriated any of Dr. Michelson's trade secrets relating to the threaded and tapered implant invention (sometimes referred to as the "threaded frusto-conical implant") [that is, if you answered Question No. 27 "Yes"], what amount of damages if any did Medtronic Sofamor Danek's conduct cause Dr. Michelson? [If you answered Question No. 27 "No," then do not answer this question.]

\$           N/A

**DAMAGES CLAIMS FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE  
BUSINESS RELATIONSHIPS**

Question No. 66: If you found that Medtronic Sofamor Danek intentionally interfered with any prospective business relationship between Dr. Michelson and another [that is, if you answered Question No. 28 "Yes"], what amount of damages if any did Medtronic Sofamor Danek's conduct cause Dr. Michelson? [If you answered Question No. 28 "No," then do not answer this question.]

\$           N/A          

Question No. 67: If you found that Medtronic, Inc. intentionally interfered with any prospective business relationship between Dr. Michelson and another (other than Medtronic Sofamor Danek) [that is, if you answered Question No. 29 "Yes"], what amount of damages if any did Medtronic, Inc.'s conduct cause Dr. Michelson? [If you answered Question No. 29 "No," then do not answer this question.]

\$           N/A          

Question No. 68: If you found that Medtronic, Inc. intentionally interfered with any prospective business relationship between Dr. Michelson and Medtronic Sofamor Danek [that is, if you answered Question No. 30 "Yes" and either Question No. 31 "Yes" or Question No. 32 "Yes"], what amount of damages if any did Medtronic, Inc.'s conduct cause Dr. Michelson? [If you answered Question No. 30 "No" or if you answered Question Nos. 31 and 32 "No," then do not answer this question.]

\$           N/A

## DAMAGES CLAIM FOR PATENT INFRINGEMENT

Question No. 69: If you found for Dr. Michelson on any of Dr. Michelson's claims for patent infringement [that is, if you answered any part of Question Nos. 33, 34, 35, 36, 37, 38, or 39 "Yes"], what do you find is the reasonable royalty percentage due Dr. Michelson to compensate for the damage caused by Medtronic Sofamor Danek's infringement? 10%

Insert in the blank space the percentage of the gross revenues of the implants, instruments and methods comprising the infringing systems, you determine is the reasonable royalty rate.

[Please fill in a number on the line before the percent sign]

## DAMAGES CLAIMS OF MEDTRONIC SOFAMOR DANEK

Enter for each question, the amount of damages, if any, Medtronic Sofamor Danek has proven it incurred.

### DAMAGES CLAIM FOR BREACH OF THE PURCHASE AGREEMENT

For Question No. 70, Medtronic Sofamor Danek seeks nominal damages for every breach you have found of the Purchase Agreement.

Question No. 70: If you find that Dr. Michelson breached the Purchase Agreement in the following ways, please award nominal damages of one dollar for Dr. Michelson's breaches:

(a) competing with Medtronic Sofamor Danek, either directly or indirectly, with respect to the Technology and the Medical Device (Section 3.2 of the Purchase Agreement) [refer to Question No. 7, if you answered "Yes," then award nominal damages]?

\$           N/A          

(b) failing to cooperate in all respects with Medtronic Sofamor Danek to ensure Medtronic Sofamor Danek's quiet enjoyment of the Technology and the Medical Device (Section 3.2 of the Purchase Agreement) [refer to Question No. 8, if you answered "Yes," then award nominal damages]?

\$           N/A          

(c) failing to give written notice and an opportunity to cure (Sections 12.6 and 12.14 of the Purchase Agreement) [refer to Question No. 9, if you answered "Yes," then award nominal damages]?

\$           N/A          

(d) violating the implied covenant of good faith and fair dealing [refer to Question No. 10, if you answered "Yes," then award nominal damages]?

\$           N/A

## DAMAGES CLAIM FOR BREACH OF THE LICENSE AGREEMENT

For Question No. 71, Medtronic Sofamor Danek seeks nominal damages for every breach you have found of the License Agreement.

Question No. 71: If you found that Karlin Technology breached the License Agreement in the following ways, please award nominal damages of one dollar for Karlin Technology's breaches:

(a) competing with Medtronic Sofamor Danek, either directly or indirectly, with respect to the Technology and the Medical Device (Section 3.2 of the License Agreement) [refer to Question No. 19, if you answered "Yes," then award nominal damages]?

\$           N/A          

(b) failing to cooperate in all respects with Medtronic Sofamor Danek to ensure Medtronic Sofamor Danek's quiet enjoyment of the Technology and the Medical Device (Section 3.2 of the License Agreement) [refer to Question No. 20, if you answered "Yes," then award nominal damages]?

\$           N/A          

(c) failing to give written notice and an opportunity to cure (Sections 13.6 and 13.14 of the License Agreement) [refer to Question No. 21, if you answered "Yes," then award nominal damages]?

\$           N/A          

(d) violating the implied covenant of good faith and fair dealing [refer to Question No. 22, if you answered "Yes," then award nominal damages]?

\$           N/A

## PUNITIVE DAMAGES CLAIMS

If both liability and damages (either compensatory or nominal damages) have been found with regard to the specific issues raised in the questions set out earlier in this verdict form, then as to each specific finding of both liability and damages you should now answer an additional question. For example, if you have answered Question No. 45 Subpart (2) as to the Bryan Cervical Disc "Yes" and you inserted an additional royalty amount in Subpart (3), then you should answer an additional question. Since Question Nos. 45, 46, 47, 48, and 49 have numerous subparts remember that as to those questions you should consider only the subparts as to which both answers (subparts (1) and (2)) are "Yes" and an additional royalty amount has been found.

Question No. 72: The additional question you must answer under these circumstances is, has Dr. Michelson or Karlin Technology proven by clear and convincing evidence that Medtronic Sofamor Danek (or Medtronic, Inc. for Question No. 72(o)) acted in a manner that was reckless, intentional, fraudulent, or malicious?

Question No. 72(a): Having answered Question No. 45 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(b): Having answered Question No. 50 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 NO (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(c): The Court has already found that Medtronic Sofamor Danek breached the name attribution provisions of the Purchase Agreement and awarded nominal damages of one dollar for that breach because specific actual damages could not be proven. The Court having determined an amount of damages, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(d): Having answered Question No. 51 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(e): Having answered Question No. 53 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(f): Having answered Question Nos. 46 and 54 and determined an amount of damages under those questions, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(g): Having answered Question No. 55 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 NO (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(h): The Court has already found that Medtronic Sofamor Danek breached the name attribution provisions of the License Agreement and awarded nominal damages of one dollar for that breach because specific actual damages could not be proven. The Court having determined an amount of damages, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(i): Having answered Question No. 56 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(j): Having answered Question No. 57 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 YES (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(k): Having answered Question No. 59 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 yes (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(l): Having answered Question No. 60 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 NO (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Karlin Technology; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(m): Having answered Question No. 65 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 NO (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

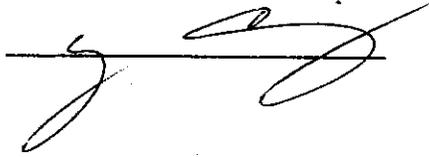
Question No. 72(n): Having answered Question No. 66 and determined an amount of damages under that question, we the jury now answer the additional question set out in Question No. 72 NO (insert either "Yes" or "No" as to the specific question).

[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic Sofamor Danek.]

Question No. 72(o): Having answered Question Nos. 67 and 68 and determined an amount of damages under those questions, we the jury now answer the additional question set out in Question No. 72 NO (insert either "Yes" or "No" as to the specific question).

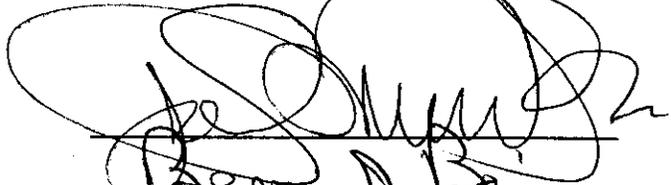
[A "Yes" answer is in favor of Dr. Michelson; a "No" answer is in favor of Medtronic, Inc.]

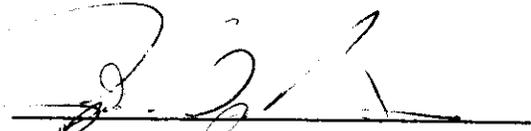
Presiding Juror:



Date: SEPTEMBER 27 2004

After the presiding juror signs, then each juror should also sign, indicating agreement to each verdict (i.e., each answer) in the verdict form.

  
 \_\_\_\_\_  
 Bernard D. Baum  
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 Steven A. Bonds  
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 Freeman C. Barkley  
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 Deborah Beavers  
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 Paul P. New  
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