

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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IN RE: ATRIUM MEDICAL CORP. *
C-QUR MESH PRODUCTS LIABILITY *
LITIGATION *
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16-md-2753-LM
September 10, 2019
1:40 p.m.

REDACTED TRANSCRIPT OF MOTION TO DISMISS HEARING
DAY TWO - AFTERNOON SESSION
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

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I N D E X

<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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DANA MESSINA

By Mr. Cheffo

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By Mr. Glasser

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CHAD CARLTON

By Ms. Armstrong

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P R O C E E D I N G S

THE COURT: Go ahead, Attorney Cheffo.

CONTINUED CROSS-EXAMINATION OF DANA MESSINA

BY MR. CHEFFO:

Q. Mr. Messina, just to orient you, I'm going to pick up a minute with the Steinway discussion we were having earlier this morning, but I want to take a little bit of a detour if that's okay with you.

You spoke on your direct examination -- you testified, excuse me, on your direct examination, about the shared services agreement. Do you recall that?

A. Yes.

Q. There are actually at least two of them. I'm going to show you excerpts from them. So this is Plaintiffs' Exhibit 116. And I'd like to -- you can, again, look at it if you need to, but I'm going to direct your attention to the second page where it says fees, and if you could blow that up.

Now, just to be clear, what we had talked about before, I asked you some questions about this, you had indicated that there were core functions that were taken over by Getinge that were no longer the responsibility or under the umbrella of Atrium, correct?

A. When you say umbrella, do you mean control?

Q. Sure. Is that right? You basically said that

1 Getinge took away control of certain core functions such
2 that without those Atrium could not function, right?

3 A. On a stand-alone basis.

4 Q. On a stand-alone basis. And you basically
5 said that as a result it left it as, you know, a shell
6 or company that could not exist, correct?

7 A. I didn't say it was a shell. I said it was a
8 company that couldn't function independently.

9 Q. The concept of shared services, that's not a
10 novel or inappropriate arrangement, is it?

11 A. Generally no, unless it's done for some
12 purpose other than in the ordinary course of business.

13 Q. Do you have any information that the shared
14 service agreement between Getinge and Atrium was done
15 for any improper purpose?

16 A. No.

17 Q. Is there anything about it that's improper?

18 A. No. You asked me a general question. I was
19 giving you a general answer.

20 Q. I'm just really wondering why it was that you
21 testified about it earlier.

22 A. Because you can set up shared services as a --
23 it's a way that one entity could extract value from
24 another entity.

25 Q. Do you know anything about the details or the

1 inner workings of the shared services agreement between
2 Atrium and Getinge?

3 A. I mean, I understand these agreements
4 generally, but I don't have specific details of those
5 shared services.

6 Q. So am I correct that you have no opinion if
7 there's anything improper or untoward or unfair about
8 this agreement, correct?

9 A. I don't know that there's anything unfair
10 about this agreement as an agreement of itself, but
11 these types of agreements, to answer your original
12 general question, they're not always fair. This one
13 appears generally fair, generally normal.

14 Q. So the agreement between Atrium and Getinge is
15 fair and normal, right?

16 A. Sure.

17 Q. Okay. And you see, I won't spend too much
18 time, but you see that there's a fee provision or it
19 talks about that the services are actually paid for by
20 the entity that receives them, right?

21 A. Yes.

22 Q. You know, let's assume it was United Airlines
23 and they outsourced an IT function or a call center,
24 right, those types of things happen in the real world,
25 right?

1 A. They do.

2 Q. And that's the type of thing that's
3 contemplated here, right? If you look at the next
4 section, in fact there's a requirement, No. 4, please,
5 that not only do they pay for it, but they pay at fair
6 market value, right?

7 A. Right.

8 Q. Did you know that when you testified earlier?

9 A. Yes.

10 Q. And this is a way of having an integrated
11 company with subsidiaries share resources and personnel
12 and costs in a way that makes good business sense,
13 right?

14 A. Generally that's the goal.

15 Q. And you have no reason to believe that
16 anything about this is any different with respect to
17 Getinge and Atrium than is the case with any other
18 functioning, legitimate enterprise, right?

19 A. I don't believe there's anything wrong with
20 it.

21 Q. Okay. Let's look at 87, and this is another
22 services agreement. You see that, right? Are you with
23 me?

24 A. Yes, I see it.

25 Q. If we can go to page 7.

1 Maybe I misunderstood, but I thought there was
2 an implication that all of these core functions like
3 legal and accounting and finance and information
4 technology were essentially taken away or taken out of
5 the control or outsourced to Getinge. Did you mean to
6 testify in that regard?

7 A. My understanding of what happened was that
8 that's essentially what happened.

9 Q. Did you read this document before you
10 testified today?

11 A. I did.

12 Q. Okay. Well, let's just look at legal, right,
13 what the legal function that would be covered. I know
14 you're not a lawyer, but you have a level of
15 sophistication with corporate legal departments, right?

16 A. I do.

17 Q. So just reading this, does this mean that
18 there's no legal function at Atrium?

19 A. Not necessarily.

20 Q. So you don't know whether there's an in-house
21 lawyer at Atrium or not, right?

22 A. I don't know whether there's an in-house
23 attorney at Atrium.

24 Q. Nothing here about HR function, nothing here
25 about environmental, nothing here about contracts,

1 right? Maybe business --

2 A. Contracts -- business acquisitions are
3 generally contracts.

4 Q. Local contracts.

5 A. There's nothing that talks about HR there.
6 It's mostly -- it appears to be transaction and tax
7 oriented.

8 Q. Right. So let's just look at the -- let's
9 look at the accounting function. The types of examples
10 here, this doesn't cover all the accounting function
11 that you would expect to see if you were to walk through
12 the doors at Atrium with its 500 employees, right?

13 A. It doesn't what?

14 Q. These three examples of the types of things
15 that are done on a shared services arrangement, you
16 wouldn't expect that they would cover all of the
17 accounting services that a company like Atrium would
18 need in its day-to-day operations?

19 A. It may not, but this would likely be most of
20 it.

21 Q. Okay. But there could be a bookkeeper?

22 A. Well, it says bookkeeping was specifically
23 identified as one of the services that are going to be
24 provided. So if -- could they have a duplicative
25 bookkeeper, could they have an accounts payable person,

1 that's possible.

2 Q. Did you also read in the shared services
3 agreement that this is voluntary, that these are the
4 services that a subsidiary could opt into but does not
5 necessarily have to? Were you aware of that?

6 A. Yes.

7 Q. If I were to go through and run through any of
8 these, do you know anything about which services Atrium
9 opted into and which it didn't?

10 A. I don't know that I could be -- give you
11 specifics, but from reading the different depositions, I
12 got the impression that most of these services were
13 outsourced and that by and large Atrium operated as a
14 manufacturing facility and had whatever attendant
15 support it needed to be a manufacturing facility, but
16 most of the sales, marketing, and other types of core
17 functionality was outsourced. But I can't go specific
18 line item by line item.

19 Q. Let's talk very generally. I'm not even
20 talking about -- I don't see anything on here about
21 sales and marketing, right? I think this -- other than
22 the last one. This talks about, the first page, legal,
23 accounting, finance, information technology, human
24 resources. Do you have any information whatsoever that
25 you can testify to here today as to what functions are

1 part of the shared services for Atrium and which are
2 not, yes or no?

3 A. I believe I can give you some. I believe HR
4 was -- from the depositions it appeared that maybe not
5 all of HR but a lot of HR was outsourced. Information
6 technology as it pertained to accounting and some of the
7 other appears to be outsourced, but I have no ability,
8 because I didn't visit the company, to be able to
9 confirm my impressions from the depositions.

10 Q. Other than HR and IT, any information
11 specifically about what was part of the shared services
12 and what was not?

13 A. I believe accounting was outsourced. The
14 format of the accounting statements appeared to be the
15 accounting format that they use at other parts of the
16 company. I forget what the name of it was, and I think
17 Mr. Hjalmarson in his deposition talked about it.

18 And then finance also was outsourced, and I
19 think the second video deposition we saw we confirmed
20 that the finance people weren't at Atrium. They were
21 somewhere else.

22 And then IT, I don't know. I don't know
23 exactly how they did their computer systems, but it
24 appeared that that was outsourced as well.

25 Q. You got that from depositions?

1 A. And some of the materials that we saw and the
2 format of the materials, the financial information, it
3 appeared to come from a system that they used on a
4 global basis.

5 Q. Right, but I think you agree with me that
6 notwithstanding what's in and what's out, maybe we'll
7 hear more about that a little bit later, there's nothing
8 inappropriate about this arrangement generally and
9 there's certainly nothing inappropriate about the way it
10 was done with respect to Getinge and Atrium?

11 A. No, I mean, it's a fairly typical arrangement.

12 Q. Thank you. Now let's turn back, if you would,
13 to your tenure with Steinway and some of the -- I'm
14 going to focus obviously not so much on your day-to-day
15 obligations but some of the things that happened at
16 Steinway that I think are informative here.

17 Let's look at Defendant's Exhibit 5, at page
18 2, and this is -- it says Steinway's -- and I'll just
19 read it: Steinway Musical Instruments, through its
20 wholly-owned subsidiaries, is a global leader in the
21 design, manufacture, marketing and distribution of high
22 quality musical instruments. We are the largest
23 domestic manufacturer of musical instruments. Whenever
24 we refer to "the company" or to "us" or use the term
25 "we" or "our" in this annual report, we are referring to

1 Steinway Musical Instruments and it's subsidiaries.

2 Do you see that?

3 A. I do.

4 Q. And you would agree with me that there is
5 nothing wrong with Steinway referring to itself as "we"
6 or "us" when it's talking about not just the parent
7 company but the whole family of Steinway subsidiaries,
8 right?

9 A. Sure. In connection with the audience that
10 we're speaking to here, which are shareholders who are
11 primarily interested in the holding company, sure, it's
12 an appropriate way to do it, sure.

13 Q. It's appropriate and this is open to anybody,
14 right, it's not just shareholders?

15 A. Oh, it's a public document, but the primary
16 audience are your shareholders and the regulators.

17 Q. Regulated by the SEC, right?

18 A. Yes.

19 Q. And they would be fine with you saying that,
20 right?

21 A. Yes, they would.

22 Q. And they would be fine if you said, We are one
23 Steinway, wouldn't they?

24 A. They might be.

25 Q. Now -- and in fact, you know, referring to a

1 company as "we" or "the company," if we were to look at
2 hundreds or thousands of 10-Qs, which I promise you we
3 will not, and the Court, we would see similar language,
4 wouldn't we?

5 A. Sure. When you're talking about companies
6 whose financial statements are consolidated for purposes
7 of reporting to the public it's -- I would be surprised
8 if you found a 10-K where it wasn't that way.

9 Q. Now, you identified Conn-Selmer as one of the
10 subsidiaries that you and the company were particularly
11 focused on with respect to having corporate
12 separateness; is that right?

13 A. We respect a corporate form; that we were
14 careful about it.

15 Q. And it was important to keep the company
16 distinct, right, those subsidiaries distinct?

17 A. For a number of reasons, yes.

18 Q. And the board of directors assumed that you
19 were trying to maintain the corporate form, correct?

20 A. Correct.

21 Q. Now, you were on the board of the subsidiary
22 Conn-Selmer, right?

23 A. I was.

24 Q. And at the time you were also an officer and
25 director of the parent company?

1 A. That's correct.

2 Q. And there was nothing wrong with that, was
3 there?

4 A. No.

5 Q. You also were the controlling shareholder of
6 Conn-Selmer, which was a subsidiary while you were the
7 CEO and a board member of the parent, right?

8 A. Not quite. I was the controlling shareholder
9 of Steinway Musical Instruments, and Steinway Musical
10 Instruments owned a hundred percent of Steinway and a
11 hundred percent of Conn-Selmer.

12 Q. So you were -- I'm sorry. Help me understand
13 that.

14 A. You had said I was the controlling shareholder
15 of Conn-Selmer. I was the controlling shareholder of
16 Steinway Musical Instruments, which owned Conn-Selmer.
17 I was a board member of Conn-Selmer. It had a separate
18 board of directors than the board of Steinway Musical
19 Instruments, but I was one of the directors.

20 Q. In your deposition you said that you were the
21 controlling shareholder of Conn-Selmer.

22 A. Did I?

23 Q. Yes.

24 A. If I did, I misspoke. I was the controlling
25 shareholder of Steinway.

1 Q. Let me just make sure. It says, "But
2 Conn-Selmer couldn't decide that itself," on that page
3 -- I'm at -- of your transcript.

4 I'm not doing this to impeach you, Mr.
5 Messina. I just want to refresh your recollection,
6 actually.

7 51, 10 to 23 for your counsel.

8 "But Conn-Selmer couldn't decide that itself,
9 could it?"

10 "Well, Conn-Selmer, you know, I was the
11 controlling shareholder of Conn-Selmer. So, you know, I
12 could decide that, but the management team at
13 Conn-Selmer could not decide that."

14 A. Okay. I should have said I was a controlling
15 shareholder of Steinway which owned Conn-Selmer. The
16 effect is the same. The management team wouldn't be
17 able to decide. I could override any decision.

18 Q. You could override any decision of the
19 management team of the subsidiary as the controlling
20 shareholder, correct?

21 A. Correct.

22 Q. Nothing wrong with that, right?

23 A. No. As long as you disclose it and people
24 understand that, sure.

25 Q. Now, Steinway Musical Instruments, which is

1 the parent company, gave certain parameters to
2 subsidiaries like Conn-Selmer and others about the
3 decisions that they could make on their own and the
4 decisions that required approval, correct?

5 A. That's correct.

6 Q. And some of those -- were you in the courtroom
7 this entire hearing?

8 A. I believe so.

9 Q. Okay. You heard some testimony about whether
10 a CEO could authorize certain finances above a certain
11 limit, right?

12 A. I don't recall, but that sounds like a normal
13 thing.

14 Q. It's normal, right?

15 A. Yeah.

16 Q. Making certain hiring and firing decisions,
17 correct?

18 A. Correct.

19 Q. Certain banking, loan decisions are things
20 that parents can and often do have a say in the
21 management team of their subsidiary, correct?

22 A. That's correct.

23 Q. Real estate issues, correct?

24 A. Sometimes, yeah. It --

25 Q. I'm sorry, go ahead.

1 A. It depends on the size.

2 Q. Okay.

3 A. It's usually the limitations are based on a
4 dollar amount. So if the dollar amount is say a million
5 dollars and the real estate deal is above that, that
6 goes to a different level. If it's below that, usually
7 the local guys or gals can handle it.

8 Q. And that's done for practical reasons, but as
9 a formal purpose, it's the parent company that could set
10 the thresholds, the limits, the parameters, depending on
11 how much input it wants to have in its subsidiary,
12 correct?

13 A. I wouldn't phrase it as to how much input they
14 want to have, but it's a way to manage and control a
15 business so that you understand what's going on at those
16 businesses.

17 Q. So I think we talked about loans, right, real
18 estate, right? Yes?

19 A. Right.

20 Q. Major branding initiatives, correct?

21 A. I don't know that we talked about major
22 branding issues.

23 Q. Would that be something that a parent could
24 exercise input or control over?

25 A. Generally that's fairly common.

1 Q. Indeed, I think you were asked at your
2 deposition, if you recall this, you know, could one of
3 the subsidiaries decide to basically if they thought it
4 would be hip and cool to go and take the Steinway logo
5 and graffiti a brick or something, right, I think you
6 had told us --

7 A. And I said no.

8 Q. That probably would be inconsistent with the
9 brand image of Steinway, right?

10 A. That probably would not be something that
11 would get approved.

12 Q. And if they put something really whacky that
13 people at Steinway thought was inconsistent with the
14 brand image on a coffee cup, on a mug or on a thimble,
15 that would still generate some concern at Steinway,
16 right, because they would be concerned about how their
17 image as a premium brand is represented?

18 A. It could if it reached that far. I don't know
19 that we had the level of sort of control that somebody
20 couldn't make a coffee cup that way, but if the coffee
21 cup made its way to my office there would probably be a
22 discussion or a phone call.

23 Q. Right. But the point is it could and it would
24 not be inconsistent, fraudulent, unusual, or something
25 outside the bounds of what could happen in legitimate

1 corporate America.

2 A. Yeah, I'm sure those things happen every day.

3 Q. They do happen every day, right?

4 A. Yeah.

5 Q. And certainly things like pension plans and
6 retirement plans, that's something that a parent would
7 often want to have input into how that's structured for
8 its subsidiaries, right?

9 A. Generally speaking. They're fairly complex
10 sort of issues, but usually those are handled at a more
11 senior level than versus a local level.

12 Q. And it's also not uncommon for companies to
13 set up pension or retirement or profit sharing programs
14 that are consistent across the parent and subsidiaries,
15 right?

16 A. It depends if you're more of a domestic
17 business versus a global business. If you're a global
18 business, they tend to be different in different
19 jurisdictions.

20 Q. Okay. But if they did happen, they wouldn't
21 be unusual or improper, correct?

22 A. In a general sense, I don't think so.

23 Q. And Conn-Selmer did 100 percent of its sales
24 through third-party distributors, right?

25 A. Well, the end consumers are from music dealers

1 and Conn-Selmer sold to music dealers.

2 Q. Which were distributors, right?

3 A. Well, they were music dealers. But our
4 revenue came from music dealers, the music dealer's
5 revenue came from the end consumer. It's a fairly sort
6 of common way to do business.

7 Q. I guess my only point is you didn't have your
8 own sales force out there, you did your sales through a
9 distribution chain?

10 A. We did have a sales force. Our sales force
11 sold to music dealers.

12 Q. Okay. And then the music dealer sold the
13 product to --

14 A. The music dealers had their own sales force
15 that sold to end consumers.

16 Q. Nothing wrong with that, right?

17 A. Nothing wrong with that.

18 Q. And when there were intercompany sales between
19 Steinway entities, they were often sales at a discount,
20 correct?

21 A. I don't know. There might have been slight
22 discounts. We had a department of people that made sure
23 that was all done legally. It's not as simple as you
24 might make it sound.

25 Q. I'm not trying to make it sound simple or

1 complicated. We could pull up Defendant's Exhibit 5 at
2 75.

3 Let me just ask you if, without getting into
4 -- if it's very complicated, you'll let me know, but
5 really my question is very simple. Did -- when a
6 product was sold within a subsidiary from one to the
7 other, or a parent to a subsidiary or vice versa, was it
8 typically sold at a discount?

9 A. As I said, I said sometimes a small discount,
10 which is not -- amazing that nine years later that I got
11 the term right.

12 Q. And selling at a discount, not a problem,
13 right?

14 A. A small discount is not a problem.

15 Q. Who set the discount?

16 A. The tax -- generally the tax people along with
17 input from accountants if it was a transfer pricing
18 issue. We didn't have a tremendous amount of that, but
19 because a lot of it took place globally we had to be
20 careful about it.

21 Q. And by engaging in these -- this was for tax
22 -- strike that.

23 This was for tax purposes primarily?

24 A. Well, there are -- no. You transfer a product
25 for business purposes. The prices still have to be

1 consistent with whatever the applicable tax and
2 regulatory scheme is in the two different countries that
3 you're doing business, and so people watch over that to
4 make sure it's done right.

5 Q. And one of the strategies was to minimize the
6 profits of U.S. entities at Steinway and maximize the
7 profits of entities in lower tax jurisdictions, correct?

8 A. That's typical of any company.

9 Q. And it was what happened at Steinway, right?

10 A. Sure.

11 Q. And there was a whole department of people at
12 Steinway that tried to figure out ways and strategies to
13 minimize tax exposure, correct?

14 A. We had people that that was their function,
15 yes.

16 Q. And you believe that that's a normal,
17 customary, reasonable function of multinational
18 corporations today, right?

19 A. Sure. Yeah.

20 Q. Now, in addition to Conn-Selmer when you were
21 the CEO of Steinway and also on the board, you sat on
22 other boards of other subsidiaries, correct?

23 A. I think one or two others.

24 Q. We talked a little bit about this so let me
25 just ask you a question or two. With respect to the

1 Steinway mark, it was something that was held in high
2 regard and valued at Steinway, correct?

3 A. That's correct.

4 Q. And one of the marketing issues or objectives
5 was to try to use the good name and reputation of
6 Steinway to help bolster sales and profits across the
7 portfolio of companies, correct?

8 A. Where it was appropriate.

9 Q. Where appropriate. You didn't want to be
10 competing with each other where you didn't have to be,
11 right?

12 A. Well, it wasn't so much we didn't want to
13 compete, but we didn't want to use the brand name where
14 it wasn't going to be effective or where we could dilute
15 the value of the brand by using it inappropriately.

16 So we used it, for instance, with Boston and
17 Essex pianos, their piano, Steinway, is known for
18 pianos, so we tended to use it there.

19 We did not, for instance, with Ludwig drums.
20 When the Beatles and Led Zeppelin and Guns & Roses were
21 playing Ludwig drums, I don't think anybody cares about
22 the Steinway mark, and I don't think that customer base
23 is influenced one way or another by it so we don't use
24 it there. So we use it where appropriate where we think
25 it can help the business.

1 Q. Those kind of sophisticated analyses about
2 marketing and branding, those are both appropriate and
3 typically done every day in corporate America and in
4 companies all around the world, right?

5 A. Sure.

6 Q. There was an effort to integrate subsidiaries
7 as much as possible at Steinway, correct?

8 A. Certain ones. For instance, if we did a band
9 instrument acquisition, if it was appropriate, we
10 integrated into the band instrument business. If we did
11 something on the piano side, we did it there, but we
12 kept those businesses generally separate.

13 Q. Okay. And I guess what I was referring to in
14 your 10-K, and we can show you, it's Defendant's Exhibit
15 5 at page 12, it was listed as a risk factor to the
16 extent that you could not integrate certain entities in
17 a way and assimilate them in a way that you wanted to,
18 fair?

19 A. That's fair.

20 Q. "And we know in situations," I'm looking at
21 the second line, "these potential transactions with
22 other companies create risks such as difficulty in
23 assimilating the personnel, customers, technology,
24 products and operations with our personnel, customers,
25 technology, products and operations." Do you see that?

1 A. Yes.

2 Q. So what this is saying in sum or substance is
3 that we want to have a general assimilation of our
4 business operations because it makes things work better
5 and it's a better and more profitable way of doing
6 business, right?

7 A. Well, I think what this is saying is that if
8 it was our goal to assimilate and save money and be more
9 efficient with the acquisitions that we did, but there
10 was a risk that they weren't going to work out the way
11 we thought they were, I think that's why this is a risk
12 factor.

13 Q. But a goal, a legitimate goal is to assimilate
14 and to try to have some of these same things where
15 you're assimilating personnel, customers, and
16 technology, right?

17 A. Oh, right.

18 Q. And that often involved some hands-on TLC and
19 working closely with the subsidiary, correct, or the
20 target?

21 A. It's an intense effort if done right.

22 Q. And to make it work, it requires intense
23 effort, a lot of communication, and a lot of
24 collaboration, right?

25 A. I think that's fair.

1 Q. Do you know when Atrium was acquired by
2 Getinge?

3 A. 2011.

4 Q. Now, I'm going to switch gears for a minute,
5 please.

6 I think you testified earlier that you would
7 have liked to have interviewed Atrium's management team
8 in this case; is that right?

9 A. That's right.

10 Q. And you didn't have a chance to do that, did
11 you?

12 A. I did not.

13 Q. But in fact, you're aware that several members
14 of the management team provided sworn affidavits in this
15 case regarding financial statements and other
16 information, correct?

17 A. I believe so.

18 Q. And you didn't even read them, did you?

19 A. I don't know. I don't know which person
20 you're referring to so it's hard for me to tell you
21 whether they're on the list that I read.

22 Q. Well, I didn't see in your --

23 A. I'm not trying to be evasive, but if it's -- I
24 gave a list of the affidavits and the depositions I
25 read. If they're not on that list, they weren't

1 provided to me.

2 Q. Okay. So Chad Carlton, Greg Sufat, Erica
3 Gallagher. So Chad was the CEO, Greg Sufat the CFO,
4 Erica Gallagher the director of tax, you were not aware
5 that they prepared sworn affidavits?

6 A. If it wasn't provided to me and it's not on
7 the list, then I wasn't aware of it. That would be
8 something I would normally read if I was provided that.

9 Q. If you were given that, you would have read
10 it?

11 A. Unless something unusual happened, I would
12 have read it.

13 Q. And you don't have any recollection of reading
14 those affidavits, do you?

15 A. If it's not on the list in the back of my
16 report, then no.

17 Q. Okay. Now, there was some discussion, and I'm
18 not going to spend any time talking more about it, about
19 graphics and business cards and marketing materials
20 regarding Getinge's guidelines. You recall that, right?

21 A. Right.

22 Q. But you generally understand what this
23 litigation is about, don't you?

24 A. I do.

25 Q. Now, were you provided any information that

1 suggested that Getinge controlled anything to do with
2 Atrium's design of medical devices?

3 A. No.

4 Q. Do you see any guidelines or materials about
5 that?

6 A. No.

7 Q. Do you know what it says on the package of the
8 C-Qur medical mesh?

9 A. I don't.

10 Q. So you have no idea whether it says Atrium,
11 Getinge, or something else?

12 A. I don't.

13 Q. Did you see any information that suggested
14 that Getinge AB controlled the manufacture of medical
15 devices in any way?

16 A. No.

17 Q. Did you see any information that suggested
18 that Getinge AB had anything to do in any way with
19 Atrium's quality control of medical devices?

20 A. Not that I'm aware of. That's not the scope
21 of what I was doing.

22 Q. Same question for customer issues, complaints?

23 A. No, I didn't see anything of that nature.

24 Q. Did you see -- I'm sorry.

25 A. Well, in my mind I was saying that customers

1 were all sort of transferred out along with the sales
2 force, but being specific to your question, I didn't see
3 anything related to customer complaints.

4 Q. Well, you understand these are medical devices
5 so the ultimate customers are people who get surgery?

6 A. I understand that, sure.

7 Q. So they're still out there. You haven't seen
8 anything to do with customer complaints or any
9 involvement by Getinge with respect to those, correct?

10 A. Correct.

11 Q. The same thing with regulatory issues, the
12 FDA, correct?

13 A. I saw the warning letters and things like that
14 but -- I looked at it more from a financial standpoint,
15 but I did see some of that.

16 Q. But did you see anything that would reflect
17 any element of control with respect to anything to do
18 with the medical device operations and the warning
19 letters of Getinge AB?

20 A. Not that I'm aware of.

21 Q. I'd like to turn your attention, Mr. Messina,
22 to the veil-piercing concept and solvency as a proxy for
23 it. Is it a fair statement of your opinion in this case
24 that publicly traded corporations that manage their
25 subsidiaries with a lot of integration should anticipate

1 by doing so that their corporate form will be
2 disregarded?

3 A. If they do it in such a way where they're
4 moving assets around in a manner that will disadvantage
5 their creditors. If they're doing it in a way that
6 doesn't affect their creditors, it's usually not
7 something that you're concerned about, but if you're
8 going to affect creditors and you've moved assets from
9 one place to another, it's something you should expect.

10 MR. CHEFFO: Can we pull up -- this is 174, 5
11 to 13.

12 Q. I tried to read pretty close to what the
13 question you were asked, Mr. Messina. Do you see that?
14 "Just a couple more substantive questions. You
15 mentioned along the way that it was your opinion that
16 the way some publicly traded companies manage their
17 subsidiaries, they do so with a lot of integration and
18 that they should anticipate by doing so that their
19 corporate form will be disregarded. Is that a
20 reasonably fair statement?" You said, "Yes, generally
21 yes."

22 Do you see that?

23 A. Yeah.

24 Q. You didn't say anything about moving around
25 assets or anything else, did you?

1 A. Well, it says -- well, I didn't get specific.
2 The way some publicly traded companies manage their
3 subsidiaries. So the way some of them do, they should
4 anticipate -- if they move assets from one to another
5 and they're going to leave a subsidiary unable to pay
6 its debts on a stand-alone basis and they move all the
7 value out, they should anticipate it. If you manage it
8 in such a way that you're protecting the corporate form
9 and the business is still viable on a stand-alone basis,
10 you should anticipate that it's not. I mean, it's not a
11 very difficult science.

12 Q. You also testified, though, that this level of
13 integration is very common amongst large consolidated
14 companies, right?

15 A. Yeah, and I think I also said when large
16 consolidated companies do this at subsidiary levels they
17 don't typically -- the more you integrate a business the
18 less you're going to be able to avail yourself of
19 corporate form. The less you integrate it's much
20 easier. To the extent that you start moving assets
21 around and you want to claim -- you want to be one
22 company and one entity gets all the benefit and one
23 entity gets all the liabilities, you shouldn't expect to
24 be able to maintain your corporate form or not have
25 those consolidated in some sort of bankruptcy or some

1 sort of litigation or whatever. You can't -- the whole
2 idea is you can't have value in a company, move all the
3 assets out and leave all the liabilities with another.
4 I can't transfer my house to you, go to a bank and say,
5 sorry, I've got nothing to pay you with and the house is
6 gone.

7 Q. That's not what I asked, I don't think, but
8 let me ask you this. You testified at your deposition
9 that these types of integrated transactions are very
10 common.

11 A. When you say, These types of integrated
12 transactions. So if you're talking about integrated
13 operations?

14 Q. Yes.

15 A. Yes, it's very common.

16 Q. Right. It's very common for large
17 consolidated companies to have highly integrated
18 subsidiaries, right?

19 A. Right.

20 Q. And under your analysis and the way you look
21 at the world, many or all or most of those should expect
22 to have their veils pierced?

23 A. If they -- first of all, you're only going to
24 get --

25 Q. That's a yes or no question, Mr. Messina.

1 A. No, it's not.

2 Q. It is.

3 A. No, it's not.

4 Q. Why don't you tell me if you can't answer it
5 yes or no and then I'll try again, because your lawyer
6 will have a chance to ask you a lot of questions.

7 A. Try again, please.

8 Q. Fair. So is it very common among large
9 consolidated entities to have highly integrated
10 subsidiaries?

11 A. Yes.

12 Q. Now, is it your opinion that almost all highly
13 integrated subsidiaries in those large consolidated
14 entities would find themselves at great risk of veil
15 piercing if the subsidiary became insolvent or a cost
16 center?

17 A. Yes.

18 Q. And is it also your opinion that even when all
19 the transactions, when all the transactions a
20 corporation undertakes are proper and have legitimate
21 business reasons, if they render the business insolvent
22 that's reason enough under your view to disregard the
23 corporate form?

24 A. Generally if it rises to the level of a
25 fraudulent conveyance, yes.

1 Q. That's not what I asked you. Do you want me
2 to read it again? It's a yes or no question.

3 A. It's generally yes, but I'm giving it some
4 context.

5 Q. I didn't ask for context, Mr. Messina. I
6 would just like you to tell me if you can answer it yes
7 or no. Is it a yes?

8 MR. GLASSER: Object. Badgering the witness.
9 I don't even remember the question.

10 Q. I'll read it again. You know what, why don't
11 we put up -- let's put up 144/25 through 145/8.

12 "So your opinion is that insolvency alone is
13 enough of a reason to pierce the corporate veil even
14 when all the transactions and issues were proper and had
15 legitimate business reasons?"

16 "Listen, I'm not going to render a legal
17 opinion, but from my standpoint, 30 years of experience
18 in business, if you make financial decisions that render
19 a business insolvent, that's reason enough."

20 Do you see that?

21 A. I do.

22 Q. And that was testimony under oath, correct?

23 A. Correct.

24 Q. Now, you -- do you have a view that an audit
25 of Atrium as an independent company would have shown it

1 to be insolvent?

2 A. Will you repeat the question? I didn't get
3 it.

4 Q. Sure. Do you have a view that an audit of
5 Atrium as an independent company would have shown it to
6 be insolvent?

7 A. That an audit of Atrium as a stand-alone
8 business would have shown it to be insolvent. As a
9 subsidiary being supported by somebody else, it may not.

10 Q. And you did not conduct an audit of Atrium's
11 financial statements; is that right?

12 A. No, I don't believe there is an audit of their
13 financial statements, and I didn't do one, no.

14 Q. And you rendered a solvency opinion without
15 doing a fair market value analysis, correct?

16 A. Correct.

17 Q. And you did not do a cash flow statement,
18 analyze cash flow statements; is that right?

19 A. The company didn't produce cash flow
20 statements, but a cash flow analysis for solvency you
21 don't necessarily need the cash flow statement.

22 Q. Now, Atrium is not a public company, right?

23 A. It is not.

24 Q. So the --

25 A. On a stand-alone basis it is not. It is part

1 of a public company.

2 Q. The accounting rules and guidelines that would
3 apply to a publicly traded company don't necessarily
4 apply to Atrium; is that fair?

5 A. That's true. It's not publicly traded so it
6 doesn't have the publicly traded aspects of accounting.

7 Q. I want to just turn for a minute to the
8 unanimous written consent document that you were shown
9 and testified about in March 14th, 2019. Do you recall
10 that? That was the ratification document? I think
11 that's what you called it, a ratification of the two
12 \$10 million --

13 A. So the backdating?

14 Q. That's your words, the backdating.

15 A. Yes.

16 Q. That's what you were referring to?

17 A. I do recall it.

18 Q. So my understanding, correct me if I'm wrong
19 on this, is that your testimony was that there were
20 loans, two loans of \$10 million that were then
21 recharacterized and they were backdated to represent
22 that they were in fact contributions in 2019?

23 A. That's what it appeared, yes.

24 Q. Okay. Let's first talk about, before we get
25 to 2019, there were two payments of \$10 million, right?

1 A. Right.

2 Q. Do you have any information about how they
3 were characterized at the time by Atrium?

4 A. Something other than as a contribution.

5 Q. How do you know that?

6 A. Because the backdating was to classify them as
7 a contribution, so they must have been something else
8 before that.

9 Q. Well, are you making -- let me ask you the
10 question. You say they are backdating, but do you know
11 that the March -- let's put up Plaintiffs' Exhibit 187.

12 This is a unanimous written consent, right, in
13 lieu of a meeting, right?

14 A. Yup, dated March 9, 2019.

15 Q. And it talks about the two \$10 million
16 contributions, right?

17 A. Right.

18 Q. And your testimony here under oath is that
19 because this document talks in terms of a contribution,
20 that you've now said that it must have been a loan and
21 this somehow changed what actually happened years
22 before?

23 A. I said it must have been something other than
24 a contribution.

25 Q. Well, what if it was just a ratification for

1 bookkeeping purposes to ratify the exact way that it was
2 kept on the books previously? Is that possible?

3 A. I don't know why that would happen.

4 Q. Is it possible?

5 A. I can't -- it doesn't make sense. Most
6 anything is possible, but why if it was done correctly
7 in 2016 would you need to reaffirm it in 2019?

8 Q. Well, what if there wasn't a board resolution
9 at the time?

10 A. If there wasn't a board resolution to what?

11 Q. To the contribution at the time and for good
12 corporate practices someone said, well, you know what,
13 we should have had a board resolution, let's make sure
14 we do the right thing.

15 You've basically -- do you have any basis
16 whatsoever other than this document, do you have a
17 scintilla of evidence that this was a loan?

18 A. No. I said it was something -- I obviously
19 don't have their general ledgers, you didn't provide
20 them for me to see, but if you're reclassifying
21 something as contributions, yes, it is an assumption of
22 mine that it likely was done as something other than a
23 contribution.

24 Q. Where does it say reclassify?

25 A. Why would you do this?

1 Q. That's not my question. My question was --
2 you've testified now under oath several times with some
3 degree of certainty that there's some nefarious purpose
4 that there was a backdating of a document based on a
5 loan. I've asked you now four or five times about any
6 information that this was a loan and also that this was
7 recharacterized because I don't see it in this document.
8 Help me.

9 A. Okay. Well, then it's an assumption of mine,
10 from my years of experience when you see something like
11 this three years after the fact, that it's to fix
12 something that wasn't done correctly. And generally
13 when you go to fix something after the fact like this it
14 was because it was done incorrectly. It's not for
15 general bookkeeping, because usually at the end of a
16 year when you do a resolution at a board you say, okay,
17 everything we did in the prior year is fine. This is
18 very unusual in my experience.

19 Now, can I sit there and tell you I saw the
20 general ledger and I know exactly how they did it, no,
21 but I've made assumptions based on my experience.

22 Q. The point is you don't know anything about
23 this, do you? Everything you've said is an assumption;
24 is that fair?

25 A. That's fair.

1 MR. CHEFFO: Can I have the balance sheet,
2 please. 2110, if we can blow that up a little bit.

3 Q. So this goes, and it confused me a little bit,
4 but it seems to go from 15, 16, 17, starting on the
5 right-hand side to the left. Do you see that?

6 A. I do. I know how to read it.

7 Q. So [REDACTED] in total equity. Do you see
8 that?

9 A. I do.

10 Q. At around the same time in the next year there
11 was the [REDACTED], right?

12 A. Right.

13 Q. And that's about [REDACTED], right, the
14 difference between [REDACTED] and [REDACTED], right?

15 A. Right.

16 Q. And that's listed as total equity, right?

17 A. Right.

18 Q. And that's a contribution, isn't it?

19 A. Well, it's -- the increase -- most of the
20 increase is in retained earnings, okay? So if you look
21 at line 2091, okay, you see a bump up in retained
22 earnings for a business that lost money. Explain that.

23 So somehow something went into retained
24 earnings for a company that didn't have a net profit,
25 okay? And so it could be that someone said, okay, you

1 know, we really didn't earn this money; we have to
2 reclassify this. It would generally go in one of the
3 other line items like 2086 or 2100 -- not 2100 but one
4 of the other line items.

5 Q. Let me just ask you, is it -- you weren't
6 there, right, you don't know a lot about how this
7 happened, but is it possible that the [REDACTED] that's
8 reflected in the March 9, 2019, document was treated as
9 a capital contribution by the parent that raised the
10 total equity number from [REDACTED] to [REDACTED]? Is that within the
11 realm of possibility?

12 A. Ask that again, please. I want to make sure I
13 get it precisely right.

14 Q. Sure. In 2016 there was a -- you say loan, I
15 say contribution, right, of [REDACTED]?

16 A. Contribution generally refers to equity.

17 Q. Okay. An equity, right. So is it possible
18 that in 2016 when the company had total equity of about
19 [REDACTED] less, they treated the [REDACTED] infusion
20 from the parent as an equity contribution based on the
21 very clear numbers right in front of us?

22 A. It doesn't appear that way.

23 Q. It's not possible?

24 A. Listen, anything is possible, but it doesn't
25 appear that way on this balance sheet.

1 Q. Okay.

2 A. As I said, the retained earnings went up but
3 you don't see, for instance, the restricted shares going
4 up, and usually in a contribution like that you would
5 see an account like that not in -- you wouldn't see
6 somebody put in contributed equity and it going to the
7 retained earnings account.

8 Q. Okay. So let's take it the other way. Is
9 there anything that shows you that this is a loan that
10 you've testified to a few times?

11 A. Is there anything that shows that --

12 Q. That it was a loan in 2016 that was
13 recharacterized in 2019?

14 A. I don't know that we could tell from this. I
15 mean --

16 Q. So you don't know?

17 A. -- to use your words, it's possible, but I
18 don't know that we could tell from this.

19 Q. So I guess at the end of the day you really
20 just don't know -- other than the 2019 document, you
21 don't really know the circumstances, how this was
22 treated, what the purpose was, whether it was a loan,
23 whether it was a contribution, fair?

24 A. I can say based on these financial statements
25 it's unlikely that it was an equity contribution in

1 2016.

2 Q. Okay.

3 A. If it was, it wasn't accounted for properly,
4 which is -- which may be the reason why somebody might
5 have backdated it if it wasn't accounted for properly.

6 Q. Well, again, you've used the term backdating.
7 I mean, if someone basically passed a resolution later
8 in order to validate something that was a formality that
9 was not followed, that happens from time to time in
10 corporate America, doesn't it?

11 A. It does, but it's rare for it to happen three
12 years.

13 Q. It can happen, right?

14 A. What?

15 Q. It can happen?

16 A. I've not seen them done like that.

17 Q. Okay. Let's take a look at -- I'm going to
18 turn to some balance sheet issues. I just have a few
19 more topics for you, Mr. Messina. This is Plaintiffs'
20 Exhibit 21.

21 Now -- 31, excuse me. My fault.

22 So is it fair to say that when you're looking
23 at a balance sheet for solvency one of the principal
24 questions is the ratio of current assets to current
25 liabilities?

1 A. Yes.

2 Q. And that's called the current ratio?

3 A. Yes.

4 Q. And if you look at line 2560, it says:

5 Short-term liabilities group internal?

6 A. Yes.

7 Q. There's been some discussion about that today?

8 A. Yes.

9 Q. And you treated this item as a short-term
10 liability as it's indicated on the balance sheet,
11 correct?

12 A. That's how it's indicated and that's how I
13 treated it.

14 Q. Are you familiar with something called the
15 substance over form doctrine?

16 A. I've heard the term used.

17 Q. You've heard of it or are you generally
18 familiar with it?

19 A. When you use the term -- I know substance over
20 form. When you use the term doctrine, I give a little
21 bit of pause because I don't know what -- if you're
22 referring to some specific legal book or if you're --
23 sort of a general understanding that business people
24 have. I generally understand it.

25 Q. Okay. Well, I actually took it from -- you're

1 involved in a Ninth Circuit case, correct?

2 A. Is that where you're telling me you took it
3 from?

4 Q. It was in a brief filed on your behalf.

5 A. So you're referring to a brief that my
6 attorneys filed in something completely unrelated?

7 Q. Well, it was dealing with tax matters and how
8 to treat and read tax forms, correct? It's not
9 completely unrelated.

10 A. Excuse me?

11 Q. It's dealing with tax matters and how you
12 should treat tax issues, correct?

13 A. That's my understanding.

14 Q. Okay. And in that brief it says that you can
15 use the substance over form doctrine to determine
16 whether a particular loan should be treated as certain
17 indebtedness, correct?

18 A. That's a tax case. It's very different than
19 the issues we're talking about here. If we want to get
20 into a tax case, that's fine. I didn't write the brief.
21 I didn't -- the way that case is being argued, I'm not
22 intimately involved with it. It's a very technical sort
23 of case that's working its way through the system.

24 Q. Okay. And I don't want to get into the gory
25 details of it, but the substance over form doctrine is

1 one of the primary arguments raised on appeal on your
2 behalf in the Ninth Circuit and I'm just asking you, and
3 it's in a tax financial case, if you're familiar with
4 that doctrine which basically says you should look
5 behind the format or you can look behind the format and
6 look at the substance of transactions, right? Isn't
7 that ostensibly what it says?

8 A. That's one of the issues in that case.

9 Q. And that's a position that you've advanced and
10 are advancing before the Ninth Circuit Court of Appeals,
11 right?

12 A. That's right.

13 Q. And you know that Mr. Fernandez made some
14 effort to look at the substance of that [REDACTED]
15 entry and determined how it was characterized and look
16 essentially beyond the form, right, and there's nothing
17 wrong with that, is there?

18 A. On financial statements you don't necessarily
19 get to do it that way.

20 Q. Even in a situation where a company is a
21 wholly-owned subsidiary?

22 A. You're not allowed under any accounting
23 standard to mischaracterize what something is on your
24 financial statements.

25 Q. Agree. No one is suggesting to

1 mischaracterize, but there are different ways of
2 accounting for things based on substance over form; is
3 that fair?

4 A. Accounting is more rule oriented than it was
5 probably 30 years ago. There are rules that govern
6 accounting. If something is a short-term liability on a
7 balance sheet, you don't get to say it's not really a
8 short-term liability.

9 Q. But in fact a short-term liability is
10 something that will come due within a year, right?

11 A. Correct.

12 Q. And in fact you know, I know, we all know,
13 that that [REDACTED] entry has not come due in the last
14 three years and there's no information that you can
15 point to that it will come due at any time in the
16 future, correct?

17 A. If your characterization were correct, these
18 financial statements would be flawed.

19 Q. Can you just answer my question, Mr. Messina?

20 THE COURT: That's the exact question I had
21 after you asked him that. You're asking him about this
22 financial statement, and you're essentially saying it
23 says short-term liability but does it really mean that,
24 and he answered it exactly --

25 MR. CHEFFO: Fair.

1 THE COURT: Okay. So I would move along.

2 MR. CHEFFO: Okay.

3 Q. So let's turn to the 2018 provision. You're
4 familiar with that, correct? Do you know what I'm
5 talking about? I'm sorry.

6 A. Just give me a little context of --

7 Q. Sure, of course. Of course. I'm sorry. In
8 2018 Atrium recorded a provision for mesh liabilities on
9 its books.

10 A. Correct. Okay.

11 Q. Sorry. I apologize.

12 A. That's fine. I just needed to know what you
13 were talking about.

14 Q. It's fair. So is it your opinion that if the
15 hernia mesh lawsuits had been reasonably considered, any
16 financially literate person would have found Atrium to
17 be undercapitalized since at least 2014?

18 A. I think that's fair.

19 Q. And the decision to record a provision like
20 that you understand would have been made by a team of
21 accountants and lawyers and financial advisors
22 typically?

23 A. Generally.

24 Q. And you don't know what information they had
25 or did not have, correct?

1 A. I don't know specifically all the information
2 they had, no. Of course not. I wasn't in the room with
3 them.

4 Q. Right. And you don't know when they learned
5 of any information, do you?

6 A. Well, you know that the suit started in I
7 think 2012. You know that Atrium -- or Getinge took
8 them seriously enough to sue the former shareholders of
9 Atrium, the shareholders or representatives, whatever
10 you want to call them. So they knew there was a
11 substantial liability.

12 But under accounting rules until you know --
13 until you can make a reasonable estimate, you record it
14 as just a general contingent liability. It's a footnote
15 in your financials. It's not a specific liability.
16 When you get more information, it becomes a specific
17 liability and that's what happened in 2018, but it
18 doesn't mean they were -- people weren't completely
19 unaware of it.

20 Q. I understand. What I want to just focus on,
21 this is from your report, because I think we agree on
22 that. You said if the hernia mesh lawsuits had been
23 reasonably considered, any financially literate person
24 would have found Atrium to be undercapitalized since at
25 least 2014, correct?

1 A. Right.

2 Q. Now, what I understood you to say is that
3 different information is learned over time, correct?

4 A. Correct.

5 Q. And is it your testimony that there should
6 have been the same provision for \$200 million in 2014?

7 A. No. So the way it works is -- you don't take
8 a provision until you know with a fair degree of
9 certainty or you have enough information to back up that
10 provision.

11 Prior to that it could be you know it's going
12 to be a big problem, but we can't put a number on it.
13 Then it just shows up as a footnote as a contingent
14 liability. So someone reading the financial statements
15 would say, okay, there's a contingent liability out
16 there, we don't know the size of it, we have to make our
17 own sort of determination as to how serious it's going
18 to be, and most people that read financial statements
19 for a living sort of understand that. They understand
20 how these provisions get made. But they also understand
21 that it doesn't mean people -- it was zero in 2017.

22 Q. I understand. But you just said you don't
23 know -- you have no information that anyone knew the
24 size or the scope, correct?

25 A. With the -- to be specific enough to record an

1 accounting entry.

2 Q. And therefore --

3 A. It could be any size.

4 Q. Right.

5 A. But until you get it more specific, it could
6 be, you know, you know it's generally there. You don't
7 know the size.

8 And so here where you have a small amount of
9 shareholders' equity, it would be hard for somebody to
10 conclude based on, for instance, the 2 -- the lawsuit
11 against the Atrium shareholder representative, it would
12 be difficult for somebody to assume that that was
13 something that was going to be small, or not larger than
14 the amount of the shareholders' equity.

15 Q. That's your assumption?

16 A. That's my assumption.

17 Q. Do you know anything about what the potential
18 exposure was in 2014?

19 A. According to Getinge, it was at least -- they
20 sued for \$34 million of money that was set aside in an
21 escrow for the acquisition and that was part of the
22 reasoning that they gave, was the four suits that they
23 had at that point and their expectation for more.

24 Q. So that's the sole basis of your
25 determination?

1 A. Yeah. In my experience when you see things
2 like that, and also when you see these types of issues
3 at a company in this sort of industry, they don't tend
4 to be isolated and small.

5 Q. Let me just ask you these questions.

6 A. Whenever you're looking at financial
7 statements and you're making a judgment, you're making
8 assumptions. So the answer to your question is yes, I
9 made assumptions.

10 Q. You are not an expert in mass tort litigation,
11 are you?

12 A. No.

13 Q. You're not an expert in product liability
14 lawsuits?

15 A. No.

16 Q. You're not an expert in medical device cases,
17 correct?

18 A. Correct.

19 Q. You have not participated in any way in
20 evaluating lawsuits or verdicts or judgments in
21 connection with mesh or other product liability
22 lawsuits, correct?

23 A. Correct.

24 Q. You don't know anything about any of the facts
25 in any of the cases, correct?

1 A. Other than the few suits that I read that were
2 done initially, I don't know any of the facts.

3 Q. You don't know anything about the governing
4 law, bars on punitive damages, or any types of damage
5 analysis of any claim, correct?

6 A. That's true.

7 Q. You have not seen a single piece of evidence
8 from a doctor, a patient, an expert in this case on the
9 merits, correct?

10 A. Fortunately, no.

11 Q. Okay. And yet you say that any financially
12 literate person would have known in 2014 that the
13 company was undercapitalized; that's your testimony,
14 right?

15 A. Yes, because financial people understand that
16 these types of lawsuits happen. They understand at a
17 general level how they tend to progress, what the
18 financial exposure tends to be in these types of
19 situations on a general basis. And so the people that
20 buy and sell securities and make investments have to
21 know these things when they're making financial
22 decisions. Are they experts? No, we're not experts,
23 but you have to be able to make an assessment as to what
24 you think is going on.

25 Q. Do you have any information that anybody is

1 able to determine whether there's three, four, five, ten
2 cases, whether something is going to be a mass tort? Do
3 you think anybody can do that?

4 A. I think that if you looked at those cases in
5 conjunction with Getinge suing for the amount of money
6 they sued for that -- and you sort of see from other
7 companies what happens when litigation starts, you don't
8 know that it's going to be a mass tort. But when you
9 see a company take the kind of action that Getinge took,
10 if you're a financial person and you see \$30 million of
11 shareholders' equity and they're suing for 34 million
12 and these are the types of problems that typically get
13 larger, not smaller, as a business person you have to
14 make those judgments when you analyze stocks and
15 companies. It's very typical.

16 Q. I think we've established that you can't tell
17 us what was known about anything at the time in any of
18 the cases or any determinations by anybody at the
19 company or any of its advisors back in 2014, correct?

20 A. I don't know that that's what I said.

21 Q. Is that true?

22 A. That I knew nothing?

23 Q. That you can't tell us what was -- other than
24 the lawsuit that you've talked about, what was available
25 in terms of the types of lawsuits and the analysis that

1 was done by the professionals back in 2014, correct?

2 A. I don't know what analysis was done beyond
3 what they said in their lawsuit against Atrium.

4 Q. The same would be true of 2015, '16 and '17,
5 correct?

6 A. I don't know what the internal analysis is of
7 it until the point where they made the provision.
8 Clearly when they made the provision there was an
9 analysis as to the size.

10 Q. So is it your testimony that they are
11 financially illiterate, all of the professionals?

12 A. One has nothing to do with the other, so I
13 don't -- when you say all the professionals.

14 Q. Well, prior to 2018 when the provision was
15 taken were they financially illiterate?

16 A. In what context? So were they analyzing the
17 solvency of Atrium? Was that their -- the professionals
18 that you're referring to as not being financially
19 literate, were they engaged in looking at the solvency
20 of Atrium? If they weren't, that's not really relevant.
21 If they were trying to determine whether or not Atrium
22 was solvent based on what they knew, I don't know. I
23 can't answer that they were financially literate.

24 MR. CHEFFO: Can we pull up the chart, please.

25 Q. This is -- just to orient you, Mr. Messina,

1 this is a demonstrative that we prepared. This is the
2 number of lawsuits that were pending against the
3 company.

4 So back in 2014, you can see there's a very
5 small number, correct?

6 A. Correct.

7 Q. We've discussed that you have no idea of
8 anything about the lawsuits, what the company knew, the
9 merits of them, anything like that, right?

10 A. That's right.

11 Q. And you also don't have any information about
12 whether there's insurance coverage for any of this, do
13 you?

14 A. I believe there is insurance coverage or
15 there's claimed to be insurance coverage. Whether or
16 not there will be, you know, I assume that's a separate
17 fight.

18 Q. Well, did you take that into account?

19 A. Sure.

20 Q. So in your undercapitalization analysis and
21 your insolvency analysis, did you assume that there
22 would be insurance coverage?

23 A. I think under accounting rules you have to
24 assume if there's any risk that you're going to be
25 uninsured or not covered. You don't look at that.

1 And the other thing when you look at a chart
2 like this what you do is, if you're doing a financial
3 analysis is you look at other types of mass tort
4 litigation to see how they ramped up. And if -- this
5 chart is only sort of helpful to a person doing a
6 financial analysis if you see how other mass torts sort
7 of ramp up. You can't sort of look at this in a vacuum
8 and say, oh, gee, there's no way anyone knew this was a
9 problem.

10 Q. Are you an expert in mass torts?

11 A. No.

12 Q. How many mass torts analyses have you done?

13 A. So when you're --

14 Q. Mr. Messina, I'm trying to wrap up. If you
15 could answer my question, how many have you done?

16 A. Probably a half a dozen.

17 Q. Okay. And in connection with this analysis,
18 in connection with this case you looked at a half a
19 dozen other analyses. Tell me which ones you looked at.

20 A. So when I -- you asked if I've ever done one.

21 Q. Okay. Now, which ones?

22 A. So when I was investing in Merck, okay, and
23 they had Vioxx, that is something when you're analyzing
24 the company you look at. And so there were a number of
25 medical and pharmaceutical companies that I've invested

1 in over a 20-something-year career where we've looked at
2 these issues. So it's not a foreign sort of issue.

3 Am I an expert on mass torts? No, I've told
4 you I'm not an expert. But in terms of analyzing
5 companies and businesses from the standpoint of making
6 an investment, I have a general knowledge of these
7 things.

8 Q. Okay, but I want to be very specific. We're
9 talking about knowledge based on the filing of lawsuits
10 and you've spoken a lot about, well, you should have
11 understood this and here's what happened and here's what
12 happens in mass torts. And I just want to understand
13 the scope of your knowledge.

14 A. Okay.

15 Q. Have you ever done an analysis of when initial
16 lawsuits are filing whether there's metrics or whether
17 you can determine the rate of additional filings? Have
18 you ever done that?

19 A. Not necessarily that way.

20 Q. Okay. Have you ever basically -- have you
21 looked at anything in this case at any point in time to
22 determine whether it would have led a reasonable person
23 to make a determination that the line would go up in
24 March '18 the way it did? Have you seen anything about
25 that?

1 A. No. The timing, it would be -- there's no
2 way.

3 Q. Okay. And have you -- is there any other
4 comparative that you've looked at in a mass tort issue
5 that you've relied on in connection with your opinion in
6 this case?

7 A. I didn't do that analysis here.

8 MR. CHEFFO: Can we have the next line,
9 please.

10 Q. So where you have your opinion, right, this is
11 where it would be -- you say that the company -- well,
12 you say, If the hernia mesh lawsuits had been reasonably
13 considered, any financially literate person would have
14 found Atrium undercapitalized since at least 2014,
15 correct?

16 A. Correct.

17 Q. And I think you've told us that that was based
18 -- do you know when the lawsuit was filed by the
19 company?

20 A. 2013 I think, but I don't -- against a
21 shareholder of Atrium.

22 Q. How many lawsuits were pending at the time?

23 A. I think four.

24 Q. Four. So there's four lawsuits pending in the
25 lawsuit. Is there anything else that you can tell us

1 here that would support the statement that any
2 financially literate person would have found Atrium to
3 be undercapitalized as of that time?

4 A. Sure. So I mean, the fact that you moved out
5 all the customers and the sales force at the beginning
6 of 2014, that would have been enough to trigger just
7 about anyone to say that Atrium was undercapitalized
8 since 2014.

9 You add on top of it that they only had
10 something like 30 or \$40 million of shareholders' equity
11 in connection with the four lawsuits that were there,
12 Getinge was making a claim for \$34 million to get back
13 from the shareholder representative. So between those
14 two items it's not hard.

15 But if you want to look specifically at the
16 hernia mesh lawsuits, the fact that Getinge took them so
17 seriously and seriously enough to file the kind of claim
18 that they filed in the amount, it would have triggered
19 somebody to say, well, this isn't a small thing. This
20 isn't four cases of \$200,000 each. Why are people
21 looking for \$34 million.

22 Q. Mr. Messina, you know that after acquisitions
23 there's often litigation if money is withheld, right?

24 A. Oh, yeah, that was part of it. That happens
25 all the time.

1 Q. Do you know what happened with the lawsuit?

2 A. I don't know what the amount that was settled
3 on.

4 Q. So you only know what they asked for in their
5 ad damnum or their request?

6 A. They sued for it. They didn't ask.

7 Q. Okay. That's it, though, you don't know what
8 happened with the lawsuit, if they got any money, if it
9 was paid at all, right?

10 A. I don't know.

11 Q. So you don't know if they recovered a single
12 penny?

13 A. I don't know. Will you tell me? I'd be very
14 curious to know.

15 Q. With respect, if they had -- you said if the
16 hernia lawsuits had been reasonably considered. So
17 there was a pending lawsuit for 30-odd million dollars,
18 you don't know how it was resolved, and there was four
19 or five lawsuits, right?

20 A. Correct.

21 Q. Anything else about the hernia mesh litigation
22 specifically?

23 A. No.

24 MR. CHEFFO: I have no further questions.

25 Thank you.

1 THE COURT: I think it's a good time for a
2 break unless you're going to be very brief.

3 MR. GLASSER: I will be brief, but I'd like a
4 break in fact.

5 THE COURT: Okay. Why don't we come back at
6 3:10.

7 (RECESS)

8 THE COURT: Go ahead, Attorney Glasser.

9 MR. GLASSER: I'll be fast.

10 REDIRECT EXAMINATION

11 BY MR. GLASSER:

12 Q. I'm just going to take in reverse order the
13 things he asked you about. So when Mr. Cheffo set out
14 he was asking about what the company knew -- actually,
15 he was kind of asking what you knew about what was going
16 on with the mesh lawsuits in 2014.

17 So you have a written report, right?

18 A. Right.

19 Q. In your written report there's a timeline,
20 correct?

21 A. Correct.

22 Q. I'll just put it here on the ELMO. And so you
23 did mention the recall letters in response to -- I'm
24 sorry, the warning letters in response to Mr. Cheffo,
25 but I don't think you mentioned this, that the FDA

1 announced a class II recall of the C-Qur Edge mesh. Did
2 you know that at the time you rendered your opinion in
3 this case?

4 A. Yes.

5 Q. And then there's the lawsuit on December 9,
6 2013, that you talked about with Mr. Cheffo, and then
7 here's the first distribution on June 30, 2014, and then
8 the second distribution, and then what happened on
9 February 3, 2015?

10 A. They had the consent decree.

11 Q. Okay. And then that summer when Jens Viebke
12 became president of Atrium, did Atrium itself stand
13 behind its indemnity or some other entity?

14 A. Getinge did.

15 Q. Okay. At the time you rendered your opinion
16 did you know all these facts?

17 A. Yes.

18 Q. Mr. Cheffo asked you about the tax dispute in
19 the Ninth Circuit. Can you just explain to the Court,
20 did you pay the tax and are you just fighting about
21 whether you're entitled to it back?

22 A. Yes. So it's regarding my 2012 tax return
23 where I paid the tax and I have a dispute with the IRS
24 as to how it was calculated.

25 Q. All right. And you would like your money

1 back?

2 A. That would be nice.

3 Q. Okay. All right. Mr. Cheffo asked you a
4 series of questions about how the two \$10 million
5 payments, let's call it that, were characterized
6 originally on the books and records of the company. Do
7 you remember those questions?

8 A. Yes.

9 Q. Did we ask the company to produce the general
10 ledger?

11 A. Yes.

12 Q. Would the general ledger have allowed you to
13 answer that question to a precision?

14 A. Yes.

15 Q. Did you have the benefit of the company
16 producing a general ledger?

17 A. No.

18 Q. Mr. Cheffo -- you guys were speaking back and
19 forth and he was saying give me just a yes or no answer,
20 and you were talking about the issue with assimilating
21 is when you assimilate the assets but not the
22 liabilities. I just wanted to give you the chance to
23 explain what you were trying to tell Mr. Cheffo with
24 that discussion.

25 A. With the discussion about moving assets?

1 Q. Moving assets but leaving liabilities.

2 A. Okay. So what I was saying was any time you
3 have a company and you are integrating different
4 subsidiaries, when you're moving assets and value from
5 one entity to another you become much more at risk for,
6 I call it consolidation, you guys call it veil piercing;
7 that your business units are going to get consolidated
8 for purposes of litigation or some other type of event
9 because you cannot enter into a transaction that harms
10 your creditors to the point where you cannot pay them.

11 So, for instance, in this case where Mr.
12 Hjalmarson says if there's a judgment or a settlement,
13 Atrium is going to have to pay it, well, Atrium has no
14 ability as a stand-alone basis really to pay much of
15 anything to anyone and so -- because all the assets and
16 value have been transferred to other entities. When you
17 do something like that, it puts you at much higher risk.

18 Q. All right. Mr. Cheffo showed you this Exhibit
19 86 and showed you that in 2017 the cashpool paid \$80,000
20 of interest in favor of Atrium. Do you remember that?

21 A. Yes.

22 Q. All right. And you had previously testified
23 about how the cashpool and the actual bank accounts
24 differ on the balance sheet. I just never showed you
25 the balance sheet to follow up. So let me show you the

1 2017 balance sheet, which is Exhibit 31. Let me just
2 make sure I've got the right column here. Yeah, it's
3 this first column.

4 Okay. Actual -- it says: Cash in bank minus
5 54,000. So what's that in your understanding?

6 A. That's the amount of cash that they have in
7 their actual bank account. So something -- when you see
8 a negative number like that, it typically means that you
9 run a zero cash balance in your bank account but you
10 might have some checks that you've written.

11 Q. That haven't cleared?

12 A. That haven't cleared, but you haven't put the
13 money in to have them clear. But that's typically --

14 Q. So minus \$54,000. And then it does say the
15 cashpool has a positive balance. Do you see that?

16 A. Right. That's correct.

17 Q. So that is consistent with Exhibit 86, paying
18 a little interest on that positive balance, right?

19 A. Right.

20 Q. Now, does the \$11 million in the cashpool
21 eclipse the internal accounts payable to the group?

22 A. No.

23 Q. What are the internal accounts payable to the
24 group?

25 A. 29 million.

1 Q. Okay. And do you think that may have to do
2 with the services that they're paying for?

3 A. It's likely that they are.

4 Q. So that's the order of magnitude as of
5 December 31, 2017, for these yet unpaid internal
6 services, right?

7 A. Correct.

8 Q. Okay. And so on a net basis is this company
9 contributing cash or needing cash?

10 A. It needs cash.

11 Q. So do you stand by your testimony about
12 whether it generally needs cash?

13 A. Yes.

14 Q. Despite the fact that it got paid \$80,000 in
15 interest?

16 A. Yes.

17 MR. GLASSER: I think that's all I have, your
18 Honor.

19 MR. CHEFFO: Nothing further, Judge.

20 MR. GLASSER: Oh. Your Honor, the defendants'
21 expert reports have been moved into evidence, so I can
22 give you -- and we've looked at parts of it, so I'd like
23 to make it an exhibit.

24 THE COURT: Any problem with that?

25 MS. ARMSTRONG: I don't think we moved our

1 exhibits in.

2 MR. GLASSER: We've moved them all in.
3 They're all on the exhibit list.

4 MS. ARMSTRONG: I think you guys moved your --
5 I think they moved their exhibits in. I think we were
6 waiting until the opening of our case to move our
7 exhibits in and we'll do so now.

8 THE COURT: Apparently you're not objecting to
9 their expert exhibits.

10 MS. ARMSTRONG: All right.

11 THE COURT: So you're just wanting to add to
12 your exhibit list his expert report.

13 MS. ARMSTRONG: The one thing I want to say is
14 I don't think we put our expert reports on the exhibit
15 list. They're of record with the Court, the Court's
16 entitled to look at them obviously, but I don't think
17 expert reports are usually treated as exhibits and so we
18 didn't put them on our exhibit list.

19 MR. GLASSER: They're actually on and they're
20 in.

21 MS. ARMSTRONG: I'm sorry. I've been
22 misinformed.

23 THE COURT: That's all right.

24 MR. GLASSER: So, your Honor, just for the
25 record I marked the report as Exhibit 237. I marked the

1 demonstrative exhibits as Exhibit 243 so the Court will
2 be able to find it. Let me approach with --

3 THE COURT: Those are full exhibits without
4 objection.

5 And is Mr. Messina free to depart?

6 Thank you, sir.

7 THE WITNESS: Thank you.

8 MR. ORENT: Your Honor, that concludes the
9 evidence that the plaintiffs wish to put on at this
10 time.

11 THE COURT: Okay.

12 MR. ORENT: I understand that defendants will
13 be calling Chad Carlton next, and at this point just
14 before he is called plaintiffs would like to renew or at
15 least stress that we filed a motion in limine specific
16 to two items. I understand that the Court didn't want
17 to strike his affidavit previously, but I do want to
18 emphasize the personal knowledge aspect of this and that
19 Mr. Carlton should be limited to those areas where he
20 has personal knowledge; and then secondarily, to the
21 extent that defendants wish to elicit information that
22 he was not the designated Rule 30(b)(6) witness for, he
23 should not be testifying about those areas.

24 Mr. Hjalmarson was the only individual that
25 Getinge had disclosed as their Rule 30(b)(6). Obviously

1 we saw his testimony earlier and that that is binding
2 upon the company.

3 And that there was under the -- I don't
4 believe there was any other disclosure originally on
5 this issue. So we want to just stress those issues with
6 the Court.

7 THE COURT: All right. And I'll take those
8 under advisement and rule on those in my order.

9 So go ahead, Attorney Armstrong.

10 CHAD CARLTON

11 having been duly sworn, testified as follows:

12 THE CLERK: Please state your full name and
13 spell your last name for the record.

14 THE WITNESS: Chad Matthew Norbert Carlton.

15 THE CLERK: Spell your last name.

16 THE WITNESS: Carlton, C-A-R-L-T-O-N.

17 MS. ARMSTRONG: Your Honor, I think we're
18 going to be putting exhibits up on the screen, and I've
19 provided hard copies for the plaintiffs. If either the
20 witness or the Court would like a binder of hard copies,
21 we have them available.

22 THE COURT: All right.

23 DIRECT EXAMINATION

24 BY MS. ARMSTRONG:

25 Q. Would you state your name for the record.

1 A. Chad Carlton.

2 Q. By whom are you employed?

3 A. Atrium Medical.

4 Q. How long have you been employed by Atrium
5 Medical Corporation?

6 A. Since June 17, 1996.

7 Q. And would you provide a brief employment
8 history.

9 A. So after I graduated from college I started
10 out as an associate product manager. I then became a
11 product manager, a product director, a director of
12 marketing. Then became the vice president of
13 cardiovascular interventions, then the senior vice
14 president of cardiovascular interventions, and then
15 following the acquisition in 2011 I became the executive
16 vice president of marketing for Atrium. And then I
17 became at one stage senior director of technical program
18 -- product management, and then I became the managing
19 director of Vascular Systems and president of Atrium
20 Medical Corporation.

21 Q. I'll take the last one first.

22 As president of Atrium Medical Corporation,
23 are you the highest ranking person at Atrium?

24 A. Yes, I am.

25 Q. What does your job involve?

1 A. My job involves managing all of the day-to-day
2 operations, to new product development, to the strategic
3 marketing of the organization, to overseeing clinical
4 affairs, and overseeing all the products that we
5 manufacture there.

6 Q. How would you describe the day-to-day
7 operations at Atrium?

8 A. So when you look at it, we have a whole team
9 of people who have to coordinate suppliers to bring
10 materials into the building. We have people -- we have
11 actual workers who work on the line. We have people in
12 manufacturing engineering who maintain the equipment.

13 At the same time as we produce these pieces of
14 equipment you also have a whole team of quality control
15 experts who will actually review what's been
16 manufactured. You have a whole team of quality who
17 helps assist the new product development teams for
18 building new products or for maintaining even current
19 products in terms of where we go. You have a whole
20 complaints department who reviews complaints. You have
21 a clinical affairs department who conducts clinical
22 studies.

23 Q. On a day-to-day basis do you consult with
24 Getinge AB about these activities?

25 A. No, I do not.

1 Q. The other position that you mentioned, I
2 believe it was managing director of Vascular Systems; is
3 that right?

4 A. Yes, that is correct.

5 Q. What do you do in that capacity?

6 A. So I oversee the vascular product lines of the
7 organization, so not just Atrium but also of other
8 organizations. Those vascular products are similar in
9 nature or have similar call patterns to what our
10 vascular products have.

11 Q. And what are the other organizations that
12 those vascular products are made by?

13 A. Those are made by Intervascular SAS and also
14 by Maquet Cardiovascular, LLC.

15 Q. Intervascular SAS, is that a subsidiary either
16 direct or indirect of Getinge AB?

17 A. Yes. It's an indirect subsidiary, yes.

18 Q. The other company that you mentioned is Maquet
19 Cardiovascular, LLC. Is that a subsidiary either direct
20 or indirect of Getinge AB?

21 A. It is an indirect subsidiary of Getinge AB.

22 Q. And what do you mean by overseeing those
23 products, what does that involve?

24 A. So as I mentioned a little earlier, we look at
25 the strategic direction of what to do with those product

1 lines, where to invest money, where to look at and spend
2 our research and development dollars; when we look at
3 that to provide, you know, support, to make sure that
4 those product lines are satisfying the market needs.

5 Q. When you started at Atrium, was it a
6 privately-held company?

7 A. Yes, it was.

8 Q. Who is its current parent corporation?

9 A. It's current parent corporation is Datascope.

10 Q. When was it acquired by Datascope?

11 A. In November of 2011.

12 Q. So following the acquisition by Datascope, did
13 Atrium continue to exist as a corporation?

14 A. Yes, it did.

15 Q. And since the acquisition has it had any
16 parent other than Datascope?

17 A. No, it has not.

18 Q. Is Datascope owned by Getinge AB?

19 A. No, it is not.

20 Q. Who is Datascope owned by?

21 A. Datascope is owned by Getinge USA Holdings 2,
22 which is owned by Getinge USA Holdings, which is owned
23 by Getinge AB.

24 MR. ORENT: Your Honor, I'm going to object at
25 this point. I believe that some of this information is

1 outside the personal knowledge. We discussed this at
2 the deposition of Mr. Carlton. I wanted to probe into
3 some background information and we were cut off in his
4 deposition. So I want to raise a particular objection
5 to his personal knowledge as to these companies. Based
6 on the deposition transcript, we believe that a lot of
7 this corporate background information was picked up
8 through efforts with counsel, and I just want to clarify
9 that for the record that it is based on his personal
10 experience, education, and training.

11 THE COURT: And you'll be able to
12 cross-examine him as well.

13 MR. ORENT: Certainly, your Honor.

14 MS. ARMSTRONG: Do I need to respond?

15 THE COURT: No. Go ahead.

16 Q. The structure that you just described, has
17 that been the structure since November of 2011?

18 A. Yes.

19 Q. Has Atrium ever been a subsidiary of Maquet
20 Cardiovascular U.S. Sales, LLC?

21 A. No, it has not.

22 Q. Has Atrium ever been a subsidiary of any
23 entity with Maquet in the name?

24 A. No, it has not.

25 Q. What is the Getinge Group?

1 A. The Getinge Group is a marketing or a branding
2 of Getinge AB and all of its subsidiaries, indirect and
3 direct.

4 Q. You referred to it as a marketing or branding
5 term, why?

6 A. Because it's not a legal entity. It's
7 basically referring to the whole group of all these
8 different companies together.

9 Q. What is Acute Care Therapies?

10 A. So Acute Care Therapies is a business area
11 within the -- within Getinge or within that -- of
12 like-minded products. And when I say that, these are
13 products that are -- that either touch the patient, and
14 I'll say something like a ventilator or a heart-lung
15 machine, or something that's used between the operating
16 room and the ICU that typically involves contact with
17 the patient.

18 In addition -- so there are a bunch of
19 companies, so a number of indirect or direct
20 subsidiaries of Getinge that are kind of grouped
21 together from a financial standpoint.

22 Q. And those companies, those are either direct
23 or indirect subsidiaries of Getinge AB?

24 A. Yes, they are.

25 Q. Is Acute Care Therapies a legal entity?

1 A. No, it is not.

2 Q. What year did Acute Care Therapies, that
3 organizational structure, come into being?

4 A. So that was roughly in the late 2015, early
5 2016 time frame.

6 Q. Was there a predecessor to Acute Care
7 Therapies?

8 A. Yes, there was.

9 Q. What was it?

10 A. Medical Systems.

11 Q. Was it sometimes called Maquet Medical
12 Systems?

13 A. It was sometimes called Getinge Medical
14 Systems, and it was called Maquet Medical Systems, and
15 sometimes people when generally talking would just say
16 Maquet in terms of that standpoint.

17 Q. And what is the function of Acute Care
18 Therapies?

19 A. So Acute Care Therapies, again, we have a
20 group of companies that have similar call patterns that
21 globally are sold in similar ways where you will have to
22 go into a hospital, you will have to interact either in
23 the operating room, the ICU, or somewhere similar to
24 that, and so this is a grouping of businesses that are a
25 bit more similar in nature than perhaps the other

1 businesses within the Getinge Group.

2 MS. ARMSTRONG: Can we put up Plaintiffs'
3 Exhibit 218, please. And let's zoom in on the title in
4 the top paragraph, please.

5 Q. What is this document?

6 A. This is my employment agreement between Atrium
7 Medical and myself dated November 4, 2011.

8 MS. ARMSTRONG: And can we find a signature
9 page? I think it's page 15.

10 Q. Who signed this document?

11 A. Trevor Carlton and myself.

12 Q. Who was Trevor Carlton?

13 A. He was the president of Atrium at the time.

14 Q. Is he related to you?

15 A. He is my brother.

16 MS. ARMSTRONG: Let's go back to the first
17 page and look at paragraph 1, please.

18 Q. What was your position as described in this
19 agreement?

20 A. At this time I was the senior vice president
21 of marketing for cardiovascular interventions.

22 MS. ARMSTRONG: Can we put up Defendant's
23 Exhibit 48, please. And again, let's zoom in on the
24 title in the first paragraph, the top paragraph.

25 Q. What is this document?

1 A. So this is my employment agreement dated
2 November 1, 2016, between Getinge Group, Getinge, and
3 Chad Carlton.

4 MS. ARMSTRONG: Can we find the signature page
5 of this document, please. Back up one. There's one
6 before this, please. There you go.

7 Q. Who was this document signed by?

8 A. This document was signed by Jens Viebke, who
9 was president of Acute Care Therapies, and Thomas
10 Marschal, who was vice president human resources of
11 Acute Care Therapies.

12 Q. And also by you?

13 A. And by me. I'm sorry.

14 Q. Can we go to the first page, please.

15 A. Yes.

16 Q. Why was this agreement -- let's look at
17 paragraph 1.

18 What was the position described in this
19 agreement.

20 A. So this was, Executive shall serve as managing
21 director of Hudson/Merrimack and as president of Atrium
22 Medical Corporation.

23 Q. Are you still the managing director of
24 Hudson/Merrimack?

25 A. Technically Hudson has been closed and I'm

1 managing director of Vascular Systems.

2 Q. What did the role of managing director of
3 Hudson/Merrimack involve?

4 A. It was managing the day-to-day operations of
5 the Hudson and Merrimack facilities.

6 Q. Can you explain why this agreement was with
7 Getinge Group instead of with Atrium Medical
8 Corporation?

9 A. Yes. Jens, who was my boss at the time, was
10 the president of Acute Care Therapies, you know, rather
11 than with Atrium Medical.

12 Q. Is Jens Viebke an employee of Getinge AB?

13 A. No, he is not.

14 Q. Was he at this time?

15 A. No, he was not.

16 Q. Who was he employed by?

17 A. He is currently employed by Maquet Critical
18 Care, I believe is the name, in Solna, and then he also
19 receives a paycheck from Atrium Medical.

20 MS. ARMSTRONG: Can we put up Plaintiffs'
21 Exhibit 41, please. Again, if you will zoom in on the
22 title and the introductory paragraph.

23 Q. What is this document?

24 A. This is an indemnification agreement with
25 Getinge AB, Atrium Medical Corporation, and myself.

1 Q. I'm going to read the first paragraph.

2 The first paragraph says: Whereas the Getinge
3 Group, acting through its parent company, Getinge AB,
4 Getinge AB, and together with Atrium Medical
5 Corporation, collectively Getinge, desires Chad Carlton,
6 executive, to serve as an officer and director of Atrium
7 Medical Corporation, company, together parties, and
8 Getinge further desires to indemnify executive in
9 accordance with the terms and conditions of the
10 indemnification agreement, the agreement.

11 Have I read that correctly?

12 A. Yes, you have.

13 Q. Is Getinge Group a subsidiary of Getinge AB?

14 A. No, it is not.

15 Q. Do you know why Getinge AB is referred to as
16 the parent company of Getinge Group in this document?

17 A. Again, it's representing all of the
18 subsidiaries and as I said, the marketing term earlier.

19 Q. Why was Getinge AB -- who was indemnifying you
20 in this agreement? Let me ask you that first.

21 A. So both Getinge AB and Atrium Medical.

22 Q. Why Getinge AB? Why not just Atrium Medical
23 Corporation?

24 A. So as I had mentioned earlier, I was also
25 managing director of Vascular Systems at this time. So

1 I oversaw the La Ciotat facility, which is a separate
2 entity outside of Atrium and -- that's it.

3 Q. Were you worried about Atrium being
4 financially able to --

5 A. No, it had nothing to do with that. It was
6 the fact that I had other responsibilities outside of
7 the Merrimack facility.

8 Q. Who pays your salary?

9 A. Atrium Medical Corporation.

10 Q. As the managing director -- I think you
11 explained this, as the managing director of Vascular
12 Systems, do your responsibilities extend beyond Atrium?

13 A. Yes, they do.

14 Q. How much of your time is spent directly
15 working for Atrium?

16 A. So rough -- at this stage about 90 percent of
17 my time is spent working with Atrium. I oversee the
18 managing director in La Ciotat for roughly I'll say
19 that's ten percent, and then other management
20 activities.

21 Q. The work that you do overseeing the vascular
22 product line, does that benefit Atrium?

23 A. Absolutely.

24 Q. How so?

25 A. So part of the benefit of being a part of the

1 Getinge Group, let's say, is that they actually have a
2 product called Hemashield and another product called
3 Intervascular.

4 Here in the U.S. the Hemashield is a market
5 leading product in the vascular arena. This is where
6 our products where we have a PTFE vascular graft, works
7 very closely with that same call pattern, same
8 physicians. So actually having a group brand or being a
9 part of the same organization helps to benefit our
10 products as well.

11 MS. ARMSTRONG: You can put Exhibit 41 away.

12 Q. As president of Atrium, are there people who
13 report directly to you?

14 A. Yes, there are.

15 Q. I don't need the names, but would you tell us
16 the positions?

17 A. So I have the director of research and science
18 and technology, the director of new product development
19 and engineering. I have the senior director of
20 operations. I have the director of marketing. I have
21 the director of clinical affairs. I have the senior
22 manager of human resources. And I also have my
23 executive assistant.

24 Q. I think you were counting on your fingers.
25 How many people did you count?

1 A. That's seven at Atrium, yes.

2 Q. Including your assistant?

3 A. Including my assistant.

4 Q. Who is responsible for hiring them?

5 A. I am responsible for hiring them.

6 Q. Do you need anyone else's authority to do so?

7 A. If I were hiring them or doing anything from
8 that standpoint, I would have a discussion with my boss,
9 Jens Viebke.

10 Q. And is he a Getinge employee?

11 A. He is not a Getinge employee.

12 Q. Is he a member of the Atrium board of
13 directors?

14 A. Yes, he is.

15 Q. Why would you have a discussion with him?

16 A. I would have a discussion with him as
17 anybody -- these are people who report to me. So in
18 terms of dealing with the interactions on a day-to-day
19 basis of, you know, thinking about hiring or firing, I
20 would like to have my boss, you know, have some
21 background and some interaction with them in case I'm
22 leaving, if I'm not there for the day, if I'm not there
23 for weeks, if I'm on vacation, he needs to be able to
24 interact with them.

25 Q. Are you familiar with the grandparent

1 principle?

2 A. Very much so.

3 Q. What is it?

4 A. So essentially what I've outlined is that you
5 would have clear discussions with your boss about your
6 direct reports. So any decision that you make with your
7 direct reports, you would actually have a discussion
8 with your boss and yourself.

9 Now again, these aren't day-to-day things, but
10 these are the general fundamental principle of that.

11 Q. Is the grandfather principle, is it a Getinge
12 philosophy?

13 A. It's a Getinge philosophy, yeah, but I think
14 it's also used in other corporations as well.

15 Q. Do you think it's a good idea?

16 A. I do.

17 Q. Why?

18 A. I personally always like the feedback of other
19 individuals. I like the different points of view, and
20 especially with my boss here, with Jens, but I also did
21 that with other bosses I had in the past.

22 Q. So you discussed your interactions with Mr.
23 Viebke who is not an employee of Getinge AB, right?

24 A. Correct.

25 MR. ORENT: Objection.

1 Q. I apologize. I was slightly leading. I
2 apologize.

3 The same question with respect to Getinge AB.
4 If you were going to hire your direct reports, would you
5 discuss it with anyone at Getinge AB?

6 A. No, I would not.

7 Q. How about if you wanted to fire any of your
8 direct reports or let them go, would you need authority
9 to do that?

10 A. So if it was a violation of an HR policy, I
11 would do that immediately. But if this was something
12 related to a performance improvement plan or a
13 restructuring, I would obviously have a conversation
14 with my boss because this is something that happens over
15 a long period of time. It's not usually something that
16 happens in a day.

17 Q. Your boss, Mr. Viebke?

18 A. Yes.

19 Q. Would you have a discussion with anyone at
20 Getinge AB?

21 A. No, I would not.

22 Q. How many people overall work at Atrium?

23 A. A little over 500.

24 Q. What do they do?

25 A. They do things from all over. You have

1 workers on the line, you have engineers who help build
2 equipment and, you know, work on fixing equipment. You
3 have engineers who will be working on developing new
4 products, you have regulatory individuals who are
5 working on getting approvals. You have quality
6 individuals who, some work on quality assurance, some of
7 them are quality engineering to review what the other
8 departments have done. There are clinical affairs
9 individuals, human resources people, and also marketing
10 people. I may have missed some and I apologize.

11 Q. Who issues their paychecks?

12 A. Atrium Medical Corporation.

13 Q. What account are the paychecks issued from?

14 MR. ORENT: Objection.

15 A. Atrium Medical Corporation.

16 THE COURT: I'm sorry?

17 MR. ORENT: I just wanted to preserve my
18 objection for the record.

19 THE COURT: Okay. So when you're objecting
20 just to preserve, you're just doing it as you would at a
21 deposition, sort of a under your breath objection?

22 MR. ORENT: Yes. Your Honor, because of the
23 pending motion, I just wanted to make sure that we
24 weren't waiving anything.

25 THE COURT: And I think that's fair and your

1 objection is definitely noted, and I think you've
2 preserved it and obviously you'll be able to
3 cross-examine.

4 MR. ORENT: Absolutely. I just want to be as
5 quiet as possible. Thank you.

6 Q. I don't know if the record is clear with the
7 question and answer. What accounts are the paychecks
8 issued from?

9 A. Atrium Medical Corporation.

10 Q. Does Getinge AB pay any salary of an Atrium
11 employee?

12 A. No, it does not.

13 Q. Other than your direct reports, these other
14 500 people, other than your direct reports, if Atrium
15 Medical Corporation wanted to hire or let go any of them
16 would you require the approval of Mr. Viebke?

17 A. No.

18 Q. Are there macro decisions that he is involved
19 in that may impact hiring decisions?

20 A. Absolutely.

21 Q. Would you explain those?

22 A. So on a monthly basis, sometimes even more
23 than monthly basis, we will review the head count within
24 the building. So if people leave and I need new
25 positions, we will discuss these positions and he will

1 quote-unquote approve those.

2 Q. How about -- same question but Getinge AB. If
3 you were going to hire or fire any of these other 500
4 people, not your direct reports, would you need the
5 approval of anyone at Getinge AB?

6 A. No, I would not.

7 Q. Have the hiring and firing arrangements that
8 you've described, have they been in place the entire
9 time that you've been president of Atrium Medical
10 Corporation?

11 A. It's been pretty consistent during that. It's
12 part of the open dialogue that I have with my boss.

13 Q. Would you look at Plaintiffs' Exhibit 10,
14 please.

15 I just want to get the date of the document.
16 This document is an e-mail dated September 14, 2012, to
17 Trevor Carlton; is that correct?

18 A. Yes, it is.

19 Q. And the subject is, Forward: 10 Golden
20 Rules." Is that correct?

21 A. Yes, that is correct.

22 MS. ARMSTRONG: Can you scroll into the
23 attachment, please. And scroll into the top so we can
24 see the title in the first line.

25 Q. And I know we've seen this document a couple

1 of times. I promise I'm not going to do the whole
2 thing, but I want to do a couple examples from it.

3 The title of this document is 10 Golden Rules,
4 and it's for the management teams of Getinge Medical
5 Systems established in 2004. Have I read that
6 correctly?

7 A. Yes, you have.

8 Q. What is Getinge Medical Systems?

9 A. As I mentioned earlier, that was the Medical
10 Systems also known as Maquet.

11 MS. ARMSTRONG: Can we go to the first line
12 that's under first name, last name, where it says,
13 "Getinge Medical Systems Direct Sales," above that.

14 Q. This line says, "Getinge Medical Systems
15 direct sales and service activities worldwide are
16 organized by registered legal entities. SSU equals
17 sales and service unit with the following reporting
18 lines."

19 Have I read that correctly?

20 A. Yes, you have.

21 Q. Currently is Atrium a sales and service unit?

22 A. No, it is not.

23 Q. Was it in 2012?

24 A. It was in 2012, yes.

25 Q. Has it been a sales and service unit since

1 2014?

2 A. No, it has not.

3 MS. ARMSTRONG: Can we go to the third
4 paragraph, the one beginning with, Prior, and just read
5 this.

6 Q. "Prior to taking any binding decision on the
7 following subjects the general manager, president, vice
8 president, or managing director will first submit
9 proposals to and obtain approval from either the
10 executive vice president, Getinge Medical Systems, or
11 the executive vice president sales and marketing,
12 Getinge Medical Systems, depending on whom he/she
13 reports to."

14 Have I read that correctly?

15 A. Yes, you have.

16 MS. ARMSTRONG: Can we also pull up No. 1.

17 Q. And No. 1 says, "Appointing or dismissing any
18 manager directly reporting to the general manager,
19 president, vice president, or managing director,
20 especially marketing manager, technical service manager
21 and chief financial officer, division manager. Any
22 search for one of these positions is to be
23 supported/coordinated by the HR manager of Getinge
24 Medical Systems."

25 Have I read that correctly.

1 A. Yes, you have.

2 Q. Is that Golden Rule applicable to Atrium
3 today?

4 A. No. If I was hiring somebody directly, unless
5 it was my HR person, I would utilize my HR team to do
6 so.

7 Q. Do you consider this Golden Rule to be
8 consistent with the grandparent principle?

9 A. I do. I mean, the concept within this is that
10 you would actually go back to -- so in this case all of
11 those people who were outlined, the general manager,
12 president, vice president or managing director, were all
13 reporting to their boss in this document.

14 Q. You refer to the HR manager. What does HR
15 stand for?

16 A. Human resources.

17 Q. Does Atrium have its own human resources
18 officer?

19 A. Yes, it does.

20 Q. Who does he or she report to?

21 A. She reports directly to me.

22 MS. ARMSTRONG: Can we look at No. 2 now.

23 Q. No. 2 reads, "Entering into or terminating any
24 commitment binding the SSU for longer than two years.
25 This refers in particular to financial long-term

1 commitments."

2 Have I read that correctly?

3 A. Yes, you have.

4 Q. Has this provision been applicable to Atrium
5 while you've been president?

6 A. So again, this particular thing depends on the
7 value of that contract. It's not just the length of
8 time. We have commitments with suppliers that are
9 longer than two years that we don't necessarily get any
10 feedback on, but it's really based on the value. If it
11 were a very high value and it wasn't something that was
12 done on a day-to-day type of basis, then I would
13 obviously go up and ask something from my boss.

14 Q. I just want to clarify because this says
15 binding the SSU. Atrium is not an SSU, right?

16 A. No, it's not.

17 Q. So is this provision technically applicable to
18 you?

19 A. No, not technically, but the spirit of it we
20 would still abide by in theory, yeah.

21 Q. Do you enter into -- does Atrium enter into
22 agreements that last longer than two years?

23 A. Yes, we do. It's a good way to work with
24 suppliers to be able to get prices down and things on
25 that side.

1 Q. And do you get approval for all of them?

2 A. No, we do not.

3 Q. What determines whether you get approval for
4 them or not?

5 A. Again, the financial basis of those.

6 MS. ARMSTRONG: Can we go to No. 5, please.

7 Q. No. 5 reads, "Buying, selling, renting,
8 letting, leasing or mortgaging any properties."

9 Have I read that correctly?

10 A. Yes, you have.

11 Q. Again, is this technically formally applicable
12 to Atrium today?

13 A. Again, it would depend on the financial
14 transaction. We have -- in times where we have needed
15 extra space for inventory or other things we have rented
16 space without getting any approval. But if I was going
17 to buy or lease new land or build something new on it, I
18 would obviously, you know, refer to my boss.

19 MS. ARMSTRONG: So we're done with this
20 document.

21 Q. Generally speaking, do you need approval for
22 decisions that relate to the day-to-day operations of
23 the company?

24 A. No, I do not.

25 Q. How about major decisions?

1 A. Yes. Absolutely.

2 Q. What would you characterize as a major
3 decision?

4 A. So divesting a product line, acquiring a new
5 product line, or something similar to if there was a
6 major disruption in supply to customers globally for an
7 extended period of time.

8 Q. Why do you consider those to be major
9 decisions?

10 A. Because they have a financial impact on the
11 organization. And that's really where it is, is that if
12 it's -- not just our financial, but things that may also
13 impact the greater organization as a whole.

14 Q. Does Atrium regularly enter into purchasing
15 agreements with suppliers?

16 A. Yes, we do.

17 Q. Do you need approval to do so?

18 A. No, we do not.

19 Q. What other types of contracts does Atrium
20 enter into on a regular basis that do not require any
21 type of approval?

22 A. So we interact with clinical research
23 organizations. We will interact with physicians. We
24 will again, as you said, suppliers of different types,
25 sometimes outside consultants who we might need to bring

1 in.

2 Q. Is there a dollar amount above which a
3 transaction would be considered major and require
4 approval beyond your level?

5 A. Yeah, \$300,000.

6 Q. Do you enter into very many of those types of
7 contracts?

8 A. No. If things are through our standard budget
9 process, it's usually not something that needs to go
10 there because we've already explained it somewhere along
11 the lines.

12 MS. ARMSTRONG: Can we put up Plaintiffs'
13 Exhibit 100. And again, I want to go to page 3 of this
14 document, please.

15 Q. So this appears to be the beginning e-mail in
16 this string. If we look at the from and the date, it's
17 from Thomas Marschal dated July 9, 2012, to a whole
18 bunch of people; is that right?

19 A. That is correct.

20 Q. If you look at the bold italicized type on the
21 second paragraph?

22 A. Yes.

23 Q. It says, "Before filling any except blue
24 collar workers' vacant/open position regardless if
25 replacement or new position/budgeted or not budgeted," I

1 will slow down, "you'll need an approval from either
2 Heinz or Michael. For those positions that were
3 approved before and are already in the internal/external
4 recruitment process, you are requested to obtain a
5 reapproval from Heinz/Michael."

6 Have I read that correctly?

7 A. Yes, you have.

8 Q. Who was Heinz?

9 A. Heinz Jacqui was the executive vice president
10 of Maquet Medical Systems.

11 Q. And Maquet Medical Systems was what again?

12 A. That was a business area within Getinge.

13 Q. And it was the predecessor to Acute Care
14 Therapies; is that right?

15 A. Yes, that is correct.

16 Q. Who is Michael?

17 A. Michael Rieder was the executive vice
18 president of the sales arm or the sales organization of
19 Maquet.

20 Q. Do you remember generally the circumstances
21 described in this e-mail?

22 A. Very much so, yes.

23 Q. What were they?

24 A. So if you actually move away that portion, but
25 the P2 process, which is projection 2, so it's the

1 second financial forecast that comes out usually
2 somewhere I think it was -- in those days it was like a
3 May or a June time frame, showed a very bad outcome or
4 projection for the organization in terms of expenses
5 were rising and sales were declining. So this was a way
6 that they put into place to help control the increase in
7 expenses.

8 Q. Were they usual or unusual circumstances?

9 A. In this particular case I remember this was
10 unusual.

11 Q. And were these measures temporary or
12 permanent?

13 A. These particular measures were temporary, but
14 in the same sense that I have this discussion with my
15 boss today, I'm sure after this they had some sort of
16 formal approval process for positions.

17 Q. Is Atrium in the business of making business
18 cards?

19 A. No, it's not.

20 Q. Is Atrium in the business of making coffee
21 cups?

22 A. No, we do not.

23 Q. Is Atrium in the business of making signs?

24 A. No, it is not.

25 Q. What is Atrium's business?

1 A. We manufacture medical devices.

2 Q. Does that include C-Qur?

3 A. Yes, it does.

4 Q. When was the C-Qur mesh developed?

5 A. It was developed roughly in the 2004-2005 time
6 frame and then commercialized in the 2006-2007 time
7 frame.

8 Q. Why did Atrium Medical Corporation decide to
9 develop a coated mesh product?

10 A. So we had a bare mesh product which serviced a
11 certain portion of hernias and things on that side. We
12 had come across on the division that I was in at the
13 time, the cardiovascular interventions, we had a product
14 that had an Omega 3 fatty acid coating for a
15 drug-loading stent that showed low inflammation, and
16 some of the factors that we were looking at from that
17 coating looked like and actually work well coating a
18 mesh.

19 Q. Has Atrium Medical Corporation expanded the
20 C-Qur product line over the years?

21 A. Yes, it has, very much so.

22 Q. Why?

23 A. Based on customer feedback with physicians and
24 identifying different market opportunities we expanded
25 the line.

1 Q. Has Getinge AB been involved with the
2 development of any of the C-Qur products?

3 A. No, it has not.

4 Q. Did you need Getinge AB's approval before you
5 expanded the C-Qur line of products?

6 A. No, we did not.

7 Q. Does Atrium have a research and development
8 budget?

9 A. Yes, it does.

10 Q. Who determines what that budget is?

11 A. So, as I mentioned earlier, I have a marketing
12 group, and part of our goal is to come with a strategic
13 three-to-five-year plan. So combined with the
14 individuals in research and development and our
15 strategic goal and also conversations with sales and
16 gathering market data, we come up with a strategic plan.

17 On an annual basis we will develop a research
18 and development budget based on, one, some projects that
19 have already been approved, but also based on what our
20 anticipation is going in the future.

21 Q. The group of people that you describe that are
22 involved in that, who are they?

23 A. So they're direct reports to me. Maybe not
24 all of my direct reports, but my director of marketing,
25 the individuals in -- the director of research and new

1 product development, and also the director of clinical
2 studies.

3 Q. What is the objective of your research and
4 development budget?

5 A. It's to develop new products and commercialize
6 them for profit eventually, and then also to help
7 maintain in what we call sometimes product care, to help
8 support existing products that are out there, and that
9 comes in a variety of different ways, whether it's
10 suppliers changing things where we need to adapt to
11 that, or at the same time when you think about just
12 updating with regulatory requirements changing, there
13 are sometimes things you have to do, new testing related
14 to that.

15 Q. Do you need approval above the Atrium level
16 for your research budget?

17 A. Absolutely.

18 Q. Why?

19 A. Our entire budget needs to be approved because
20 it's a significant outlay of cash.

21 Q. And who do you get the approval from?

22 A. I get it from Jens Viebke. He takes our
23 budget, groups it together with multiple other budgets
24 within the ACT group that he oversees, and then he
25 brings that up to the Getinge AB level where they will

1 approve the budget.

2 Q. For the Acute Care Therapies group?

3 A. Yep.

4 Q. Why are those layers of approval required?

5 A. Again, these are significant expenses that
6 take place within an organization and it's where you're
7 investing major resources over a period of time.

8 Q. So when Atrium is developing its research and
9 development budget, how does it decide where to spend
10 its money?

11 A. Again, that's our team from a strategic
12 standpoint where we will create plans and then we will
13 actually take those plans -- and depending on what they
14 are. Sometimes it involves large projects and we'll
15 take those projects up to -- we may have to get further
16 approval because many of these projects take years and
17 are also multiple millions of dollars.

18 Q. What is meant by the term basic research?

19 A. So basic research is usually research that
20 comes out of a university or is at a very infant stage,
21 a lot of times you see this with drugs and other things,
22 but where you'll take it all the way from a concept, and
23 then you have to prove that concept before you even get
24 it to preclinical trials, and then at clinical trials
25 and then regulatory. So it's that very early stage of

1 research.

2 Q. Does Atrium invest in basic research?

3 A. Very little.

4 Q. Why not?

5 A. There's a lot of high risk associated with
6 that. You may have ten different ideas and only get one
7 out of there, but you may have invested a lot of money.

8 But there's also the standpoint of we live in
9 a very regulated environment, and so what may take ten
10 years before you can fully commercialize it and bring it
11 forward, we're not into the stage of doing that. We're
12 into commercializing things that are much more in a
13 shorter time period, something that's either ready to be
14 commercialized or we may acquire something that's
15 already on the market.

16 Q. That business model that you just described,
17 is that a business model that was imposed on you by
18 Getinge?

19 A. No, it was not imposed by Getinge.

20 Q. Is it consistent with Getinge's own
21 philosophy?

22 A. It is consistent, but I would say also prior
23 to us being acquired we also had -- it was very much
24 where our philosophy was.

25 Q. Since you've been president of Atrium, has any

1 research project been rejected by Acute Care Therapies
2 or Getinge AB?

3 A. No, I am very careful about the research and
4 development projects that I bring forward. I -- I like
5 to look at things in a three-to-five-year payback time
6 period and when I do that, I like to also see that
7 there's a good return on that investment.

8 Q. Who owns the patents associated with the C-Qur
9 line of products?

10 A. Atrium does. There may be a couple of them
11 that may be owned by some other individual and were kind
12 of co-licensed or co there, but for the most part Atrium
13 owns all the patents.

14 Q. Does Atrium have patent applications pending
15 for any product, not just C-Qur?

16 A. Yes, it does.

17 Q. When Atrium developed a new C-Qur product, did
18 it have to get clearance from the FDA?

19 A. Yes. Whenever you develop a new product and
20 you have to do a 510(k), you have to get clearance from
21 the FDA.

22 Q. Who was responsible for obtaining that
23 regulatory authorization?

24 A. Atrium Medical Corporation.

25 Q. Did Getinge AB have any involvement in that

1 process?

2 A. No, it did not.

3 Q. Does Atrium Medical Corporation monitor the
4 performance of C-Qur in the field so that it can monitor
5 safety and efficacy issues?

6 A. Yes. We have a complaints department that
7 receives complaints.

8 Q. Just briefly describe what you do in that
9 regard.

10 A. So -- and there are a couple of things when we
11 say monitor, because there are regulations associated
12 with this.

13 So we take in the complaints from the field
14 where, you know, sales reps or if a hospital or a
15 physician has a complaint, it will be filed. It will be
16 taken in.

17 But we also have another side of it where the
18 clinical affairs department deals with the, what we call
19 CERs, or clinical evaluation reports. These clinical
20 evaluation reports take the literature that is out in
21 the field, analyzes that compared to the complaints
22 database, and it will actually create a risk/benefit
23 kind of analysis that's required, yeah.

24 Q. The complaint evaluation process that you
25 described, is Getinge AB involved in that?

1 A. No, not at all.

2 Q. The clinical evaluation report that you
3 described, that process, is Getinge AB involved in that?

4 A. No, that's all local.

5 Q. Did Atrium Medical Corporation develop
6 instructions for use for the C-Qur products?

7 A. Yes, it did.

8 Q. What is the purpose of the instructions for
9 use?

10 A. So instructions for use gives a description of
11 what the product is. It provides the indications for
12 use. It provides the contraindications of when not to
13 use the product. It has precautions of things to be
14 careful about when you actually use the product. It has
15 adverse events as potential things that can happen with
16 the product, and it also provides some instructions for
17 physicians on how to utilize the product.

18 Q. Were the instructions for use submitted to the
19 FDA for review?

20 A. That's part of the 510(k) process. You need
21 to submit them, yes.

22 Q. Does Getinge AB have any role in developing
23 the instructions for use?

24 A. No, they have not.

25 Q. Does Getinge AB have any role in the

1 manufacturing or production of C-Qur products?

2 A. No, it has not.

3 Q. What entity is responsible for the
4 manufacturing and production --

5 A. Atrium Medical Corporation. Sorry.

6 Q. Which entity is responsible for the packaging
7 of C-Qur products?

8 A. Atrium Medical Corporation.

9 Q. And did Getinge AB have any role in the
10 packaging of C-Qur products?

11 A. No, it does not and has not.

12 Q. Does Getinge AB sell or distribute C-Qur
13 products?

14 A. No, it does not.

15 Q. Who sells Atrium C-Qur products in the United
16 States currently?

17 A. Getinge USA Sales.

18 Q. How long has Getinge USA Sales sold Atrium
19 products?

20 A. Since approximately October of 2017.

21 Q. Who sold the products before then?

22 A. Maquet Cardiovascular USA Sales.

23 Q. When did that begin?

24 A. That began January 1, 2014.

25 Q. And then who sold the products before January

1 2014?

2 A. Atrium Medical Corporation.

3 Q. Why that change? Why did it change from
4 Atrium to Maquet Cardiovascular U.S. Sales in 2014?

5 A. So we were aligning globally with the sales
6 organizations within the Maquet sales organizations at
7 the time. So we had sales organizations in France. We
8 had sales organizations in Australia and the UK and
9 around the world, and we also worked through
10 distributors in multiple areas.

11 So we were aligning, and we actually started
12 that process in 2012 in certain countries and 2013 in
13 other countries, and then in 2014 it was the United
14 States.

15 Q. Were there business reasons for that change?

16 A. There are clear business reasons for that,
17 yes.

18 Q. What were they?

19 A. So there are a number of synergies. So when
20 you think about it, the sales force is a huge burden so
21 it relieves that burden. But also by grouping a lot of
22 products together you gain some benefits with
23 negotiations, and then you also have the benefit with
24 marketing. So you have multiple products that you can
25 market.

1 Q. Okay. Let's take those one by one.

2 Would you explain a little bit more what you
3 mean about synergies in terms of burden?

4 A. Yeah, the sales organization is one of the
5 most expensive organizations within anything.

6 So what ends up happening for us, you know,
7 you would have turnover in sales reps. There's a lot of
8 management associated with that. So the hiring and
9 firing, you know, by having that together you're
10 reducing that burden. They can work with recruiters and
11 other people on that standpoint.

12 But you're also talking about at a local level
13 they will actually do the marketing, all right, so, you
14 know, in each individual country they will help to
15 manage the trade shows, they will manage some of the
16 other marketing, which is also a major burden. So when
17 you look at this, you're actually shifting some of that
18 burden to that area, and you can gain some consolidated
19 pieces.

20 As I mentioned earlier, Acute Care Therapies
21 has products that work together, and those products have
22 similar call patterns or trade shows and things, so
23 you're able to maximize some benefit by not having two
24 booths, you have one booth, you know, things along those
25 lines.

1 Q. The next area you mentioned I believe was
2 negotiating. Would you explain the synergies achieved
3 in that area?

4 A. So the U.S. has 5,000 plus hospitals and those
5 hospitals, and I don't want to just say hospitals,
6 sometimes they're surgery centers, but they access
7 buying groups. These buying groups are basically a
8 group of hospitals, and I'm just going to arbitrarily
9 say 500 to 700 of them together. As an individual
10 entity like Atrium if you go to sell to that hospital,
11 or to that buying group, you may only have five to
12 \$7 million worth of sales in that -- for that buying
13 group. You don't get much attention. But when you then
14 group them together in a large organization, you will
15 get a lot of -- you'll get a bit more attention with
16 your negotiations.

17 At the same thing, that also happens at the
18 local hospital level. They may utilize, you know,
19 50,000, \$70,000 of a product per year, but by grouping
20 products together you end up with a better negotiating
21 power with those hospitals.

22 Q. And then the third area you mentioned was
23 marketing. Would you explain the synergies in that
24 area?

25 A. And again marketing -- I kind of alluded to it

1 a little bit earlier about why I oversee products in
2 La Ciotat, France.

3 But you have a product like the Hemashield
4 product, which is I dare to say the gold standard for
5 physicians when they're doing an open aortic repair, and
6 they have a certain trust and belief in that product.
7 So when you talk about marketing and bringing things
8 together, it makes logical sense to then bring our
9 vascular grafts in because you're creating that
10 relationship, that dynamic.

11 And then also, as I mentioned earlier, the
12 trade shows. You don't have to have two booths. You
13 can have one booth and market things together that way.

14 Q. Did you get access to new markets?

15 A. Absolutely.

16 Q. Did Atrium benefit from taking advantage of
17 these synergies?

18 A. Yes, it did.

19 MS. ARMSTRONG: Your Honor, for my next
20 questions can I utilize the white pad?

21 THE COURT: Absolutely.

22 Q. My next area of questions I want to focus on
23 the period from January 2014 through September 2017. I
24 may not say that every time, but that's the period of
25 time that I'm focused on.

1 A. Okay.

2 Q. I want you to walk me through the distribution
3 path for Atrium's products during that time period,
4 January 2014 through September 2017. Where do we start?

5 A. So Atrium would produce and sterilize a
6 product.

7 Q. I'm a little old-school. I like white pads.
8 Okay. So where would they go next?

9 A. So in this particular case we would ship it to
10 a central distribution center in Dayton, New Jersey, and
11 that's part of Maquet Cardiovascular, LLC.

12 Q. A distribution center. Tell me the entity
13 again while I'm writing.

14 A. Maquet Cardiovascular, LLC.

15 Q. Where do they go next?

16 A. So from that central distribution center it
17 can technically go all over the world, but let's just
18 start with the U.S.

19 So it would then go from the U.S. -- in the
20 U.S. it would be sold to Maquet Cardiovascular USA
21 Sales.

22 Q. What is the function here?

23 A. So they sell and market the product, but it
24 would actually be the sales. And they sell it directly
25 from there to the hospital or a distributor as it would

1 go.

2 Q. So can I just say customer?

3 A. It is a year-end customer, yes.

4 Q. Would you explain to me what I've got as an
5 L-shape here. You go from Atrium to Maquet CV, LLC to
6 Maquet Cardiovascular U.S. Sales.

7 Why doesn't Atrium just sell the products
8 directly to Maquet Cardiovascular U.S. Sales?

9 A. So we gain some efficiencies by using that
10 central distribution center, but in theory we can ship
11 it from that distribution center. We can ship it all
12 over the world to our other, I'll say distributors but
13 the other SSUs of the world. So this allows a central
14 way for that to take place.

15 Q. Is this similar to a warehousing function?

16 A. It is a warehousing function, yes.

17 Q. Is it unusual for a manufacturer to outsource
18 a warehousing function?

19 A. No. To my knowledge, I think many companies
20 do it.

21 Q. Is it unusual for a manufacturer to outsource
22 a distribution function?

23 A. No. In fact, I remember very clearly in the
24 early days of Atrium we used a distributor or a third
25 party to sell products.

1 MS. ARMSTRONG: If I could stay up here, I'm
2 probably not quite done with the white pad yet.

3 THE COURT: That's fine.

4 Q. Does Atrium sell its products on the
5 competitive market?

6 A. Yes, it does.

7 Q. How is the retail price determined?

8 A. So -- and again, we sell them globally, and I
9 think the easiest way would be to -- it's basically what
10 the market will bear.

11 Q. I want to break the retail price down a little
12 bit, if you would help me with that.

13 I'm going to start with retail price. What
14 are the components of the retail price?

15 A. So you have what we call is the standard cost
16 or the cost to produce the product.

17 Q. And the other component?

18 A. Profit.

19 Q. So of the profits from this retail price that
20 the customer pays for an Atrium product, where does the
21 profit go?

22 A. So roughly 50 percent of that profit goes to
23 Atrium and 50 percent of that stays with the sales and
24 service organization.

25 Q. And what did you tell us the sales and service

1 organization in this time period was?

2 A. Maquet Cardiovascular, LLC, for the U.S.

3 Q. What happens to the cost component?

4 A. So the cost is actually -- we recoup that cost
5 right away, but that cost comes back to us.

6 Q. Just to see if I can get you to walk me
7 through it on the other chart that I made.

8 So the retail -- the customers, they're the
9 ones that pay the retail price, right?

10 A. Yes, they are.

11 Q. So I'm going to start here, and just walk me
12 through what happens. I'm going to call it money
13 because retail -- I'm assuming they're paying you in
14 money?

15 A. Right.

16 Q. What happens to this money?

17 A. So that money gets paid back to Maquet
18 Cardiovascular U.S. Sales.

19 Q. Okay. Where does it go from there?

20 A. So they retain roughly 50 percent of the
21 profit.

22 Q. Where does it go from there?

23 A. So then the rest of that value actually goes
24 back to Maquet Cardiovascular, LLC.

25 Q. Where does it go from there?

1 A. So then the profit is returned to Atrium.

2 Q. The rest of the profit?

3 A. The rest of the profit is returned to Atrium.
4 The cost was actually returned to Atrium when it
5 originally shipped it to Maquet Cardiovascular, LLC.
6 They kind of fronted the money or gave us that, but it's
7 also a -- I'll say it's an estimated standard cost. We
8 come up with those costs at the beginning of the year,
9 or technically December of the previous year based on
10 how many we're going to make, how efficient we're going
11 to be, but that's kind of the standard cost as they
12 transfer.

13 Q. So as I understand what you just told me, they
14 had already advanced you an estimate of the cost?

15 A. Yes.

16 Q. And they get repaid that?

17 A. Yes.

18 Q. Do they make any profit?

19 A. No, they don't.

20 Q. Did you feel -- I'll go back to the podium.

21 Did you ever feel like Maquet Cardiovascular
22 U.S. Sales was getting more than their fair share of the
23 profits?

24 A. No. When you look at it, the sales
25 organization is -- has a lot of expenses. It is a major

1 cost as you deal with that so --

2 Q. Has Atrium's profits fluctuated from year to
3 year?

4 A. Yes. Very much so.

5 Q. What are some of the factors that can cause
6 Atrium's profits to fluctuate?

7 A. So we have a number of different things, and
8 I'll take -- the consent decree has had some impact
9 where, one, we've had to make some payments, but, you
10 know, when you look at it -- so you have a few
11 extraordinary things that have taken place, but also
12 your cost of goods can change and fluctuate on a regular
13 basis, the amount of sales that you make on a regular
14 basis can impact those sales.

15 MS. ARMSTRONG: Can we put up Exhibit 59,
16 please. I just want to look at the years -- I just want
17 to view 2011 through 2013.

18 MR. ORENT: Your Honor, I just want to renew
19 the particular personal knowledge aspects of Mr. Carlton
20 was not president during any of these years.

21 MS. ARMSTRONG: He was in charge of sales.

22 THE COURT: Your objection is noted and you
23 will be able to cross-examine.

24 Q. Mr. Carlton, were you in the sales
25 organization during --

1 A. I was -- just so you know during this time
2 period I was the -- so in this time period I was the
3 executive vice president of marketing for the
4 organization.

5 Q. So for these, the years 2011 and 2012 and
6 2013, would you characterize these as typical years for
7 Atrium?

8 A. There were a number of things that took place
9 in this time period. So fiscal year 2011 was not a
10 typical year because that was when we were acquired.

11 2012 shows a dramatic increase, and some of
12 that increase is because we actually -- because of the
13 products that were in La Ciotat, the Hemashield and
14 Intervascular products, they were actually brought
15 into -- we were a sales and service unit for 2012 and
16 2013. We actually benefited from taking over the sales
17 of those products as part of the organization of Maquet.

18 So you will actually see the external sales
19 from 2011 to 2012 go up pretty dramatically and then the
20 same thing for '12 and '13, and that's a reflection of,
21 again, we ended up representing another product in the
22 U.S. that was part of the Maquet organization.

23 MS. ARMSTRONG: Can we go to the next page of
24 this document, and just blow it up. We'll do the top
25 half and then we'll do the bottom half but blow it up so

1 we can read it.

2 Q. And again, this goes from right to left. It's
3 2015 on the right and then 2016 and 2017, correct?

4 A. Yes.

5 Q. And can we go down -- I want to go back to the
6 bottom.

7 A. Well, actually, can I mention something on the
8 top here? Related to the sales, one of the things you
9 have to recognize is that internal sales are also
10 reflected as external sales. In the 2015 time period we
11 had this thing called a consent decree which had some
12 impact on our sales.

13 MS. ARMSTRONG: Can we go down.

14 Q. I'm looking at line 8989, net profit for the
15 year, and in 2016 -- actually 2015, I'm sorry, in 2015
16 did Atrium make a profit?

17 A. No, it did not.

18 Q. Why didn't Atrium make a profit in 2015?

19 A. We had two payments to the U.S. government as
20 disgorgements, equitable disgorgements related to the
21 FDA.

22 Q. What were the amounts of those payments?

23 A. They were two \$6 million payments totaling
24 \$12 million.

25 Q. Were it not for those payments would Atrium

1 have made a profit?

2 A. Yes, it would have.

3 Q. Did Atrium make a profit in 2016?

4 A. No, it did not.

5 Q. Is there a reason why not?

6 A. We had a settlement, we call it the Sullivan
7 settlement, and that was for roughly 11 and a half
8 million dollars, and then we also had attorney's fees
9 that we had to pay.

10 Q. Would Atrium have made a profit were it not
11 for that Sullivan settlement?

12 A. Yes, it would have.

13 Q. Who is Mark Brown?

14 A. Mark Brown was the national sales manager for
15 the biosurgery products.

16 Q. In 2018 who was Mark Brown employed by?

17 A. He was employed by Getinge USA Sales.

18 Q. Was he employed by Getinge AB?

19 A. No, he was not.

20 Q. But he was employed by a company that had
21 Getinge in the name?

22 A. Yes, he was.

23 Q. Was Mr. Brown ever employed by Maquet
24 Cardiovascular U.S. Sales, LLC?

25 A. Yes, he was.

1 Q. From when to when?

2 A. From January 1, 2014, to September of 2017.

3 Q. Before then who was he employed by?

4 A. Atrium Medical Corporation.

5 Q. Did his employment follow the transition of
6 the sales force?

7 A. Yes, it did.

8 Q. We talked about marketing synergies before.
9 Does Atrium ever take advantage of co-branding?

10 A. Yes.

11 Q. Why?

12 A. Again, you're trying to build off of a more
13 global brand, and so by building a global brand and
14 hopefully things that people trust and believe in and
15 like, you are kind of piggybacking and building that.

16 Q. Does that include the Getinge brand or logo?

17 A. Yes, we have.

18 Q. Does that include the -- does co-branding
19 include the Maquet brand or logo?

20 A. Yes. We tried to use the Maquet brand -- when
21 we first were acquired we actually did some things where
22 we tried to merge our logo with kind of the
23 Maquet/Getinge logo and did some things on that
24 standpoint to try to piggyback on that, and then really
25 eventually we just -- with the One Getinge kind of

1 transformation we tried to build the Getinge brand.

2 Q. What is One Getinge?

3 A. So One Getinge, I know you've heard a lot of
4 different things from this, but it's really -- to me
5 it's more of a marketing piece. Some of the things
6 internally were how we deal with our organization and
7 how we've done that, but it was basically getting
8 everybody behind the One Getinge brand.

9 Q. When you pull into the parking lot of the
10 building where you work, is there a sign at the
11 entrance?

12 A. Yes, there is.

13 Q. What is it?

14 A. Getinge.

15 Q. Is there a sign in the lobby of the building?

16 A. Yes, there is.

17 Q. What is it?

18 A. It says Maquet Getinge Group.

19 Q. Why doesn't the sign say Atrium?

20 A. So we have customers who visit our building,
21 we have sales reps who visit our building. We are
22 trying to build the Getinge brand in this standpoint, so
23 it's just continuing on in that standpoint.

24 Q. Are there business reasons to use a common
25 logo when marketing products made by different indirect

1 subsidiaries of Getinge AB?

2 A. Yeah, it helps to reduce customer confusion.

3 Q. Does it have any other benefits?

4 A. Yeah. You know, with -- it helps you feel
5 part of a larger family and part of a larger group as a
6 whole.

7 Q. Are your products clearly labeled to indicate
8 who the manufacturer is?

9 A. Yes, they are.

10 Q. And what do they indicate?

11 A. Atrium Medical Corporation.

12 Q. Do your products conform to the Getinge
13 branding guidelines?

14 A. No, they do not.

15 Q. Why not?

16 A. They have the Atrium name and the Atrium
17 branding on there and --

18 Q. They don't say Getinge?

19 A. They do not say Getinge.

20 Q. Is co-branding a common industry practice?

21 A. Yes, it is.

22 Q. In the medical device industry or other
23 industries?

24 A. Yes, it is.

25 Q. Within the Getinge brand family of companies,

1 are there shared resources?

2 A. Yes, there are.

3 Q. Can you give me some examples?

4 A. Yeah. There are parts of IT that are a shared
5 resource. There are parts of human resources that are a
6 shared resource, like the 401(k) or the health care
7 plan. There are things related to kind of website and
8 there are things related to finance that we do shared
9 resources with.

10 Q. Why do you do this?

11 A. It helps reduce cost. You're kind of
12 consolidating and doing certain things where there are
13 similar functions that can occur over and over again.
14 You're accessing things so you can actually have a
15 smaller organization to do those.

16 Q. If you had to do each of these functions at
17 Atrium, would you have to pay people to do them?

18 A. Yeah, or you would consult with people
19 externally and do some things on that side, too.

20 Q. Whether you get the services from Getinge, do
21 it yourself, or outsource it, is it going to cost you
22 money?

23 A. Yes.

24 Q. Does Atrium have information technology
25 employees?

1 A. Yes, they do.

2 Q. Who pays them?

3 A. Atrium Medical.

4 Q. These shared services that we've been talking
5 about, how are they accounted for?

6 A. So they're accounted for, so -- and you
7 mentioned we had IT people. Those IT people actually
8 not only work for Atrium, but they also do some work
9 externally. So there is a general piece where they --
10 those expenses, whether we incur them externally or
11 they're incurred by people, by other organizations into
12 our side, all those expenses are kind of filtered out
13 and then invoices are accounted for down throughout the
14 whole organization.

15 Q. Does Atrium have a head of regulatory or
16 quality?

17 A. Yes. Locally we have a senior manager of
18 regulatory and a director of quality.

19 Q. Are those the same people?

20 A. Those are two separate positions and separate
21 people.

22 Q. Do they report to you?

23 A. They have a dotted line to me. They do not
24 report directly to me.

25 Q. Who do they report directly to?

1 A. So the director of quality reports to John
2 Costello, who is the vice president of corporate quality
3 and compliance, and then the senior manager of
4 regulatory reports up to Susan Eichler-Houston, who is a
5 director of regulatory at Maquet Cardiovascular.

6 Q. When was that reporting structure created?

7 A. So that reporting structure was created when I
8 became president in November of 2016.

9 Q. What was the reporting structure before then?

10 A. So even -- I take that back. So the dotted
11 line was at that stage. I think prior to that those
12 individuals still reported up into that chain. That was
13 roughly after the consent decree.

14 Q. So the reporting structure you're describing,
15 I'm just unclear, when was it created?

16 A. So in terms of the regulatory -- the
17 regulatory and quality happened sometime after the
18 consent decree in -- I don't want to say it was
19 immediately after but sometime in that year of 2015,
20 probably early 2016, with the One Getinge that that
21 structure kind of separated out.

22 Q. Why do you have that reporting structure?

23 A. I actually like that reporting structure
24 because it creates more independence in terms of those
25 organizations and in terms of the responsibility of

1 what's needed in hiring and firing, but that was part of
2 the consent decree.

3 Q. Can you explain how that reporting structure
4 impacts activities such as preparing either a 510(k)
5 application or a PMA application to the FDA, those types
6 of functions?

7 A. So the first part is I -- I am the management
8 with executive responsibility. So within this I still
9 have the oversight of the whole building. So when
10 filing a 510(k) or things related to that standpoint,
11 our whole organization works together as a unit, right,
12 so you have -- when you look at this, you have our new
13 product development who does a certain part for our
14 submission. You also have manufacturing engineering who
15 will help conduct some validations, along with
16 production, and then you have the quality department who
17 kind of reviews these different parts and pieces, and
18 they work together with the regulatory department to
19 actually then submit those things for 510(k) or other
20 regulatory approvals.

21 Q. So the things you just described, are those
22 local functions or are they higher up?

23 A. Those are all done locally.

24 Q. And by locally you mean Atrium?

25 A. They are all done at Atrium, yes.

1 Q. Is there a cashpool used by the Getinge group
2 of companies?

3 A. Yes, there is.

4 Q. What is a cashpool?

5 A. I am not a financial expert. I realize
6 there's some more financial experts here today. But to
7 me the Cashpool Agreement is an agreement that we have
8 where we have a bank account at the Swedish bank and
9 other entities have bank accounts at that Swedish bank
10 and that is a, let's say a service that is provided
11 there so that they can actually bring all the cash
12 together to help service those different subsidiaries.
13 And in a very straightforward way, it's a banking
14 service.

15 Q. So after the acquisition, did Atrium transfer
16 its excess cash into the cashpool?

17 A. Yes, we did.

18 Q. Is Atrium paid interest on the cash that it
19 has in the cashpool?

20 A. Yes. If we have cash in the cashpool, we pay
21 interest and if we don't, we pay it -- I'm sorry -- we
22 get paid interest, and if we don't, we pay interest.

23 Q. Defense Exhibit 86.

24 This is an interest statement from SEB,
25 correct?

1 A. Yes, it is.

2 Q. What is SEB?

3 A. That's the Swedish bank that we use.

4 Q. If we go down to the year-to-date credit
5 interest, what was the interest paid in the year being
6 reported here to Atrium?

7 A. That is \$80,346.08.

8 Q. Does Atrium have access to the excess cash
9 that it contributes to the cashpool?

10 A. We utilize it on a regular basis to pay
11 invoices and other things, yes.

12 Q. Do you have to get permission of Getinge AB?

13 A. No. It follows our normal transactions and
14 functions.

15 Q. Has Atrium ever provided guaranties or
16 security interests, those types of financing documents,
17 to either Getinge AB or another member of the Getinge
18 group of companies to facilitate financing arrangements?

19 A. Yes, we have.

20 Q. Why do you do that?

21 A. By taking not only Atrium, but the other
22 entities that are typically involved in that, you are
23 able to get a lower interest rate, you know, you're able
24 to negotiate better because you have a larger number of
25 organizations involved.

1 Q. To your knowledge has Getinge -- has Atrium
2 ever been called upon to make a payment pursuant to one
3 of those guaranties?

4 A. No, we have not to my knowledge.

5 Q. To your knowledge has Getinge ever been called
6 upon to surrender an asset that was proffered as a
7 security interest pursuant to one of those agreements?

8 A. No, it has not.

9 Q. Has your ability to pay debts as they come due
10 ever been impaired by one of those agreements?

11 A. Not to my knowledge, no.

12 Q. Have they had any impact on the operations of
13 Atrium?

14 A. No.

15 Q. Has Atrium made distributions to its parent
16 Datascope from time to time?

17 A. Yes, we did.

18 Q. Are you familiar with the distribution in the
19 amount of 13.7 million in 2014?

20 A. Yes, I am.

21 Q. What was it?

22 A. It was a returning of retained earnings to our
23 parent company.

24 Q. Is it unusual to distribute retained earnings
25 to a shareholder?

1 A. No. In fact, when Atrium existed they sent
2 earnings to shareholders as well.

3 Q. When you say Atrium existed, you mean prior to
4 the --

5 A. I'm sorry. I'm sorry. Let me correct that.
6 When Atrium was a privately-held company, they
7 did the same thing.

8 Q. At the time of this distribution did you have
9 a lot of litigation involving the surgical mesh product?

10 A. No, we did not.

11 Q. Are you familiar with a 27.2 million
12 distribution from Atrium to Datascope in December of
13 2014?

14 A. Yes, I am.

15 Q. What was its purpose?

16 A. So again, it was retained earnings that were
17 distributed back to its parent company.

18 Q. Did you have a lot of mesh litigation at that
19 point in time?

20 A. No, we did not.

21 Q. Are you familiar with a 9 million distribution
22 to Datascope in December of 2015?

23 A. Yes, I am.

24 Q. What was the purpose of that distribution?

25 A. So we were -- our sales and marketing

1 organization in the Netherlands was -- because we had
2 utilized all the sales and service units within Europe,
3 we were shutting that organization down because all
4 those functions were being accomplished by other
5 organizations. So when that was closed down, that was
6 the amount coming back.

7 Q. When that distribution was made, did you have
8 a lot of mesh litigations?

9 A. No, not yet. Not at that time.

10 Q. Was there a point in time when Atrium saw an
11 increase in surgical mesh litigation?

12 A. Yes.

13 Q. When?

14 A. Following the creation of the MDL in I want to
15 say the 2017 time frame.

16 Q. We've talked about some of the distributions
17 from Atrium to its parent. Has Atrium ever received
18 contributions the other way, contributions from its
19 parent, from Datascope?

20 A. Yes, it has.

21 Q. Can you tell us about those?

22 A. It received two \$10 million contributions in
23 2016.

24 Q. Were those contributions or loans?

25 A. Those were contributions.

1 Q. As president of Atrium Corporation, if you had
2 had a \$20 million loan liability to your parent
3 corporation, would you be aware of that?

4 A. Yes, I would.

5 Q. Were those transactions ever reclassified from
6 loans to contributions?

7 A. No. Those were always contributions.

8 Q. Why did you receive those contributions?

9 A. So in 2015 I mentioned earlier that we had
10 \$12 million that we paid in relationship to the consent
11 decree, and then in early 2016 we had 11 and a half
12 million dollars that we paid for the Sullivan
13 settlement. So those were extraordinary measures and
14 this was a way to help recapitalize us.

15 Q. In light of the synergies that you've told us
16 about, do you consider Atrium to be interdependent with
17 either Getinge AB or other subsidiaries of Getinge?

18 A. So interdependent has its own terminology in
19 the way the thing goes. Do we cooperate? Yes, we do.
20 Do we rely on an organization to sell for us? Yes, we
21 do. But at any time that you sign a distribution
22 agreement with different things you will rely on them in
23 one form or another. I consider it cooperation, not
24 necessarily interdependence, but that's my
25 interpretation.

1 Q. What's your interpretation of interdependence?

2 A. Interdependence means that you could not
3 survive without the other organizations.

4 Q. Do you think Atrium could survive without the
5 other organizations?

6 A. We did survive. We were a privately-held
7 company and we could today if we became an independent
8 company.

9 Q. Who is Peter Hjalmarson?

10 A. He is the treasurer of Getinge.

11 Q. AB?

12 A. AB, yeah.

13 Q. If he said that there was interdependence
14 among the Getinge group of companies, was he wrong?

15 A. It's his interpretation and his understanding
16 of what that terminology means.

17 Q. You don't disagree that there's cooperation?

18 A. I do not.

19 Q. You don't disagree that there's a
20 relationship?

21 A. I do not.

22 Q. You said that you felt like you could survive.
23 How would you do that?

24 A. So if tomorrow we woke up and we were no
25 longer, you know, they said, you know, get rid of you,

1 you know, in terms of we're not a part of it, we would
2 either rebuild the sales organization or through that
3 split we'd get a portion of the sales organization. We
4 did it all before; we could very easily do it again.
5 You might have to contract with another third-party
6 distributor, but beyond that, we have customers who
7 recognize our products globally.

8 Q. What about the contributions from Datascope,
9 what if you didn't have that anymore? How would you
10 survive?

11 A. We would have done what we did before, and
12 that was we had banks and we could get loans, and if
13 not, we would look for particularly other types of
14 financing.

15 Q. Is Getinge AB a publicly traded company?

16 A. Yes, it is.

17 Q. To your understanding, does it have
18 obligations to its shareholders?

19 A. Yes, it does.

20 Q. How do those obligations impact its
21 relationship with its direct and indirect subsidiaries?

22 A. It has to provide oversight.

23 Q. Has Getinge AB developed policies that are
24 applicable to its direct and indirect subsidiaries?

25 A. Yes, it has developed a lot of policies.

1 Q. Why?

2 A. Those policies help to have the individual
3 subsidiaries, whether they're direct or indirect, helps
4 them to follow a certain course or a certain way that
5 the overall company wants to go in a direction.

6 Q. Can we look at Exhibit 40. Plaintiff Exhibit
7 40.

8 What is this document?

9 A. This is the employee handbook for Merrimack,
10 New Hampshire.

11 Q. Is it a global employee handbook?

12 A. No, it is not. It has certain things that are
13 specific to Merrimack, yes.

14 Q. Why does it say Getinge instead of Atrium?

15 A. So this was part of the concept of trying to
16 brand things toward the Getinge side.

17 Q. When employees come on board at Atrium, do
18 they know that they're working for Atrium?

19 A. Yes, they do.

20 Q. How?

21 A. A couple of things. Their offer letter says,
22 it says Atrium Medical. Secondly, I do a part of the
23 orientation when the individuals come in. I actually
24 have a presentation that talks about Atrium, it talks
25 about Getinge, right, and I also talk about Maquet at

1 the time. So it's very clear at that stage.

2 We also at that stage -- by law we have to
3 have them receive the consent decree, and I go through
4 and I talk to them about the consent decree and about
5 Atrium there.

6 And then my other pieces -- so for those
7 people who are working on the chest drains, Atrium is
8 printed on every single chest drain. On our vascular
9 grafts, Atrium is printed on the vascular grafts. On
10 our packaging for our stents and for our mesh products,
11 it all has Atrium on the packaging.

12 All of the quality documents within the
13 building have Atrium Medical on the quality documents.

14 Q. We could put that down. Let me move on to
15 another topic.

16 Did Atrium Medical Corporation decide to sell
17 its biosurgery business at some point in time?

18 A. Yes, it has.

19 Q. And the biosurgery business, does that include
20 surgical mesh products?

21 A. Yes, it does.

22 Q. Including C-Qur?

23 A. Yes, it does.

24 Q. How much of Atrium's overall sales does
25 surgical mesh account for?

1 A. Less than ten percent.

2 Q. At the time the decision was made to sell the
3 biosurgery business, how much was it?

4 A. Roughly ten to 15 percent.

5 Q. What accounts for the bulk of Atrium Medical's
6 profits?

7 A. That would be -- the covered stents is the
8 largest product line followed by the chest drainage
9 devices.

10 Q. When did Atrium Medical Corporation begin
11 considering selling its biosurgery business?

12 A. So we first contemplated it in I'm going to
13 say late 2012, but let's say the 2012 to 2013 time
14 frame.

15 We had originally -- we were out here trying
16 to -- after the acquisition trying to add more products
17 to our bag. So we were looking at stapling devices. We
18 were looking at mesh placers. We were looking at
19 biologics.

20 So we had this plan called Project Indian
21 Summer, and as we looked and analyzed these different
22 products that we were going to acquire and look at, each
23 one of them kind of fell off the radar for one reason or
24 another. Either the quality wasn't there or the market
25 wasn't there or the deal wasn't going to shape up.

1 So after that standpoint we basically came --
2 and when I say we, it's the Atrium executive team at the
3 time, and I'll say specifically Trevor and myself, Ted
4 was probably part of this, but we basically realized
5 that we were being out-competed because our competitors
6 had a lot of these extra products in their bag.

7 So we basically -- when those deals all fell
8 through, we came to this decision to look at divesting
9 the business. At that stage in the game it was still,
10 as I said, fairly ten to 15 percent, it's actually
11 probably closer to 15 percent of the business at that
12 stage. So this was a decision that we asked Trevor to
13 take to Heinz.

14 Q. So who made the decision?

15 A. So the decision started at Atrium, yes.

16 Q. And did you have to get approval for it?

17 A. Absolutely. This was a significant portion of
18 the acquisition that was taken by -- when we were
19 acquired.

20 Q. Would you consider selling part of your
21 business to be a big deal?

22 A. It is a very big deal.

23 Q. Is it part of the day-to-day operations of the
24 company?

25 A. No, it is not.

1 Q. I think you said that Trevor took it to Heinz?

2 A. Heinz Jacqui, his boss at the time, yes.

3 Q. Did the potential buyers eventually withdraw
4 from the sale?

5 A. So over the course of this there were several
6 potential buyers. The most serious buyer that we signed
7 an agreement in 2018 did drop out in the first quarter
8 of this year due to failure to get regulatory approval
9 for the deal.

10 MS. ARMSTRONG: Can we look at Defendants'
11 Exhibit 69.

12 Q. What is this document? What is the name at
13 the top of it?

14 A. This is the board of directors meeting minutes
15 from October 12, 2018.

16 Q. And what was the purpose, or what is reflected
17 in this document?

18 A. So this is a special meeting of the board of
19 directors. This was a meeting with Jens, myself, and
20 Gary Sufat, who -- it was basically to review and
21 approve the acquisition of the mesh business -- or to
22 divest the mesh business to -- it was C-Qur Surgical,
23 but it was I believe if we drill down --

24 MS. ARMSTRONG: Can we scroll down a little
25 bit.

1 A. Yeah, with HJ Capital, Ltd.

2 Q. So had you been trying to sell the business
3 for several years at this point?

4 A. We had had several -- we had discussions for a
5 long period of time with a number of different potential
6 buyers, yes.

7 Q. And the purpose of this was to approve a sale
8 to a particular buyer --

9 A. Yes, it was.

10 Q. -- where you were close to finalizing?

11 A. Correct. We were I believe announcing it very
12 shortly thereafter this.

13 Q. I'll put this away.

14 Have there been other -- so this -- selling
15 the business you said was a big deal. Have there been
16 other extraordinary transactions where Atrium sought the
17 input and approval of Getinge AB?

18 A. Well, the Sullivan litigation would be one in
19 particular. Obviously -- we've discussed the consent
20 decree a little bit earlier today, but the consent
21 decree was one where obviously it had to go to Getinge
22 AB.

23 Q. So why did you need approval of Getinge AB for
24 the Sullivan settlement?

25 A. Because it would impact shareholder value.

1 One, it was a large financial transaction but also, you
2 know, in different ways could impact shareholder value.

3 Q. Did Atrium also have input into that decision?

4 A. Yes, it did.

5 Q. Why did you need approval of Getinge AB to
6 enter into the consent decree?

7 A. Well, we were one party in the consent decree
8 and we were involved in the discussions with the consent
9 decree.

10 MS. ARMSTRONG: Could we put up Plaintiffs'
11 Exhibit 184, please. Let's just focus in on the
12 caption.

13 Q. Who are the defendants?

14 Let me strike that.

15 Who are the corporate defendants?

16 A. The corporations are Atrium Medical
17 Corporation, Maquet Holding B.V., Maquet Cardiovascular,
18 LLC, and Maquet Cardiopulmonary AG.

19 Q. And then the two individual defendants, just
20 their names. We're going to talk about them in a
21 minute.

22 A. Heinz Jacqui and Gail Christie.

23 MS. ARMSTRONG: Could we go to page 3 of this
24 document. Let's look at 4(a).

25 Q. What are the specified facilities?

1 A. They are Atrium facilities. The Atrium, 5
2 Wentworth Drive, was our main manufacturing facility,
3 and then Atrium, 29 Flagstone Drive, was our warehouse.

4 Q. Is there a category of additional facilities?

5 A. Yes, there are.

6 Q. And are those -- I think it's subpart (b).
7 Are those Atrium facilities?

8 A. No, they are not.

9 Q. Are they located in New Hampshire?

10 A. No, they are not.

11 Q. Are they all located in the United States?

12 A. No. Two of them are -- actually half of them
13 are -- yeah, two of them are located in Germany.

14 Q. You mentioned -- we talked about Heinz Jacqui
15 and Gail Christie. Why were they made parties to the
16 consent decree?

17 A. The FDA requested them to be on it.

18 MS. ARMSTRONG: Can we go to the signature
19 page. The one before that, I believe.

20 Q. Heinz Jacqui. If we look at Heinz Jacqui's
21 signature block, who did he work for at this time?

22 A. At the time he was chief executive officer and
23 managing director of Maquet Holdings BV and Company.

24 Q. And was Maquet Holdings BV and Company a party
25 to the consent decree?

1 A. Yes, it was.

2 Q. If we look at Gail Christie's signature block,
3 who did she work for?

4 A. She was the corporate chief quality assurance
5 and regulatory affairs and compliance officer of Maquet
6 Holding BV and Company.

7 Q. Did somebody sign this agreement on behalf of
8 the corporate defendants, including Atrium?

9 A. Yes, that was John Fiedler. He was legal
10 counsel.

11 MS. ARMSTRONG: Can we put up -- oh, strike
12 that.

13 Q. These three transactions -- oh, by the way,
14 did Atrium have any input into the consent decree?

15 A. Yes, it did.

16 Q. These three transactions, selling the
17 biosurgery business, the Sullivan settlement, the
18 consent decree, why would you seek the approval of
19 Getinge AB to do these types of transactions?

20 A. All of these transactions had impact on
21 shareholder value and were a significant cash -- or
22 significant expenses.

23 MS. ARMSTRONG: Can we put up Plaintiffs'
24 Exhibit 215, please. Let me just do the e-mail to get
25 to the date of the document.

1 Q. So this is an e-mail from Lena Hagman to a
2 bunch of people dated November 4, 2016; is that correct?

3 A. Yes, that is correct.

4 MS. ARMSTRONG: Can we turn to the attachment
5 to this document.

6 Q. Okay. There's an announcement that's attached
7 to this e-mail and it says, "New governance model and
8 structure for CD sites."

9 Have I read that correctly?

10 A. Yes, you have.

11 Q. What does CD stand for?

12 A. Consent decree.

13 Q. Would you look at the second paragraph and
14 read the first two sentences?

15 A. "Each site will be led by a managing director
16 with full executive authority. Local site supply chain,
17 local site R&D, and selected local site support
18 functions will report with the solid lines to the
19 managing director."

20 MS. ARMSTRONG: Can we come down to the
21 Merrimack and Hudson section.

22 Q. According to this section, who was named the
23 managing director for the Atrium sites?

24 A. I was the managing director, and also later on
25 it shows I'm president of Atrium.

1 Q. And to be clear, there are other sites that
2 are governed by the consent decree, right?

3 A. That is correct.

4 Q. But the person in charge of the Atrium site
5 was whom?

6 A. That was me. Thank you.

7 MS. ARMSTRONG: Can we go to the next page,
8 please.

9 Q. Look at the bullets. The line above the
10 bullets it says, "The following local functions," and
11 we're still in this section talking about the Atrium
12 sites, right?

13 A. Yes.

14 Q. The line above the bullet says, "The following
15 local functions and respective leaders will report
16 directly to Chad in his new role."

17 Have I read that correctly?

18 A. Yes, you have.

19 Q. And then the first bullet is R&D, Scott
20 Corbeil. Who did he work for?

21 A. Atrium Medical Corporation.

22 Q. And then the second bullet is manufacturing
23 engineering and FSE, Harry Osman. Who did he work for?

24 A. Atrium Medical Corporation.

25 Q. And then the third bullet is manufacturing and

1 logistics, Jennifer Bone. Who did she work for?

2 A. Atrium Medical Corporation.

3 MS. ARMSTRONG: We can put that away.

4 Q. Before Atrium was acquired by Datascope did it
5 have insurance that covered product liability claims?

6 A. Yes, we did.

7 Q. After you were acquired by Datascope were
8 there changes to your insurance program?

9 A. Yes. We aligned with what the other indirect
10 and direct subsidiaries of Getinge use for insurance.

11 Q. Now, I expect that you hope that there will be
12 insurance coverage for this litigation, but to the
13 extent there is not, which entity would be responsible
14 for the liabilities incurred by Atrium in connection
15 with this litigation?

16 A. Atrium Medical Corporation.

17 Q. Would that include attorney's fees incurred by
18 Atrium?

19 A. Yes.

20 Q. And again, to the extent not covered by
21 insurance, which you hope for, to the extent not covered
22 by insurance, if there's any judgments against Atrium,
23 who would be responsible for paying them?

24 A. Atrium Medical Corporation.

25 Q. Does Atrium have any agreement with Getinge AB

1 by which Getinge AB has assumed Atrium Medical
2 Corporation's liabilities for this litigation?

3 A. Not that I'm aware of.

4 Q. Do you know what the accounting term provision
5 refers to?

6 A. Again, I've stated I'm not a financial expert,
7 but I have a pretty -- I have a rough understanding,
8 yes.

9 Q. Tell us your rough understanding.

10 A. So a provision is basically a -- it's an
11 amount of money that you could potentially have to spend
12 in the future. So we recognize this as a potential
13 liability in the future. So that's why we've recognized
14 it on our books, but it's not something you have to pay.
15 It's not been a predetermined piece. It's an estimate.

16 Q. Let's break that down a little bit. Did
17 Atrium recognize a provision on its 2018 profit and loss
18 statement, did you recognize a provision that
19 corresponded to the potential expenses of the mesh
20 litigation?

21 A. Yes, we recognized an expense of \$200 million.

22 Q. Do you know whether or not that provision
23 accounts for insurance reimbursement?

24 A. It does not account for insurance
25 reimbursement.

1 Q. So if the liabilities included in the
2 provision, if they are reimbursed by insurance, will
3 Atrium be out of pocket any money?

4 A. No, it would not.

5 Q. Even with this litigation, the mesh litigation
6 in 2017 and 2018, has Atrium Medical Corporation been
7 able to pay its obligations as they come due?

8 A. Yes, it has.

9 Q. In the absence of an extraordinary expense,
10 does Atrium Medical Corporation expect to be able to pay
11 its obligations as they come due in 2019?

12 A. Yes, we do.

13 Q. If you had an extraordinary expense and Atrium
14 were not able to pay its obligations as they come due,
15 what would you do?

16 A. We would basically ask for a loan from
17 Datascope or some other entity within the Getinge Group.

18 Q. If you were a stand-alone company and you had
19 an extraordinary expense and couldn't pay your
20 obligations as they come due, what would you do?

21 A. I would ask for a loan from a bank or some
22 other financial instrument.

23 Q. Does Atrium maintain its own officers and
24 board of directors?

25 A. Yes, it does.

1 Q. Does Atrium maintain bylaws separate from
2 Getinge AB?

3 A. Yes, it does.

4 Q. Does Atrium maintain its own financial
5 records?

6 A. Yes, it does.

7 Q. Who are the members of the board of directors?

8 A. Current members are Jens Viebke, Gary Sufat
9 and myself.

10 Q. Do you have meetings?

11 A. We have meetings, yes.

12 Q. And Atrium is not a publicly traded
13 corporation?

14 A. No, it's not.

15 Q. Are you always as formal as a publicly traded
16 corporation might be?

17 A. No. We meet on a regular basis and in terms
18 of quarterly reviewing numbers and things that don't
19 necessarily create minutes, let's say.

20 Q. Would you consider Atrium to be a single
21 economic entity with Getinge AB?

22 A. So this is a terminology I'm not familiar
23 with. In the terms of it as a publicly traded company
24 that you have to report consolidated financial results,
25 then yes, I would consider that -- again, not knowing

1 that terminology, it's a scary sounding term that -- I
2 would not necessarily say that we are a single one
3 entity as it goes through there.

4 Q. Why not?

5 A. It's basically we function as our own
6 independent organization. I mean, we have 500 people
7 who come to work every day. We make two and half
8 million chest drainage devices. So, you know, we have
9 the ability to function on our own if we needed to.

10 Q. Is Atrium a zombie company?

11 A. Atrium is not a zombie company. As I stated
12 earlier, we make two and a half million chest drainage
13 devices that hospitals depend on for surgeries around
14 the world. We make more than 50,000 covered stents per
15 year. We make more than 20,000 grafts per year. We've
16 made more than a hundred thousand mesh pieces, you know,
17 on a regular basis. So we are a functioning
18 organization.

19 MS. ARMSTRONG: That's all I have, your Honor.

20 THE COURT: All right. Well, that's good
21 timing.

22 It's five of 5:00. So what we'll do now is
23 we'll break and start with cross-examination at 9:00
24 a.m. tomorrow. All right.

25 (Trial adjourned at 4:55 p.m.)

C E R T I F I C A T E

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2
3
4 I, Susan M. Bateman, do hereby certify that the
5 foregoing transcript is a true and accurate
6 transcription of the within proceedings, to the best of
7 my knowledge, skill, ability and belief.
8
9

10 Submitted: 9-24-19

/s/ Susan M. Bateman
SUSAN M. BATEMAN, LCR, RPR, CRR

11
12 I, Susan M. Bateman, certify that the foregoing is a
13 true and correct copy of the transcript originally filed
14 with the clerk of court on October 25, 2019, and
15 incorporating redactions of personal identifiers
16 requested by The Honorable Landya B. McCafferty in
accordance with Judicial Conference policy. Redacted
characters appear as a blank line on the paper copy and
a black box on the electronic transcript

17 Dated: 10-25-19

/s/ Susan M. Bateman
SUSAN M. BATEMAN, LCR, RPR, CRR

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