

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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IN RE: ATRIUM MEDICAL CORP. *
C-QUR MESH PRODUCTS LIABILITY * No. 16-md-02753-LM
LITIGATION * September 10, 2019
* 9:07 a.m.
*
* * * * *

REDACTED TRANSCRIPT OF DAY TWO OF MOTION HEARING
MORNING SESSION

BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

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I N D E X

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P R O C E E D I N G S

1
2 THE CLERK: All rise for the Honorable Court. The
3 Court has before it for consideration today Day Two in the
4 Motion to Dismiss hearing in In Re: Atrium Medical Corp. C-Our
5 Mesh Products Liability Litigation, MDL Docket Number
6 16-md-2753-LM.

7 THE COURT: Good morning, all. I want to say thank
8 you to counsel for significantly narrowing the scope of the
9 redactions, and we can go over these at a time when we have a
10 break, but I was very pleased to see that this morning. And
11 so, I know we're continuing with some videotaped depositions of
12 your witnesses, and so any other housekeeping matters before we
13 started today?

14 MR. ORENT: Not for plaintiffs, your Honor.

15 MR. CHEFFO: Not here, your Honor. Thank you.

16 THE COURT: All right. What is your plan for this
17 morning, just to time things out?

18 MR. ORENT: Your Honor, we have approximately an hour
19 and 7 to an hour and 10 minutes of video. That will encompass
20 two witnesses: Mr. Trevor Carlton, who was the former
21 president of Atrium, as well as Mark Brown, who was an
22 individual in sales and marketing. After those two, we
23 anticipate calling plaintiffs' expert Mr. Dana Messina. He's
24 our financial expert. And then that will complete plaintiffs'
25 case.

1 THE COURT: So, your case may be in by noon, noonish?

2 MR. ORENT: That would my hope, your Honor, at least
3 the direct portion of the examination. I don't know how long
4 defendants' cross will be.

5 THE COURT: All right. And is Messina one of the --
6 no, Messina is not one of the two.

7 MS. ARMSTRONG: He is, your Honor.

8 THE COURT: He is, that you want certain things
9 redacted?

10 MS. ARMSTRONG: Yes, your Honor.

11 THE COURT: All right. And you've done what I've
12 asked with respect to only requesting a seal of the courtroom
13 for one portion of his testimony?

14 MS. ARMSTRONG: We've made a proposal to plaintiffs'
15 counsel as to which part of the testimony we would like the
16 courtroom closed during.

17 MR. GLASSER: So, the way we've reordered his exam is
18 so that, basically, all the qualitative things that have
19 nothing to do with numbers come first. Then I'll flag it for
20 the Court when it's time to switch to talk about numbers.

21 THE COURT: Assuming there's no media in the
22 courtroom, and assuming there's nobody but plaintiffs and
23 plaintiffs' counsel, we could just lock the courtroom as
24 opposed to having people have to leave.

25 MS. ARMSTRONG: That's correct, your Honor.

1 THE COURT: Make sense? Okay. So, we'll deal with
2 that, we'll cross that bridge when we get there.

3 Okay. Let's go ahead and begin, then. Attorney
4 Orent.

5 MR. ORENT: Thank you, your Honor. We are now
6 presenting by video the testimony of Mr. Trevor Carlton.

7 (Video deposition of Trevor Carlton played)

8 MR. ORENT: Your Honor, at this point we would like to
9 go ahead and play about seven minutes of Mark Brown.

10 THE COURT: Go ahead.

11 (Video deposition of Mark Brown played)

12 THE COURT: Can you pause this for one second. Remind
13 me who Mark Brown is.

14 MR. ORENT: Mark Brown, his title, I believe, was in
15 sales and marketing. I can get you that momentarily.

16 THE COURT: But he worked for?

17 MS. ARMSTRONG: Your Honor, we're going to cover this
18 in our direct of Mr. Carlton, if that will help, but I can give
19 you a preview, if you would like. He was in sales. He worked
20 for three different companies at the end of his career. He
21 worked for Getinge U.S. Sales. Prior to that he worked for
22 Maquet Cardiovascular U.S. Sales, LLC, and prior to that he
23 worked for Atrium. And it's going to be part of the testimony
24 about what happened with the Sales and Service Unit.

25 THE COURT: Okay. I was just trying to get a handle

1 on who he was.

2 MR. ORENT: Your Honor, I don't think he knew, to be
3 honest with you, your Honor, and I think that's one of the
4 issues that we're trying to point out. I think that's sort of
5 clear here from the --

6 THE COURT: Okay. Go ahead. Sorry for the
7 interruption.

8 (Video deposition of Mark Brown resumed)

9 MR. GLASSER: We're ready to call our first live
10 witness, your Honor, but a quick biology break?

11 THE COURT: A quick what?

12 MR. GLASSER: Break.

13 THE COURT: I was just about to say we'll take a
14 morning break and be back here at 10:30.

15 THE CLERK: All rise.

16 (Recess taken from 10:19 a.m. to 10:36 a.m.)

17 THE CLERK: All rise for the Honorable Court.

18 **DANA MESSINA**, having been duly sworn by the Clerk, was
19 examined and testified as follows:

20 THE CLERK: Thank you. Please state your full name
21 and spell your last name for the record.

22 THE WITNESS: Dana Messina, M-e-s-s-i-n-a.

23 THE CLERK: Thank you very much. Please be seated.

24 DIRECT EXAMINATION

25 BY MR. GLASSER:

1 Q. And, Dana, you may need to lean, pull that microphone --

2 A. Gotcha.

3 Q. Can you tell the Court your name, please.

4 A. Dana Messina.

5 Q. Where do you live?

6 A. I live in Santa Monica, California.

7 Q. Could you please quickly describe your education to the
8 Court.

9 A. I have a bachelor degree in Mechanical Engineering from
10 Tufts and an MBA from Harvard.

11 Q. Can you please quickly walk the Court through your work
12 experience, focusing on your work as an investment banker, a
13 high-yield banker, a restructuring banker, and then on to your
14 work in private equity.

15 A. Okay. My first job out of college was as a nuclear
16 engineer. After business school I started as an investment
17 banker for a company called Drexel Burnham doing high-yield
18 banking and corporate finance; after that worked for another
19 Los Angeles investment bank where I ran its corporate finance
20 department; and then also at some point started my own firm,
21 merged with some others, and built a restructuring business
22 that was one of the largest restructuring businesses in the
23 country. I eventually sold that off and have since also made
24 private equity investments and had an investment management
25 company.

1 Q. All right. You've used a couple of terms of art. What's
2 "high-yield" banking?

3 A. "High-yield banking" is debt banking for companies that
4 are below investment grade, meaning they're generally small- to
5 mid-size companies.

6 Q. And you're raising -- you're doing transactions with them?

7 A. Yeah. Generally leveraged buyouts where a majority of the
8 purchase price is debt.

9 Q. Okay. What is "restructuring banking"?

10 A. "Restructuring banking" is for companies that are in
11 financial distress or in some sort of trouble where they have
12 more debt than they can service and they need advice on how to
13 restructure their business and their finances.

14 Q. Approximately how many years did your career focus on the
15 banking aspects we've just discussed?

16 A. Probably 20 years, 20-plus years.

17 Q. All right. And now at some point you also started doing
18 private equity investments. Describe that work for the Court.

19 A. Okay. In 1992 I started buying businesses and building
20 them up, bought a band instrument business, bought a piano
21 company, took it public, bought a truck-manufacturing business,
22 a paper company, things like that.

23 Q. What the most famous of the companies that you bought and
24 grew?

25 A. Steinway & Sons, probably. At the time when we started

1 with the band instrument business it was very small. We bought
2 Steinway & Sons, which is sort of a well-known, iconic brand,
3 and built it up to, I think when we sold it we were the second
4 largest music business in the world.

5 Q. And what year did you sell it?

6 A. 2013.

7 Q. And what years did you run it?

8 A. As a public company from 2006 through 2011, and as a
9 private company before that I ran it from '92, when we bought
10 the band instrument business, until it went public.

11 Q. All right. And what was your official role in that
12 company?

13 A. I was the CEO.

14 Q. So, you have a career as a banker?

15 A. Correct.

16 Q. You have a career as a private equity investor. Have you
17 also worked regularly for the United States of America
18 Department of Labor, and, if so, for how long?

19 A. I think it's 28 years now I've been the primary financial
20 consultant and expert witness for the Department of Labor on
21 complex financial transactions.

22 Q. So, can you give the Court an example of some of the
23 investigations that you help the Department of Labor conduct
24 and some cases that have garnered some headlines?

25 A. Probably the most famous would be Enron, but I've worked

1 with them on companies like the Tribune Company and have done
2 trials for them mostly in ESOP-related companies and have
3 probably done three or four trials that have gone to verdict
4 for them.

5 Q. And in those -- in that work you're typically the
6 financial expert for the Department of Labor looking at what?

7 A. Generally -- so, I've done probably 100-plus
8 investigations for them. They typically involve companies that
9 engage in ESOPs, where a company is selling itself to its
10 employees, and there's a purchase price, there is a significant
11 amount of debt involved, they're very complex transactions, and
12 if something has gone wrong the Government will investigate
13 them, and if it's gone really wrong and there's a dispute,
14 occasionally they don't settle and they go to trial.

15 Q. Okay. So, for example, the Tribune case was one of the
16 larger ESOPs in the country. How big a transaction was that?

17 A. It was, I think, 13 billion.

18 Q. And you were the expert for the Department of Labor on
19 unpacking that?

20 A. Well, I was a consultant on that one, because it didn't go
21 to trial. That one settled. Enron I was a consultant; it
22 didn't go to trial. But on something like Sentry, which is a
23 small manufacturing company, where there was just a verdict I
24 think a month ago, so that one I wasn't an expert consultant.
25 I was an expert witness because it went to trial.

1 Q. Okay. And has your work as a high-yield banker and as a
2 private equity investor made you familiar with the analysis of
3 financial statements?

4 A. Sure.

5 Q. Is it fair to say that your entire career has involved the
6 analysis of financial statements?

7 A. Very much so.

8 Q. All right. Has your work made you familiar with the
9 operation of related companies and economic structure, such as
10 the one at issue in this case where you have a parent and many
11 subsidiaries?

12 A. Yes.

13 Q. Focusing in on your work as an investment banker in the
14 high-yield market, describe for the Court how that involves
15 solvency analysis.

16 A. So, when you're doing a leveraged buyout -- let's say
17 you're buying a company for a billion dollars and you're using
18 a majority of debt -- for that transaction to get completed for
19 the bankers and the other lenders to be happy, generally they
20 want to see a solvency opinion or a solvency analysis as part
21 of that to make sure that the company is not incurring more
22 debt than they can service.

23 Q. Is this also true in your career in private equity
24 leveraged buyouts?

25 A. Sure.

1 Q. Do these similar concerns exist?

2 A. Yeah. If you're buying a company, it's got to be
3 feasible. The amount of debt you take on has to be
4 serviceable.

5 Q. Are ESOP transactions also -- do they also involve debt,
6 financial analysis and complex corporate structures?

7 A. Yes.

8 Q. Okay. In this case what did we ask you to opine on?

9 A. You asked me to opine whether or not Atrium and Getinge
10 operated as a single economic entity for business purposes and
11 also whether or not Atrium was solvent and financially viable
12 as an independent entity from 2014 on.

13 Q. Okay. Focusing in on the question of whether Getinge and
14 Atrium operated together as one economic entity, were you
15 comfortable that your prior education and experience allowed
16 you to understand and address that question?

17 A. Yes.

18 Q. Focusing in on the question of Atrium's
19 undercapitalization or solvency, were you comfortable that your
20 prior education and experience allowed you to understand and
21 address those questions?

22 A. Yes.

23 MR. GLASSER: Your Honor, I move to admit Mr. Messina
24 as a financial expert to opine on his solvency analysis and his
25 analysis of how the parent and subsidiary companies in this

1 case operated together.

2 MR. CHEFFO: I don't think we have challenged for the
3 purposes of this hearing his qualifications. Obviously, we do
4 to his and conclusions and methodology, but the qualifications
5 we don't, your Honor.

6 THE COURT: All right. That motion is granted.

7 Q. Focusing in on -- and I don't want any numbers yet. We'll
8 get to the point in the exam when we switch to numbers, and
9 I'll kind of announce it, okay? But just focusing in on the
10 question of whether Getinge and Atrium operated together as one
11 entity, what was your opinion from a financial and control
12 perspective after January 1, 2014?

13 A. That Getinge and Atrium operated as a single economic unit
14 from a business and control perspective.

15 Q. Okay. And focusing in on the question of Atrium's
16 undercapitalization or solvency, what is your opinion on that
17 issue?

18 A. That Atrium from 2014 on was so stripped of its value, its
19 assets and its financial functions that it couldn't possibly
20 operate as an independent entity. But for the benevolence of
21 Getinge and its other subsidiaries it was financially
22 insolvent.

23 Q. Because the Court has asked us to group the
24 financial-related testimony at the end, I want to first focus
25 in on the control and operating-together aspects of the case,

1 okay?

2 A. Okay.

3 Q. Do Atrium and Getinge commingle cash?

4 A. Yes.

5 Q. I want to call up Exhibit 47. The Court has already seen
6 it. It's the Cash Pool Agreement. I just want to ask you what
7 your understanding of how the Cash Pool Agreement operated is.

8 Let's first go to the first paragraph. Who is the
9 company that the -- define the term "the company"?

10 A. "The company" is Getinge.

11 Q. Okay. And then "participants" are who?

12 A. Would be the subsidiaries.

13 Q. All right. So, now let's go to Section 1.2 and blow that
14 up. What is your understanding of how Section 1.2 functions?

15 A. So, the way this works is Getinge has a bank account, all
16 the cash moves up into Getinge, and that there are notional
17 information entries that are made at the subsidiary levels to
18 account for the amount of cash that they've contributed to that
19 cash pool.

20 Q. All right. Let's go to Section 2.1. What is your
21 understanding of Section 2.1? And I'm basically looking at the
22 highlighted part.

23 A. So, what this shows you is that the cash at the subsidiary
24 levels will be zero or some number very close to zero, and that
25 the cash will be somewhere else; and, again, there will be a

1 notional journal entry as to the amount of cash that a
2 subsidiary has that's being held by Getinge.

3 Q. And that consolidation account, is that owned by the
4 company, Getinge?

5 A. Yes.

6 Q. All right. So, are there other ways that parents and
7 subsidiaries could use their cash together or consolidate it
8 for reporting purposes but still have cash?

9 A. You could -- entities could have their own bank accounts,
10 their own bank lines, things of that nature, where their cash
11 will be separate, or they can do it this way.

12 Q. So, would there be any way to more commingle cash than the
13 way Getinge does it?

14 A. No. This is about as commingling as you can get when you
15 share a bank account.

16 Q. All right. Now, in opening Mr. Cheffo discussed that he's
17 going to discuss with you some of your work at Steinway. How
18 did Steinway handle this among business divisions, for example?

19 A. At Steinway we had two divisions that we kept very
20 separate, because we made business decisions for them and we
21 were looking at future decisions where we wanted to maintain
22 sort of the corporate formalities; and so, our band business
23 had a separate bank line and separate accounts, bank accounts,
24 from our piano division. But below that we ran it very much
25 like this, so the subsidiaries below each of those entities we

1 were protecting were run where we consolidated cash for
2 efficiency purposes in this way.

3 Q. But Steinway, the reporting company, the holding company,
4 did not, in fact, have everybody else's cash, correct?

5 A. Correct. We did not.

6 Q. It just reported it on a consolidated basis, correct?

7 A. Correct.

8 Q. So, that's a different way to do it. And how is that
9 different than what Getinge is doing in terms of respecting
10 corporate form?

11 A. Where we made an effort to respect corporate form for
12 business decision reasons, they made business decisions that
13 were more akin for efficiency and not to respect corporate
14 form. This is very sort of typical of where you're not
15 respecting corporate form when you make decisions like this.

16 Q. Okay. Now, I want to flag how this -- don't tell me the
17 exact numbers -- but when we turn to, for example, the balance
18 sheet of Atrium how will this cash management express itself on
19 the balance sheet? Just give me like, you know, directionally.

20 A. So, you will see that they have a bank -- their own bank
21 account with very little in it, and then you will see a ledger
22 line that shows cash that's held by Getinge. That would be the
23 information account --

24 Q. Okay.

25 A. -- which would be much larger.

1 Q. How does the -- I'm done with the Cash Pool Agreement.
2 How does the manner in which Getinge controls certain core
3 corporate functions on behalf of Atrium affect your view that
4 they operate as an integrated enterprise?

5 A. Most of the core business functions of Atrium had been
6 taken over and transferred to other units of Getinge and
7 Getinge itself.

8 Q. And what are these type of core business functions? Let's
9 get more concrete on what type of functions we're talking
10 about.

11 A. Legal, financial, information technology, human resources.
12 So, really what had happened was everything but for
13 manufacturing was transferred away from Atrium.

14 Q. And Mr. Hjalmarson was shown a piece of the Business
15 Service Agreement that had to do with the pricing for that, but
16 let's call up Exhibit 87, the Services Agreement, and walk
17 through the functions that Getinge AB took away.

18 A. Okay.

19 Q. All right. Let's go to the first page, and let's see who
20 this is by and between, this Services Agreement.

21 A. It's between Getinge and Atrium.

22 MR. GLASSER: Can you blow that up, Mr. Knowles.

23 Q. Getinge AB itself?

24 A. Yes.

25 MR. GLASSER: All right. And now let's go to Page 7

1 with -- oh, we've got to go down to the "Whereas" to see what's
2 happening in this agreement, the "Whereas" clause on Paragraph
3 B, first page, Mr. Knowles.

4 Q. It says here, "All companies of the group have a
5 continuing need for advice and assistance in various areas,
6 including finance, information technology, human resources and
7 management as set out in Annex I." Do you see that?

8 A. Yes.

9 Q. And is Annex I where the list of services that will be
10 provided appears?

11 A. Yes.

12 MR. GLASSER: So, can we go to Annex I, Mr. Knowles,
13 which is Page 7. And let's just blow that up.

14 Q. So, what are the functions that after the purchase of
15 Atrium Getinge AB is taking over?

16 A. Legal, accounting, finance, information technology, human
17 resources.

18 Q. Let's go to the next page.

19 A. Management, sales and marketing.

20 Q. All right. And so, is it possible to run a company more
21 independently than this?

22 A. I think you mean is it more --

23 Q. I guess what I'm saying is why would a parent company make
24 these decisions to take all these functions away?

25 A. Well, the parent company would do it for efficiency. A

1 company operating as a standalone unit would never make these
2 sorts of decisions, but if you're operating as part of the
3 bigger entity and you're trying to gain efficiencies you would
4 do this, but you wouldn't then claim you can operate, the
5 remaining company could operate independently.

6 Q. Or even survive?

7 A. It could survive, no.

8 Q. All right. Now, there are some other agreements of this
9 type. I'll just flag them for the record. I don't think we
10 need to grind through them. We can brief them. Exhibit 88,
11 116, 115, 117, those are the other business services types
12 agreements that cover IT and other business support. Have you
13 reviewed all of those?

14 A. Yes.

15 Q. Now, how does the onboarding process for employees
16 expressed in Exhibit 40 affect your view of whether they
17 operated as an integrated enterprise?

18 MR. GLASSER: Could we call up the employee handbook,
19 Exhibit 40.

20 A. Well, it's just another sort of factor to show that from
21 an operating and control standpoint the business was really
22 part of Getinge and everybody was working for the benefit of
23 Getinge as opposed to the benefit of Atrium.

24 Q. Now, did we do a search to try and figure out how many
25 times the word "Getinge" is used in this employee handbook?

1 A. Yeah, we did that, and I think it was some number around
2 250 times.

3 Q. And is the word "Atrium" in here at all?

4 A. I believe it's in there once.

5 Q. All right. Let's turn to Page 41 and see how Atrium is
6 used.

7 MR. GLASSER: Let's blow that up, Mr. Knowles.

8 Q. What's this say?

9 A. You want me to read it?

10 Q. Yeah.

11 A. "Legacy Atrium employees to step down to 80 hours of
12 rollover will be in four phases."

13 Q. So, they're described as "Legacy employees"?

14 A. Correct.

15 Q. All right. Now, I don't want to go over the Ten Golden
16 Rules, but did you review those in reaching your opinion?

17 A. I believe so.

18 Q. Yeah. And then there's also a series of policies imposed
19 by Getinge on all its operating units. Did you review those
20 policy manuals?

21 A. Yes.

22 Q. All right. And did the level of micromanagement in those
23 policy manuals affect your view that this company was operated
24 as one enterprise?

25 A. Yes.

1 Q. How?

2 A. The level of micromanagement that you saw of Getinge of
3 the Atrium subsidiary was more extreme than I think I've ever
4 seen. It was detailed to the point of how many millimeters
5 from the edge of a business card a logo had to be. So, the
6 level of sort of controlling guidance was fairly intense.

7 Q. All right. Let's walk through the actual exhibits in
8 evidence that you cite in your opinion.

9 MR. GLASSER: Exhibit 85, please, Mr. Knowles.

10 Q. What is Exhibit 85, Mr. Messina?

11 A. This is Getinge's writing guidelines that they provide to
12 their subsidiaries, including Atrium.

13 Q. So, this is one of the policies that are required to be
14 followed, so far as you understand?

15 A. That's my understanding.

16 Q. All right. Let's turn to Page 4 of 35. You cited this in
17 your report. "Everything we put down in words must follow the
18 Getinge tone of voice. This document presents specific rules
19 for Getinge product names as well as selected rules for writing
20 American English, our corporate language."

21 Why did you cite this in your report?

22 A. Well, it just shows you that everything is about Getinge,
23 it's no longer about Atrium, and they're very specific about
24 wanting to promote and operate and have their employees operate
25 as part of Getinge, not part of Atrium.

1 Q. Let's turn to Exhibit 84. What is Exhibit 84?

2 A. This is, as it says, the Video Guidelines.

3 Q. And you cited Page 120, so let's go to Page 120. So,
4 blowing this up, "Use this section for guidance on how to apply
5 text, colors and graphics to ensure that every video is
6 distinctly Getinge. The following guidelines are mandatory for
7 all videos, excluding high-end external marketing productions."

8 Why did you cite this?

9 A. Again, it's just another example of the direction of the
10 business being to be part of Getinge that eliminate sort of any
11 notion of an existence of Atrium as a standalone business.

12 "You are part of Getinge and everything that you do has to be
13 distinctly Getinge," and this is -- it's not optional, it's
14 mandatory. So, when you think about trying to operate, Atrium
15 trying to operate independently, they don't really have that
16 ability.

17 Q. All right. Exhibit 73, the digital guidelines. Okay.
18 What are these?

19 A. These digital guidelines generally refer to things like
20 websites and things of that nature, and these are the
21 guidelines that they're given.

22 Q. And you cited Page 8 of 47. Let's turn to that.

23 A. Yeah, this is just one more example. It's just the
24 accumulation of examples of the business being run as Getinge.

25 Q. Exhibit 74, the Distributor Guidelines. What are these

1 guidelines for?

2 A. These are for the distributors that sell the Getinge
3 products.

4 Q. You cited Page 5 of 23. Let's go to what you cited in
5 your report. "When you use templates from Getinge, you are not
6 allowed to include any information about other brands. All
7 marketing material must be approved by your local Getinge
8 marketing representative."

9 Why did you cite that?

10 A. Just, again, it's just another cumulative example of,
11 "We're running this as Getinge. We are not running this as
12 Atrium. We're running this as Getinge."

13 Q. Okay. Exhibit 75, the E-learning Guidelines. What is
14 "E-learning"?

15 A. "E-learning" is when a company such as Atrium or Getinge
16 puts instructional-type videos or materials together and
17 websites for people to understand how to use their products.

18 Q. So, you cited Page 7 of 28. Why did you cite this?

19 A. Again, it's just another example of Getinge forcing the
20 notion that everything is about Getinge and everything is about
21 promoting and creating value at Getinge as opposed to Atrium.

22 Q. Exhibition guidelines, Exhibit 76.

23 A. These are when they go to a trade show or other types of
24 events where they display their products or meet their
25 customers or do some sort of marketing of their brands or

1 products.

2 Q. All right. You cited Page 30 of 70. So, this has to do
3 with reception and hospitality areas.

4 A. So, "Fresh flowers add warmth. Only display one type of
5 flower in clear glass vases." This was, in my mind, sort of
6 just an extreme level of micromanagement beyond sort of
7 anything that you see at any company I've been involved with,
8 and I've been involved with a lot of companies. But this is
9 sort of wow.

10 Q. All right. Page 78, the Facilities Guidelines. I mean
11 Exhibit 78. What are these?

12 A. Guidelines on how the facilities are going to be managed.

13 Q. All right. You cited Page 29 of 56. What does this show?

14 A. Again, this is just two different color fabrics in that,
15 to the extent you have a facility and you put furniture or some
16 sort of covering in the facility, it's supposed to be at or
17 between these two colors. Again, it's just -- it's an extreme
18 level of micromanagement.

19 Q. Exhibit 79, the Merchandise Guidelines. What are
20 merchandise guidelines?

21 A. So, companies oftentimes have things that they give away,
22 like coffee cups and mugs and pens and things like that, and
23 this is the guidelines that they've imposed upon their
24 subsidiaries on how they are to do that.

25 Q. All right. So, you cited Page 12 of 18. What's this one?

1 A. This is just they're being dictated to what their coffee
2 cups have to look like.

3 Q. Okay. Exhibit 80, Office Materials Guidelines. What are
4 these?

5 A. Just sort of self-explanatory. The office materials that
6 they can use and produce and things that they're supposed to
7 have.

8 Q. So, you cited Page 6 of 16. You cited the corner over
9 here. Why did you cite that?

10 A. Well, this is just an example of the level of detail with
11 which they operated their subsidiaries and provided them with
12 guidance. They're telling them that your business card has to
13 have the logo 5 millimeters from the right side and
14 6 millimeters from the top. There's essentially no detail
15 that's missing.

16 Q. From these guidelines?

17 A. From these guidelines.

18 Q. All right. Exhibit 81, Product Branding Guidelines. What
19 are these?

20 A. Just when they brand their products. It's just, you know,
21 what they produce, what the names are going to be, what the
22 look is going to be.

23 Q. And you cited Page 24 of 31. And why did you cite that?

24 A. Well, this is, you know, you think about these computers
25 in here. This is their splash screen. So, they want whenever

1 a computer is turned on at their facilities, or you don't have
2 your own sort of home screen, you have this splash screen. You
3 might have a picture of your kids. I might have a Steinway
4 logo. This is the level of detail, and it doesn't say
5 "Atrium," it says "Getinge."

6 Q. Exhibit 82, the Service Vehicle Guidelines. What are
7 these for?

8 A. You know, all the vehicles that deliver product or are
9 used for their business.

10 Q. And you cited Page 4 of 12, Striping Rules.

11 A. Yeah. They want to be very clear on what kind of stripes
12 and how the stripes are put on their business -- on their cars.

13 Q. Exhibit 83, the Signage Guidelines. What are these?

14 A. As it notes, the signage at the facilities and what it's
15 going to look like and what it's going to say.

16 Q. And you cited Page 8 of 19. And what do those show?

17 A. These are your options.

18 Q. They are approved sign options?

19 A. These are the approved sign options.

20 MR. GLASSER: And let's call up Exhibit 163,
21 Mr. Knowles.

22 Q. The sign at Merrimack. Does it meet these requirements?

23 A. It does. It says "Getinge."

24 Q. Okay. Does financial dependency of Atrium on Getinge
25 affect your view of whether they operated as an integrated

1 economic enterprise?

2 A. Sure. But for the financial, let's call it benevolence or
3 input or support of Getinge, I don't know that Atrium could
4 operate for 30 days by itself.

5 Q. Okay. And that's true on and after January 1, 2014?

6 A. Correct.

7 MR. GLASSER: Your Honor, we're going to move to the
8 financial part of the examination.

9 THE COURT: All right. And everybody who is in the
10 courtroom now is either a plaintiff in the case or plaintiffs'
11 counsel in the case. Anybody in the courtroom not involved in
12 the case?

13 UNIDENTIFIED SPEAKER: Intern.

14 THE COURT: You're an intern for?

15 UNIDENTIFIED SPEAKER: For Judge Laplante.

16 THE COURT: Oh, okay.

17 MS. ARMSTRONG: We have no objection, your Honor.

18 THE COURT: Okay, good. All right. So, what we're
19 going to do is just lock the courtroom for this portion. My
20 understanding, based on the offer of proof, is that there will
21 be testimony about profit and loss statements, specific
22 detailed financial analysis, and on that basis we're going to
23 seal this testimony for the time being, and I'll review it.
24 Obviously, if it seems to me as it's coming in that it's just
25 not worthy of this level of seal, I will ask for argument on

1 it, but at this point I am going to handle it this way for
2 reasons stated in my order that I issued in advance of the
3 hearing. So, we will lock the courtroom at this point, and now
4 we'll get into the specific financials.

5 **CLOSED COURTROOM - SEALED PROCEEDINGS:**

6 THE COURT: Go ahead, Attorney Glasser.

7 BY MR. GLASSER:

8 Q. Mr. Messina, as part of your work in this case you
9 examined the financial data that the defendants produced to us
10 of Atrium, correct?

11 A. Correct.

12 Q. And that comprised balance sheets and income statements of
13 Atrium from 2011 through December 31, 2018, correct?

14 A. Correct.

15 Q. You made some charts in your report that show what
16 happened, in your written report, right?

17 A. Right.

18 Q. Okay. I'd like to call up Messina Number 1, which is a
19 chart that was in your report. Can you just walk the Court
20 through exactly what Messina Number 1 chart shows in this case.

21 A. This shows the sales composition between their internal
22 and external accounts, plus their centrally approved and group
23 contributions which are sort of Getinge items, but you can see
24 from the red, which are their customers in their external
25 accounts, that when they moved sales from Atrium to Maquet in

1 2014 you can see the significant drop-off in sales. They
2 basically transferred their customers elsewhere.

3 Q. All right. So, let's focus in on this. In 2013 total
4 gross revenue was above \$250 million. That's right here,
5 right?

6 A. Correct.

7 THE COURT: Why is this under seal? I've seen this
8 chart before, and it's not detailed yet in terms of financials.
9 And I've seen this chart before in previous --

10 MR. GLASSER: I don't think they objected to this one
11 per se, your Honor, but I'm about to get into more financials.

12 THE COURT: Okay. Go ahead.

13 MR. GLASSER: I just put the whole...

14 Q. And then here it's somewhere under \$100 million, right?

15 A. In 2014 it's -- I think it's under -- it's closer to
16 5 million, 5 or 6 million.

17 Q. Oh, the external sales. But I'm saying even the total
18 sales --

19 A. The total sales, even their internal sales, is between --
20 it's closer to [REDACTED], I think.

21 Q. Okay. And so, this gap right here that I've just marked
22 is the value of the customers and those relationships and those
23 sales transferred away. That's the big change in the company,
24 right?

25 A. That's the annual change. If you want to talk about the

1 value, the value is something on the magnitude of \$650 million
2 in value was transferred from Atrium to other Getinge
3 subsidiaries.

4 Q. And I think you say that because they bought it here for
5 like \$660 million or \$680 million, right?

6 A. Yeah. I mean, they paid 660, they announced at the time
7 that there was \$50 million EBIT, they paid approximately 13
8 times EBIT, and so if you use the fact that EBIT went from
9 50 million in 2013, rough numbers, down to zero in 2014, that's
10 essentially the value of their customers and their external
11 sales that were transferred away from Atrium to other entities,
12 and it's about \$100 million annually of revenue.

13 Q. It's the profit margin on a recurring basis from these
14 customer relationships have been transferred away?

15 A. Right.

16 Q. Would you describe that as a major decision for a company?

17 A. Sure. I mean, it's major in a number of different ways.
18 One, it's an extraordinary amount of value to transfer from one
19 business to another. It's also a decision that will make the
20 company that it's being transferred away from unable to operate
21 independently anymore.

22 Q. It just becomes a cost center?

23 A. It's a cost center.

24 Q. And to whomever made this decision right here, do you
25 believe that the effects of transferring away \$150 million of

1 recurring gross revenue were known and knowable?

2 A. Absolutely. Sure.

3 Q. So, financial decisions like this have real-world business
4 consequences, basically?

5 A. Business decisions have financial consequences,
6 absolutely.

7 Q. And this was a major one?

8 A. That's a major decision with major financial consequences.

9 Q. Let's look at Messina Exhibit No. 2, the second
10 illustration that's in your report on net losses thereafter.
11 Let me clear that. What does this second chart show from your
12 report?

13 A. So, this just -- this shows you that after they
14 transferred the customers and the sales away from Atrium that
15 the profits that they had been reporting on the magnitude of
16 \$50 million went negative. So, all the profits went away, and,
17 obviously, in 2018 they became very negative.

18 Q. All right. And this chart, Messina Number 2, actually
19 gives them credit for the value of those centrally approved
20 items and group contributions that Mr. Hjalmarson talked about,
21 where they put transfer pricing money back in the company,
22 right?

23 MR. CHEFFO: Your Honor, excuse me. I understand
24 it's --

25 THE COURT: Okay. Go ahead.

1 MR. CHEFFO: I understand it's a Bench hearing, and
2 that's why I haven't objected to the leading, but I think
3 we're --

4 THE COURT: I agree. I think it is a bit leading at
5 times, and there are certain things that are just so factually
6 obvious to even the Court that I think you could move along.

7 MR. GLASSER: All right. Let's go to Messina Exhibit
8 No. 3, Illustration Number 3.

9 Q. So, let's start down -- what is this?

10 A. This is an income statement for the years 2014 through
11 2018.

12 Q. Where did this data come from?

13 A. It came from Atrium's financial statements.

14 Q. Can you explain to the Court what the line marked "Net
15 Profit" shows us over the period 2014 to 2018.

16 A. This just shows the net losses that were produced at
17 Atrium.

18 Q. What were the cumulative net losses over the five-year
19 period?

20 A. Roughly [REDACTED].

21 Q. Okay. What is the "EBIT" line? You used the word "EBIT"
22 before in your discussion. What does "EBIT" mean?

23 A. "EBIT" means earnings before interest and taxes. It's a
24 financial measure that people use. It's sometimes called
25 "operating cash flow." EBIT is the metric that Getinge used to

1 describe the purchase price of Atrium when they bought it, when
2 they paid the 660, 680 million, and they described it as, "We
3 paid about 13 times EBIT for this acquisition." So, it's a
4 very standard financial metric.

5 Q. So, after the decision to transfer the sales and customers
6 in 2014, what were the cumulative EBIT losses over the next
7 five years?

8 A. About negative close to [REDACTED].

9 MR. GLASSER: Okay. Let's go to Exhibit 149, please,
10 Mr. Knowles.

11 Q. So, this was an exhibit used in the Hjalmarson deposition.
12 Can you just look at Line 499 and explain to the Court what the
13 meaning of the loss numbers in Line 499 on Atrium's income
14 statement for the three years '15, '16 and '17 indicates to you
15 as a financial analyst.

16 A. So, a couple of things. One, it shows you that they're
17 selling their products for less than it costs them to make
18 them; and, two, it shows you, but for money being transferred
19 from Getinge and its other subsidiaries, there's only
20 [REDACTED] -- between [REDACTED] of external sales coming
21 in, there's [REDACTED] of cost of product going out,
22 and so that when you try and think about this business
23 operating independently or that it's being managed in a way
24 that Atrium can stand alone, service its creditors and things
25 of that nature, it becomes fairly obvious that it can no longer

1 do that.

2 Q. Let's go back to Messina Exhibit -- Messina Illustration
3 Number 3. So, we saw that the cumulative EBIT losses are
4 approximately [REDACTED] over this period. Does this alone
5 tell you whether the company is solvent or insolvent, or do you
6 need to also look somewhere else?

7 A. You also have to look at the balance sheet. So, for
8 instance, if there's more than [REDACTED] of cash or working
9 capital on the balance sheet to make up for these losses, you
10 might run into a different conclusion than if you just looked
11 at this.

12 MR. GLASSER: So, let's go back to Exhibit 149, and
13 let's put up both this first page and the second half. Oh, we
14 need to go to the balance sheet. Sorry. My fault. Let's go
15 to Exhibit 125.

16 Q. This is the 2018 balance sheet. Are there more than
17 [REDACTED] of cash available to pay these losses?

18 A. No.

19 Q. So, is this company insolvent?

20 A. The combination of the lack of working capital, positive
21 working capital, and operating losses would fit sort of the
22 classic definition of "insolvency."

23 Q. Which is?

24 A. Not having enough -- not having the ability to pay your
25 debts as they come due, and sort of, more specifically, not

1 having the ability to pay your debts as they come due within
2 the next year independently.

3 Q. All right. Let's go to Messina Exhibit No. 4, the current
4 ratio chart. What is the current ratio chart?

5 A. The current ratio is -- it's a very standard financial
6 metric, again. It describes the level of current assets
7 divided by current liabilities. It's a measure of your working
8 capital.

9 Q. So, what is a "current asset" and what is a "current
10 liability"?

11 A. A "current asset" is an asset that can be converted into
12 cash generally within a year. So, it usually includes cash,
13 accounts receivable, and inventory. Those are the primary sort
14 of components of current assets.

15 And then "current liabilities" would be accrued
16 expenses, accounts payable and any amount of debt that's coming
17 due within the next 12 months.

18 Q. All right. And for each of these years, 2015 through
19 2018, either including or excluding group accounts, which we'll
20 get to, what is the current ratio of this company?

21 A. It's below 1. So, that means that there are more
22 liabilities than they have assets.

23 Q. On a current basis?

24 A. On a current basis.

25 Q. And does that meet your definition, your classic

1 definition of "insolvency," of not being able to meet your
2 debts as they are expected to come due within the next year?

3 A. If your current ratio is below 1 and in addition to that
4 you have operating losses, that will generally meet the classic
5 definition of "insolvency."

6 Q. All right. And while this is expressed as a percentage or
7 as a ratio -- by the way, why did you do one including group
8 accounts and one excluding group accounts?

9 A. The expert for the defendants made a claim that he spoke
10 to the CFO about the financial statements and the accounts and
11 that certain current liabilities should not be included or that
12 the Getinge account should not be included when calculating
13 this current ratio for purposes of insolvency, and so we
14 calculated the same ratio excluding the group accounts to see
15 if that had any impact on the solvency of the business.

16 Q. Did it?

17 A. No. It was still insolvent, even if you exclude the group
18 accounts.

19 Q. And while this is a ratio, this .55 and this .42, it can
20 be expressed as money, in dollars, right?

21 A. It can be, sure.

22 MR. GLASSER: So, we looked at Exhibit 125, which was
23 the balance sheet from 2018. Let's look at Exhibit 31,
24 Mr. Knowles. Exhibit 31. Okay. Let's go back one page on
25 Exhibit 31, just so we can see what it is.

1 Q. So, this Exhibit 31 is the 2016 and 2017 balance sheet,
2 right?

3 A. Right.

4 Q. So, did I ask you to look at the 2017 and the 2018 balance
5 sheet to just convert those ratio numbers into cash numbers so
6 the Court could see what the magnitude is?

7 A. Yeah. Instead of having to go through --

8 MR. GLASSER: All right. Let's put up Messina
9 Illustrative Number 5 that just did that math.

10 Q. So, based on Exhibit 31, what's the working capital
11 deficit of the company in 2017?

12 A. [REDACTED].

13 Q. And on Exhibit 125 what is the working capital deficit?

14 A. It's about [REDACTED].

15 Q. All right. So, remember, we go back to the EBIT losses
16 that are approximately [REDACTED]. Is this a company with
17 enough working capital to cover those losses?

18 A. No.

19 Q. Let's go to Messina Number 6, please, Messina Illustrative
20 Number 6. What does this chart show from your report?

21 A. So, this shows the total current liabilities of the
22 business -- remember, liabilities that are going to be due
23 within the next year -- and you can see that after 2014 there
24 is a significant jump in the current liabilities. They go from
25 [REDACTED]. And you should also note that those

1 liabilities are primarily in what are called the accounts
2 payable group and the short-term group financial liabilities.

3 So, these are debts that Atrium owes to Getinge, and
4 so Getinge set up a system where Atrium owes them money, and it
5 was set up in a way that would make those funds owed Atrium
6 more senior to any other creditor or anyone else at Atrium
7 that's owed money.

8 Q. All right. I was going to -- so, when you say that,
9 you're basically citing the security agreements and guaranties
10 that we've seen in this case, right?

11 A. Correct.

12 Q. Let's go to Exhibit 103, for example. So, this is the
13 security agreement that the Court has already seen executed in
14 July of 2013, right, July 1st, 2013?

15 A. Correct.

16 Q. And we've already looked at that Atrium signed it. So, I
17 just want to go to the amount. Can you tell the Court what the
18 amount of the borrowing is?

19 A. [REDACTED] in total.

20 Q. [REDACTED].

21 MR. GLASSER: And let's go to Page 26, Mr. Knowles. I
22 think it's Page 26. Let's go back a few pages. I'm sorry. I
23 want to go to the last page of text. Maybe it's page --
24 Section 26, Page 23. I'm sorry. All right.

25 Q. And what's your understanding of whether Atrium is jointly

1 and severally liable for this [REDACTED] of debt?

2 A. It's pretty clear that they are.

3 Q. And did you review the definition of the collateral in
4 this agreement?

5 MR. GLASSER: Let's go to that definition of
6 collateral, which is on Page 2 and 3. It's right here,
7 Mr. Knowles. And then on the second page.

8 Q. Is that a fairly standard definition of "collateral,"
9 basically swooping up -- describe that.

10 A. It's a standard definition of "collateral" for a senior
11 lender, so it's essentially that the lender here has first
12 claim on all -- essentially all the assets of the business.

13 Q. All right. So, Mr. Hjalmarson testified, as you were here
14 in the court, that Atrium would be able to pay for these hernia
15 mesh lawsuits. Did you hear those questions and answers at the
16 end of his exam?

17 A. He didn't say they would be able to pay. He said they
18 would be responsible for paying.

19 Q. Is there any way that they could be financially
20 responsible, as a practical matter, given what you've seen of
21 their financials?

22 MR. CHEFFO: I object to the leading nature of these
23 questions again.

24 Q. Well, how could they pay? How could they pay?

25 A. They had no financial capability to pay, because, if you

1 think about it and look at it, there is -- the customers and
2 revenue were transferred out. So, let's say that that's of a
3 magnitude of about \$650 million. You have a business that has
4 in 2017, I think from the statements we looked at, [REDACTED]
5 of external cash coming in and more than I think [REDACTED]
6 of cost to goods sales going out. That business by itself,
7 standalone and independent, has no ability to pay any judgment
8 or settlement that's reached in this case.

9 Q. All right. And then when you said -- what took me to the
10 security arrangement we were looking -- let's go back to
11 Exhibit Illustration Number 6, Messina Illustration Number 6.
12 We were looking at this, and you said that this [REDACTED] of
13 debt was on a senior secured basis. Explain to the Court what
14 you mean by that.

15 A. Well, not the [REDACTED] but the short-term
16 financial liabilities and the group payables, which total about
17 [REDACTED], and this is just the current. There's an extra I
18 think [REDACTED] dollars of debt that's owed Getinge
19 that's of a longer-term nature. This is senior and secured, so
20 this comes before any unsecured liability of the business. So,
21 any judgment that they have in this case or any other case is
22 unsecured, and so those creditors get paid after Getinge gets
23 paid its [REDACTED], and so in short-term liabilities plus
24 whatever it's owed in long-term liabilities.

25 Q. So, you were a restructuring banker for many years. If

1 Atrium went bankrupt, declared bankruptcy, who has the secured
2 liens here?

3 A. Getinge.

4 Q. And what can Getinge do with those secured liens?

5 A. They could essentially foreclose, take back the factory,
6 and leave the creditors with nothing.

7 Q. So, would that be -- is there a concept in bankruptcy that
8 deals with that -- with the types of transfers that render a
9 company insolvent, and what are they called?

10 A. Fraudulent transfers or fraudulent conveyances.

11 Q. And do you believe that the transferring out, do you
12 believe that happened in this case?

13 A. Oh, yeah.

14 Q. Okay. What are some other examples?

15 A. In this case?

16 Q. Yeah. For example, later in 2014 were there any other
17 conveyances?

18 A. You had distributions, I think \$40 million of
19 distributions of cash that went from Atrium to Datascope and
20 eventually up to Getinge.

21 MR. GLASSER: All right. Hold on. Just, the Court
22 has already seen those, so I'm not going to pull up those
23 exhibits, but just for the record those distributions are
24 Exhibits 9 and 95, your Honor.

25 Q. And that was approximately \$40 million that was done also

1 in 2014, right?

2 A. Correct.

3 Q. All right. Let's go back to the ratio chart, which was
4 Messina Demonstrative Number 4. So, here the current ratio in
5 2014 is positive. It's your opinion that you offered in the
6 court was that on and after this date this company was rendered
7 insolvent. We know in July of 2013 they put the security
8 agreement, so that's about here, and then we know that they
9 transferred the customers January 1 from Hjalmarson, and then
10 the two distributions are here. So, why is it --

11 MR. CHEFFO: Your Honor --

12 MR. GLASSER: I haven't asked the question yet.

13 THE COURT: He's laying I think the factual foundation
14 for his question. I'm going to allow it. Go ahead.

15 Q. So, why is it that you are saying this company was
16 nevertheless insolvent even if the current ratio is positive in
17 2014?

18 A. Because when you transferred the customers and sales force
19 you transferred most of the value of the business out. You
20 knew when you transferred those customers out that this
21 business, that Atrium on a standalone basis would be operating
22 at a loss, and so it was foreseeable that the business was not
23 going to be able to independently pay its debts as they came
24 due the moment you took the customer base and transferred it
25 away.

1 Q. So, what's your opinion about whether there's injustice or
2 fraud having to do with this \$40 million of transfers after
3 that decision?

4 A. Remember, I'm not a lawyer, but the classic sort of
5 definition of "fraudulent conveyance" is, it's engaging in a
6 transaction where you've done something that is unfair to your
7 creditors. So, to the extent that you've taken away hundreds
8 of millions of dollars out of Atrium and transferred it
9 somewhere else and you now claim that Atrium by itself is
10 responsible to its creditors is sort of the classic definition
11 of it.

12 Q. There was also another transfer that we haven't gone over
13 yet, I don't think, Exhibit 97. Maybe we did.

14 MR. GLASSER: But can you pull up Exhibit 97,
15 Mr. Knowles.

16 Q. And this is a Note Assignment Agreement in December of
17 2015 for approximately [REDACTED]. Do you remember that
18 testimony with Mr. Hjalmarson on this?

19 A. Yes.

20 Q. All right. And the date of this is December 2015. Is
21 your view of -- what is a "note assignment"? What is happening
22 here? What is this doing?

23 A. So, this is another asset of Atrium's that was transferred
24 away from Atrium to another subsidiary of Getinge.

25 Q. In your opinion was Atrium insolvent on December 31st,

1 2015?

2 A. Yes.

3 Q. So, given that this [REDACTED] was transferred out, in
4 your view was that a fraudulent conveyance?

5 A. That's a fraudulent conveyance.

6 MR. GLASSER: That finishes the financial numbers part
7 of the exam, your Honor. So, we could unlock the courtroom.

8 THE COURT: Okay. And you have further testimony?

9 MR. GLASSER: I do.

10 THE COURT: Before --

11 MR. GLASSER: There's actually -- I'm sorry, I was
12 wrong. There is one more later, so let's just keep it locked.

13 THE COURT: Okay.

14 Q. All right. So, you have seen financial statements from
15 December 31 of each year 2011 through 2018, but yet your
16 opinion is it's insolvent 2014 through 2018 inclusive. Why are
17 you able to say on the dates between the data points that you
18 have that the company remains insolvent?

19 A. So, once you've made a determination of insolvency, which
20 I did at the beginning of 2014, when the value and assets were
21 transferred away, the company never made any money. Each year
22 there were losses. So, to the extent -- and it's not a
23 seasonal business, it's not a cyclical-type business. So, the
24 fact that they lost money every year, there was never a point
25 where they could have made themselves solvent from their

1 business operation, so it logically follows that they were
2 insolvent on every date in between.

3 Q. Now, it is the case that we haven't been able to review in
4 this case statements of cash flow; isn't that right?

5 A. That's right.

6 Q. Do you find that odd that Atrium did not have statements
7 of -- well, first, what are statements of cash flow?

8 A. So, when you have financials, they generally consist of
9 three statements, a balance sheet, an income statement and a
10 cash flow statement, and in this case Atrium was only able to
11 produce to us the balance sheet and the income statement. They
12 did not produce a cash flow statement.

13 Q. Does the lack of a cash flow statement for Atrium enter
14 into your analysis of whether they operate Atrium as
15 essentially a disregarded entity?

16 A. Well, they certainly aren't respecting the corporate form
17 when you can't produce basic financial statements, and it's
18 typical in my experience that, when a company or a subsidiary
19 is not producing cash flow statements, that it could be a cost
20 center, or it's an entity that is really part of some other
21 entity. So, sure. To answer your question, yes.

22 MR. GLASSER: There are also two indemnity agreements
23 that the Court has already seen which, just for the record,
24 your Honor, are Exhibits 41 and 42. I don't need to call them
25 back up.

1 Q. But those were indemnity agreements for Chad Carlton and
2 Jens Viebke to serve as president of Atrium after the transfer
3 of the customers and the sales that provided for indemnity from
4 Getinge AB itself. Did those agreements enter into your
5 analysis?

6 A. Yeah. Those agreements were very unusual, and they were
7 just another indication that Atrium as a standalone business
8 was likely insolvent.

9 Q. Why do you say that?

10 A. Because a company's bylaws generally indemnify executives
11 that run the business, and that indemnity is only worth
12 something if there's a financial capability to pay any claims
13 that go against that company or that executive. And so, for an
14 executive to need sort of backup indemnity from a parent
15 company or another entity is unusual in any sort of business
16 context where you have the business operating independently.
17 So, clearly, somebody either looking out for those executives
18 or the executives themselves understood that Atrium was going
19 to have limited ability as a standalone business to support any
20 indemnity, and they sought additional protection.

21 Q. There has also in this case been some backward
22 recharacterization of financial transactions. Did that enter
23 into your analysis?

24 A. Yes.

25 MR. GLASSER: Let's call up Exhibit 187, Mr. Knowles,

1 and let's focus in on this paragraph right here, the "Whereas."

2 Q. So, this is dated the 14th day of March 2019, and what is
3 it doing?

4 A. So, they're backdating by three years two transactions
5 that took place in 2016. There were two \$10 million
6 transactions that had taken place in 2016 that they now wanted
7 to recharacterize as equity contributions.

8 Q. What does it make you think when it's three years later?

9 A. Well, first of all, it's unusual. Whenever you see
10 financial statements sort of recharacterized years later, you
11 know, it's a red flag to begin with. And then for specifically
12 when you're reclassifying something into an equity account from
13 another account it generally means that someone was worried
14 about solvency. The only reason you need to move something
15 from a debt account to an equity account generally is to
16 satisfy an accountant or some other regulator that there's some
17 solvency in an entity.

18 Q. Okay. Now, the defendants in this case put forward a
19 witness, Mr. Fernandez, who opined that Atrium was solvent on
20 December 31st, 2017. Do you agree or disagree with him?

21 A. I disagree.

22 Q. Why do you disagree with him?

23 A. Well, one, I've gone through my analysis, but in terms of
24 his analysis -- there are three tests for solvency, a cash flow
25 test, a balance sheet test and an adequate capital test, and

1 you can use any of those. He chose to use the balance sheet
2 test as his test for solvency, and he applied the test
3 incorrectly. So, the balance sheet test that he used, he took
4 the fact that there was more -- that there was positive equity,
5 leaving aside the litigation here. What you're supposed to do
6 is take the market value of the assets. He used the book
7 value, and the market value would be much lower and very
8 different than the book value he used, and he subtracted from
9 it the liabilities, but he did not take into account this mesh
10 litigation and the potential liabilities from that in his
11 conclusion that the business was solvent.

12 Q. But also I want to draw your attention -- let's go to
13 Messina Exhibit Number 7. So, this account here, 2560,
14 short-term financial liabilities, group internal, [REDACTED].
15 Okay? You're familiar with this line on the balance sheet?

16 A. Yes.

17 Q. Okay. How did Mr. Fernandez -- what does a "short-term
18 financial liability" normally mean?

19 A. A liability that will become due within the next
20 12 months.

21 Q. All right. In his analysis did Mr. Fernandez treat this
22 as a current liability?

23 A. No.

24 Q. Why not?

25 A. The claim, from reading the deposition, is that he spoke

1 to the CFO, and that the CFO told him it wasn't a real current
2 liability, that it should be put somewhere else on the balance
3 sheet.

4 Q. All right. And so, if Mr. Fernandez had treated this
5 [REDACTED] as it's characterized on the balance sheet, could
6 he have found the company solvent?

7 A. He could have found it insolvent.

8 Q. He would have found it insolvent you're saying?

9 A. He could have found it insolvent. I can't speak for what
10 he would have done, but logically he would have found it to be
11 insolvent.

12 Q. Okay. And what is your view of the propriety of having an
13 oral conversation with the CFO who tells you, "You don't have
14 to regard this as a short-term liability, even though the
15 balance sheet says it is"?

16 A. I would find it to be very disconcerting to the standpoint
17 of, if a financial officer tells you that the financial
18 statements as presented don't accurately reflect the actual
19 financial condition of the company, he is essentially telling
20 you that the financial statements are not reliable, and if a
21 financial officer tells you the financial statements are not
22 reliable, you know, stop, don't go any further.

23 Q. Let's go back to this Exhibit No. 5. So, let's keep in
24 mind that [REDACTED] number, and let's go back to the working
25 capital numbers for 2017, [REDACTED]. So, the effect of

1 ignoring that [REDACTED] is to reduce 2017 total current
2 liabilities in half, essentially?

3 A. Correct. Essentially.

4 Q. And so, working capital becomes positive?

5 A. Essentially.

6 Q. So, it's a big swing?

7 A. There's a big swing.

8 Q. If the characterization of current liabilities is not
9 trustworthy, how should a finance professional treat the rest
10 of the financial statements?

11 A. In this day and age, where the penalties for having
12 unreliable financial statements in a public company are so
13 severe that you should not really move forward with your
14 solvency analysis, you shouldn't even use the financial
15 statements, if you believe that.

16 Q. Do you hold all the opinions you've given today to a
17 reasonable degree of certainty?

18 A. Yes.

19 MR. GLASSER: I have no other questions for this
20 witness, your Honor.

21 THE COURT: All right. And let me ask, can you start
22 your cross with the confidential information, or would that be
23 throwing you off in a way you didn't really prepare for?

24 MR. CHEFFO: I didn't really prepare -- I'm not sure.

25 THE COURT: Is there any need to seal your cross?

1 (Counsel conferred off the record)

2 MR. CHEFFO: What we were just discussing -- I'm
3 sorry, your Honor. I'm trying to figure out -- I think I could
4 probably do this without actually having to seal any of the
5 numbers.

6 THE COURT: Excellent.

7 MR. CHEFFO: If I do, I'll respectfully apologize, but
8 I'm going to try and do that, so I can start, if you want.

9 THE COURT: And we can unlock the courtroom, which
10 makes the Court much more comfortable.

11 (End of sealed proceedings)

12 IN OPEN COURT:

13 MR. CHEFFO: Do you want to take a break? It's up to
14 you.

15 THE COURT: I think we'll go till probably 12:15. All
16 right?

17 MR. CHEFFO: Okay. May I proceed, your Honor?

18 THE COURT: Yes.

19 MR. CHEFFO: Thank you.

20 CROSS-EXAMINATION

21 BY. MR. CHEFFO:

22 Q. Good morning still, Mr. Messina. We haven't met. My name
23 is Mark Cheffo, and I represent the defendants.

24 A. Nice to meet you.

25 Q. Nice to meet you, too. You're compensated for your work

1 today?

2 A. I am.

3 Q. And what's your hourly rate?

4 A. Nine-fifty.

5 Q. Now, let me just ask you a few questions about your
6 report. Your report does not address the relationship between
7 Atrium and Datascope, does it?

8 A. No.

9 Q. It doesn't address the relationship between Datascope and
10 Getinge USA Holdings, Inc., does it?

11 A. No.

12 Q. It does not address the relationship between Getinge USA
13 Holding and Getinge USA Holding, Inc., correct?

14 A. Correct.

15 Q. And it does not address the relationship between Getinge
16 USA Holding and Getinge AB, correct?

17 A. Correct.

18 Q. And you know what those entities are, right?

19 A. I do.

20 Q. And you were aware of that when you were preparing your
21 report, that there's a chain of four corporate entities between
22 Getinge AB and Atrium, correct?

23 A. Correct. I understand that.

24 Q. In your report you did not offer an opinion that there was
25 any fraud or injustice associated with Atrium's employee

1 handbook, did you?

2 A. Fraud or injustice with the handbook?

3 Q. Yes.

4 A. No.

5 Q. And you didn't offer any opinion with respect to fraud or
6 injustice regarding any financial authority or limits placed on
7 the CEO of Atrium, did you?

8 A. No.

9 Q. And you didn't offer any opinion with respect to fraud or
10 injustice with respect to any ability for the Atrium CEO to
11 hire or fire direct reports, did you?

12 A. No.

13 Q. And you didn't offer any opinion with respect to fraud or
14 injustice with respect to any signage or information that's
15 presented at Atrium's facilities, did you?

16 A. No.

17 Q. And I won't go through all of them, but you saw -- you
18 were asked to go through a litany of guidelines with respect to
19 things, including coffee cups and flowers and so on. You
20 recall that, right?

21 A. Correct.

22 Q. And you didn't offer any opinion with respect to any fraud
23 or injustice with respect to any of those guidelines or
24 anything contained in those, did you?

25 A. No.

1 Q. And you did not offer any opinion with respect to fraud or
2 injustice with respect to HR rules, pension plans, retirement
3 funds, holiday schedules, did you?

4 A. No.

5 Q. And, similarly, you didn't offer any opinion with respect
6 to fraud or injustice regarding Atrium's weather hotline, its
7 emergency closing decisions, its use of websites to post job
8 listings, did you?

9 A. No.

10 Q. And you didn't offer any opinion with respect to anything
11 concerning fraud or injustice regarding shared tech support,
12 treasury functions, use of written consents by the Atrium
13 Board, correct?

14 A. No. And, remember, I think I told Mr. Wilson in my
15 deposition I'm not a lawyer, so I don't determine fraud. But
16 the transfer of the core functionality that you mentioned, IT
17 and whatever, did have an impact on my opinions as to whether
18 they operated independently and whether they could operate
19 independently on a go-forward basis, which had an effect on
20 solvency. I just want to make sure that -- I think we
21 sometimes cross or talk past each other, and I just want to
22 make sure --

23 Q. Okay. Well, you did offer a fraudulent conveyance opinion
24 that you talked about when you were asked on direct, right?

25 A. Yes.

1 Q. Okay. And I'm just asking you now whether you formed a
2 view as to fraud or injustice, and I think you've told me,
3 "No," and I just have a few other questions. Sponsoring
4 paralympians, the grandparent principle, indemnification
5 agreements, consideration by Getinge's Board of significant
6 legal issues, you didn't offer an opinion as to whether there
7 was any fraud or injustice in any of those in your report, did
8 you?

9 A. First of all, "fraud" is different than "fraudulent
10 conveyance," but when you use the term "injustice," so
11 "injustice" from the standpoint of a creditor, when you move an
12 asset away from a creditor in a way that they can't get paid or
13 will delay them being paid or affect their ability to be
14 repaid, that's an injustice, okay? But I'm not a lawyer, and I
15 don't deal with things like intent or things like that when you
16 talk about fraud, but when you talk about financial issues I
17 talk about what's fair and just to a creditor, from that
18 standpoint.

19 Q. So, "fraudulent transfer" I agree is different than
20 "fraud," right?

21 A. Right.

22 Q. So, you haven't offered any opinion on fraud --

23 A. No.

24 Q. -- right? And there's nothing in your report that talks
25 about fraud or injustice, correct? Because you're not lawyer.

1 A. I'm not a lawyer or a judge.

2 Q. Right. Your view is that Atrium has been insolvent since
3 sometime in 2014, correct?

4 A. From the point where they transferred their customer base
5 and their sales force away to other entities they became
6 insolvent.

7 Q. When was that?

8 A. 2014.

9 Q. Okay. Has Atrium declared bankruptcy ever?

10 A. No, because it's being supported by Getinge.

11 Q. Mr. Messina, I'm just asking you a yes-or-no question.
12 Have they ever declared bankruptcy?

13 A. Obviously not.

14 Q. Right. Have you seen any documents indicating an
15 intention to declare bankruptcy?

16 A. No.

17 Q. Has Atrium been an ongoing concern for all times including
18 today?

19 A. Has Atrium been an ongoing concern? It's not been a
20 financially independent concern, but it has been an ongoing
21 concern.

22 Q. So, the answer is "Yes"?

23 A. I gave you my answer.

24 Q. Okay. And has Atrium, to your knowledge, ever failed to
25 meet any financial obligations?

1 A. With the help of Getinge and other subsidiaries, no, it
2 has not.

3 Q. So, the answer is "No"?

4 A. I gave you my answer.

5 Q. Is there a single obligation that you're aware of that
6 Atrium has failed to meet ever, financial obligation?

7 A. Not to my knowledge.

8 Q. Has there been -- have you seen any discussion of the need
9 to declare bankruptcy in any of the information or the work
10 you've done?

11 A. Have I seen the need to?

12 Q. Yeah. Have you seen internal documents or anything from
13 the company?

14 A. No.

15 Q. And you said one of the measures of insolvency is not
16 having an ability to pay, correct?

17 A. Correct.

18 Q. And we know that you're not aware of a single situation
19 ever that Atrium has not had an ability to pay, correct?

20 A. Correct, but I would add to it, but for the financial
21 assistance of Getinge, it would not have the ability to pay.

22 Q. They have the ability to pay, and they have met every
23 obligation ever, to your knowledge, correct?

24 A. They've paid all their obligations with the support of
25 Getinge.

1 Q. Okay. And they are part of a corporate family, right?
2 You're familiar with that concept, right?

3 A. I am familiar with that concept, and they are.

4 Q. And you're not aware of -- just to close this loop, you're
5 not aware of any obligation of which -- financial obligation of
6 which they are not current, right? You can't tell the Court a
7 single one, correct?

8 A. Correct.

9 Q. When companies are insolvent and they can't meet their
10 financial obligations they typically file for bankruptcy,
11 right?

12 A. Generally not as part of a larger entity. They sometimes
13 will, but generally no. If Atrium was operating independently,
14 without support of Getinge, they probably would have to.

15 Q. But they're not operating independently, are they?

16 A. They're not operating independently.

17 Q. Right. And that's very common for subsidiaries that are
18 part of corporate families, correct?

19 A. It's fairly common, sure.

20 Q. Right. Now, you were asked to determine in this case
21 whether Atrium and Getinge -- and I'm going to call Getinge AB
22 "Getinge," if that's okay with you, just for shorthand.

23 A. That's fine.

24 Q. -- operate as a single economic unit, right?

25 A. Correct.

1 Q. That's on Page 3 of your report, right?

2 A. Correct.

3 Q. And I have a copy of your report. You're probably
4 familiar with it, but if you need a copy of it, you let me
5 know.

6 A. Okay.

7 Q. And you opined that they did operate as a single economic
8 entity, right?

9 A. Correct.

10 Q. And one of the things that you relied on, in fact, the
11 first thing, is Mr. Hjalmarson's deposition testimony where he
12 said they act as a single economic unit, right?

13 A. Correct.

14 Q. And you didn't cite any authority in your report for what
15 constitutes a single economic unit, did you?

16 A. No.

17 Q. And you didn't cite any standards of how we or the Court
18 could determine the methodology for determining what's a single
19 economic unit, did you?

20 A. I don't believe so.

21 Q. And you didn't cite to any case or description of what
22 constitutes a single economic unit, correct?

23 A. I don't believe I did.

24 Q. And, in fact, when you were deposed you were not aware
25 that the term "single economic unit" was a financial term of

1 art, right?

2 A. I didn't realize at the time that it was an IFRS term of
3 art, but I looked it up after the deposition, after Mr. Wilson
4 asked me about it three or four times.

5 Q. Right. And you actually thought it was a legal term of
6 art, right?

7 A. Excuse me?

8 Q. You thought it was a legal term?

9 A. In the context that we were dealing with I thought we were
10 dealing with it as a financial term, business term, as opposed
11 to a specific term used in a European regulatory scheme.

12 Q. And you learned at the deposition and then you confirmed
13 later that it actually is a financial term of art of the IFRS,
14 which is the governing standards for European financial
15 institutions, correct?

16 A. It's Europe's version of Generally Accepted Accounting
17 Principles.

18 Q. Right. And you know now and you knew then that
19 Mr. Hjalmarson is a financial professional who practices
20 primarily in Europe, right?

21 A. Yes.

22 Q. And those, the IFRS, are the standards that govern
23 publicly traded companies in Europe like Getinge AB, right?

24 A. Correct.

25 Q. And the term "single economic unit" is something that's

1 specifically defined in the IFRS, correct?

2 A. I believe it is.

3 Q. And, in fact, do we have -- this is Defendants' Exhibit
4 83, and if we could turn to Page 12, please, in Exhibit A.
5 This is how the term is defined in the IFRS, correct?

6 A. Correct.

7 Q. In fact, because Getinge is governed by the IFRS codes and
8 responsibilities, it is, in fact, required to prepare
9 consolidated financial statements for itself and its
10 subsidiaries, right?

11 A. It is.

12 Q. And so, when Mr. Hjalmarson, you know now, was referring
13 to "single economic unit" he was talking about the standards
14 from the IFRS, correct?

15 A. It's possible he was. I don't know that he was
16 necessarily talking about the main connection with
17 consolidating financial statements, but it's possible.

18 Q. Okay. Now, in your report I took a look and I could only
19 find the use of the word "fraud" one time. I think it's on
20 Page 20 of your report. Does that sound consistent to you?

21 A. You guys did the scans, but that wouldn't surprise me.

22 Q. Okay. Now, this is on Page 20. If we could just go to --
23 I'll just read it for you. "The Getinge Holding USA 2018
24 security agreements to which Atrium is a guarantor requires
25 Atrium to pledge all of its assets, including its property,

1 plant and equipment in favor of its lenders." Do you see that?

2 A. Yes.

3 Q. That's not correct, is it?

4 A. What's wrong with it?

5 Q. Do the security agreements -- are they in favor of the
6 lenders or in favor of Getinge?

7 A. I believe they're in favor of -- I see. Okay. So, it's
8 not as artful as it should be. They're in favor of Getinge.

9 Q. Right. So, that should say, "In favor of Getinge," not
10 its lenders, right?

11 A. In favor of Getinge as the lender.

12 Q. And then the next sentence is also incorrect when it says,
13 "The guaranty and security agreements made Getinge's
14 lenders..." That should say "Getinge," correct?

15 A. Correct. It would be more accurate to say "Getinge," even
16 though Getinge's lenders are Getinge.

17 Q. It would be completely inaccurate to say "lenders," right,
18 because that's not what the security agreement says? Correct?

19 A. A security agreement is between -- generally between a
20 lender and a borrower, and in this case the security agreement
21 is with Getinge. So, I wasn't as artful as I could have been,
22 so good for you.

23 Q. Right. It's not an artful issue. I'm not taking issue.
24 It's a significant issue, because these are important
25 documents, right? Your lawyer spent some time, and I just want

1 to make clear for you and for the Court that this is an
2 obligation just between Getinge and Atrium, nothing to do with
3 lenders, correct?

4 A. Other than the fact that Getinge is a lender.

5 Q. We don't need to parse this, but "Getinge's lenders,"
6 that's wrong, isn't it?

7 A. Not "Getinge's lenders," yes.

8 Q. "Getinge as a lender."

9 A. "Getinge as a lender, yeah." I'm agreeing with you.
10 Fine. I didn't write it as properly as I could.

11 Q. Well, and it's significant, because what it means here is
12 that the lenders have no obligation or ability, excuse me, to
13 do anything with respect to calling this agreement. To the
14 extent it was called or acted upon it would be Getinge,
15 correct?

16 A. Getinge would be the one that would act, not Getinge's
17 lenders.

18 Q. Has Getinge acted or called this agreement?

19 A. Not to my knowledge.

20 Q. Have you seen ever in any document information, testimony,
21 any intention or desire or inclination by Getinge to call this
22 agreement?

23 A. No, but I would say if Getinge acted, as most companies
24 do, in the best interests of their shareholders, if there was a
25 claim, a large claim at Atrium, that would be the point where

1 they would act. They wouldn't act now.

2 Q. Do you remember my question?

3 A. Do I remember your question? Yeah. They have not acted
4 as we speak -- stand here today. They have not acted.

5 Q. Right. Thank you.

6 Now, let's turn to the Cash Pool Agreement. You've
7 opined that an agreement to pool funds in an account among
8 separate entities like Getinge and Atrium and its other
9 subsidiaries is evidence of commingling of funds, correct?

10 A. Correct.

11 Q. Now, I just want to make sure I understood. You said
12 something early on. You said that there was different levels
13 when you talked about Steinway. The direct subsidiaries below
14 Steinway had separate accounts, but then you said, in fact,
15 some of the other subsidiaries did pool their agreements like
16 Getinge? Did I understand that?

17 A. Yes.

18 Q. So, some of the corporate subsidiaries that were -- these
19 are actual corporations, right?

20 A. Yes.

21 Q. Lawful, non-fraudulent, non-sham corporations, right?

22 A. At Steinway?

23 Q. Yes.

24 A. Yeah.

25 Q. And some of those lawful, non-sham, non-absconding-type

1 subsidiaries pooled their funds in the same way that Atrium
2 does, right?

3 A. Yes.

4 Q. Thanks. And you also said in your report -- can we pull
5 up Messina Page 14. There's something highlighted, but I'd
6 actually like to just, if I could, Mr. Messina, just direct
7 your attention to the sentence just before it: "Cash positive
8 subsidiaries -- "

9 MR. CHEFFO: There you go. Thank you very much. And
10 the next sentence, please.

11 Q. "Cash positive subsidiaries earn interest, while
12 subsidiaries in need of short-term cash pay interest on their
13 withdrawals. It should be noted that Atrium paid interest on
14 borrowed funds but never seemed to receive interest payments,
15 confirming that it was a net user of cash from Getinge."

16 Did I read that correctly?

17 A. Yes.

18 Q. That's wrong, isn't it?

19 A. Okay. Explain why.

20 Q. Well, do you know if it's wrong?

21 A. As I sit here, I don't know why it's wrong.

22 Q. Okay. So, you basically formed a view that, if you were a
23 cash-positive subsidiary you would get interest, and you looked
24 at information that you were shown, and you determined that
25 Atrium was not a cash-positive subsidiary because it only paid

1 interest from this account, it didn't receive interest.

2 Correct?

3 A. That's what it appeared in the financial statements that I
4 saw.

5 Q. Okay. Now, can we look at Defendant Exhibit 86, please.
6 Were you shown this document?

7 A. I don't know.

8 Q. There's a lot of information, a lot of documents. You
9 don't recall whether you saw this or not. Fair?

10 A. That's fair.

11 Q. I'll represent to you this is a document from the bank
12 that holds the Cash Pool Agreement, and what you can see is
13 that -- well, you can see -- you see right below this is a
14 transaction account in a cash pool system? Do you see that?

15 A. Yeah.

16 Q. And you can see it's for Atrium Medical, and if you can go
17 down a little further you can see that the interest received by
18 Atrium is \$80,000. Do you see that?

19 A. I see that. I'm trying to understand. It says -- this
20 represents here claim or liability towards the owner of the
21 Cash Pool Agreement, which is Getinge. So, they credit
22 interest. It looks like they received \$80,000 of interest.

23 Q. Right. Could we go back to the last document, at 14,
24 please. So, just to put it in context for you and the Court,
25 Mr. Messina, in fact, cash-positive subsidiaries earn interest,

1 which means that Atrium is a cash-positive subsidiary, right?

2 A. Well, in 2017 it means that they earned \$80,000 of
3 interest, and so at least for that year it appeared that they
4 had some cash balance within the Cash Pool Agreement.

5 Q. Well, I'm just reading your report.

6 A. I understand.

7 Q. Cash-positive subsidiaries earn interest, right?

8 A. Yes.

9 Q. And you saw that they were a cash-positive subsidiary,
10 right?

11 A. For that year.

12 Q. Okay. Now, let's talk a little bit about your tenure at
13 Steinway. You had a positive experience at Steinway, right?

14 A. I did.

15 Q. You're proud of the company?

16 A. Yeah, absolutely.

17 Q. You were there for 15 years, correct? You ran it for 15
18 years?

19 A. I was there longer than that.

20 Q. I didn't mean to talk over you. I'm sorry.

21 A. I was there longer than -- I was the CEO while it was
22 public for 15 years.

23 Q. 1996 to 2011?

24 A. Yes.

25 Q. And during most, if not all, of that period it was a

1 publicly traded company?

2 A. It was public from '96 to 2013.

3 Q. So, the full time that you were the CEO it was public,
4 right?

5 A. Correct.

6 Q. And you had all the requirements and obligations that come
7 with a public company, right?

8 A. Correct.

9 Q. Now, you were familiar then and you're probably generally
10 familiar now with the corporate structure of Steinway and its
11 operations?

12 A. I am.

13 Q. Are you still involved with Steinway?

14 A. No.

15 Q. Now, can we just pull up Steinway's 10-K. This is
16 defendants' Exhibit 5. This is the annual report filed with
17 the SEC, correct? I should have said this is 2010.

18 MR. CHEFFO: Can we make it bigger for the witness,
19 for Mr. Messina?

20 Q. If you need a hard copy of any of this, I'm going to be
21 not spending a lot of time on these documents, but if you can't
22 read anything or you'd like to see a hard copy, just ask and
23 I'll give it to you.

24 A. Yeah. If you're not going to spend a lot of time, we'll
25 give it a shot. This is a Steinway 10-K 2010.

1 Q. Okay. And you signed this?

2 A. I assume I did. I'm sure I did.

3 Q. Okay.

4 A. You don't have to show me the signature. I'm sure I
5 signed it.

6 Q. Okay, fair. And if you look at Page 87 of this document,
7 what I'm going to show you is -- if you could just blow this up
8 a little bit, please, for both of us since I can't read that
9 either -- these are the subsidiaries or at least some of them,
10 right?

11 A. These are the material subsidiaries of Steinway.

12 Q. And when you talked earlier about certain subsidiaries
13 having certain banking functions and others having functions
14 similar to Atrium and Getinge, those would be included on this
15 page, right?

16 A. Yes, generally.

17 Q. And one of these corporate subsidiaries is Boston Pianos.
18 I think that is where?

19 A. In the middle.

20 Q. It's in the middle. Great. Thank you. Now, that's an
21 entry-level piano business from Steinway, right?

22 A. Mid-price.

23 Q. Mid-price. Thank you. And they are marketed as designed
24 by Steinway on the piano, correct?

25 A. Right.

1 Q. But the actual manufacturer is Boston?

2 A. Well, the actual manufacturer is a company in Japan called
3 Kawai. The Boston Piano, we design, have them built for us in
4 Japan, and then we sell them to other entities from the Boston
5 Piano business.

6 Q. Okay. And you testified at your deposition that, even
7 though Boston was a separate, viable corporate entity,
8 decisions about Boston Pianos were made based on maximizing the
9 profitability of Steinway & Sons, which is the corporate
10 parent, correct?

11 A. That's correct.

12 Q. There was nothing wrong with that, was there?

13 A. There's nothing wrong with it to the extent that there is
14 not a negative financial consequence to somebody else.

15 Q. And you also testified, or it's your view, is it not,
16 that, since these are all wholly owned subsidiaries under
17 Steinway Musical Instruments, the ultimate duty to the ultimate
18 shareholder is through Steinway Musical Instruments, correct?

19 A. That's correct.

20 Q. That relates to all of these subsidiaries, doesn't it?

21 A. The duty to maximize value to the shareholders?

22 Q. Well, to the ultimate shareholder of Steinway Musical
23 Instruments, which is at the top of the food chain.

24 A. The ultimate duty of Steinway Musical Instruments is to
25 maximize the value for the shareholders. The duty that some of

1 these subsidiaries have is to operate in the manner with which
2 we wanted them to operate, which was, hopefully, supporting
3 what we were trying to do at Steinway Musical Instruments.

4 THE COURT: We're going to take our lunch break now.

5 MR. CHEFFO: Yes, your Honor. Thank you.

6 THE COURT: And let's be back here around 1:30.

7 MR. CHEFFO: Absolutely. Thank you, your Honor.

8 THE COURT: Is there any more videotaped deposition?

9 MR. CHEFFO: No.

10 THE COURT: Okay. Thank you.

11 THE CLERK: All rise.

12 (Lunch recess taken at 12:14 p.m.)

13 (See separate transcript for afternoon session)

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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of In Re: Atrium Medical Corp. C-Qur Mesh Products Liability Litigation, No. 16-md-02753-LM.

Date: 9/30/19 /s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter

I, Brenda K. Hancock, certify that the foregoing is a true and correct copy of the transcript originally filed with the Clerk of Court on 9/30/19 incorporating redactions requested by the Hon. Landya B. McCafferty in accordance with Judicial Conference Policy. Redacted characters appear as a black box on the paper copy and a black box on the electronic transcript.

Date: 10/31/19

BRENDA K. HANCOCK, CRR, RMR
OFFICIAL COURT REPORTER