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BIG

SUITS

MICHELSON V.  
MEDTRONIC

MARC MARMARO  
(JEFFER, MANGELS, BUTLER & MARMARO LLP)



Biomedical device manufacturer Medtronic, Inc., has sustained a large financial wound. On October 12 an eight-person jury in U.S. district court in Memphis ordered its spinal products subsidiary, Medtronic Sofamor Danek, Inc., to pay surgeon and wealthy inventor Gary Michelson, M.D., \$400 million in punitive damages for patent infringement, on top of \$159 million for unpaid royalties. In 1994 Michelson and his company, Karlin Technology Inc., sold the rights to his spinal fusion surgery inventions and techniques to Memphis-based Sofamor Danek. Medtronic bought the company in 1999, hoping to make money on baby boomers' aching backs.

Medtronic started the legal fight in 2001 by suing Michelson, seeking more than \$200 million for breaking their contract. Medtronic argued that the 1994 agreements gave it rights to all 600 of Michelson's spinal surgery inventions, while he contended that the contracts did not apply to those he created after the agreement. Michelson filed a countersuit alleging

that Medtronic underpaid his royalties and infringed his post-1994 patents.

Although the jury forced Medtronic to pay damages, it decided the company could still use all of Michelson's pre-1994 inventions, which bring the company about \$500 million in sales every year. The two parties are currently negotiating a new deal for Michelson's post-1994 inventions, says Robert Krupka, Michelson's lawyer.

Behind the scenes, the court fight swelled. Michelson moved more than 50 lawyers to a Memphis office, and his legal team filled more than 60 hotel rooms with witnesses and experts, 30 of whom were called at trial. Michelson estimates that he spent \$62 million on the case, says Krupka. The inventor's probably not done spending: In a statement, Medtronic said that it plans to pursue "posttrial remedies" for the "unjustified and excessive" awards. Michelson, meanwhile, may seek an injunction to stop Medtronic from further patent infringement.

FOR PLAINTIFF GARY  
MICHELSON AND KARLIN  
TECHNOLOGY, INC.

**JEFFER, MANGELS, BUTLER  
& MARMARO (LOS ANGELES):**

**Stanley Gibson, Marc Marmaro, Dan Sedor, Alex Tamin, and associates Jim Bauch and Devorah Cohen.**

According to Gibson, Jeffer has represented Michelson in corporate matters for almost 20 years.

**KIRKLAND & ELLIS (CHICAGO):**

**Marc Cohen, Luke Dauchot, Christopher Heck, Melissa Ingalls, Robert Krupka, Xanath Owens, Rick Richmond, Heiko Schultz, and associates Lindsay Casamassima, Lori Chang, Philip Chen, J. Drew Diamond, Adam Hagen, Jane Park, Nick Saros, and Laura Thomas.** (All are in Los Angeles.) Michelson met Krupka through a friend at Jeffer, who wasn't involved in the case. Other lawyers from Kirkland and Jeffer also went to Memphis to work on the case.

**BOWEN RILEY WARNOCK &**

**JACOBSON (NASHVILLE):**

**Jay Bowen** and associates **Amy Everhart** and **Chris Vlahos**.

Marmaro had worked with the firm before, says Bowen. **WYATT, TARRANT & COMBS (MEMPHIS): Robert Craddock, Jr., and Glen Reid, Jr.** The firm had worked on other cases against Medtronic, says Reid. He examined several witnesses at trial.

FOR DEFENDANT MEDTRONIC  
SOFAMOR DANEK, INC.

**MCDERMOTT WILL & EMERY (CHICAGO): Jack Lever, Jr., Raphael Lupo, Ronald Pabis, Michael Switzer, Donna Tanguay, Melvin White, and associates Steven Allis and Stephanie Nagel.** (All work in Washington, D.C.) Medtronic and firm lawyers refused to comment on their relationship. **BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ (MEMPHIS): Leo Bearman, Jr., and Bradley Trammell.** Spokesmen from Medtronic and the firm declined to comment.

—LISA LERER