

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch**

Date: November 19, 2013  
Courtroom Deputy: J. Chris Smith  
FTR Technician: Kathy Terasaki

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Civil Action No. 11-cv-00767-RPM

DR. GEORGE FREY, M.D., a Colorado Citizen,  
  
Plaintiff,

Ian R. Walsworth  
Stanley M. Gibson  
Hiwot M. Covell  
David B. Kellis

v.

WARSAW ORTHOPEDIC, INC., and  
MEDTRONIC SOFAMOR DANEK USA, INC., an Indiana corporation,  
  
Defendants.

Luke L. Dauchot  
Conor F. Farley  
Nimalka R. Wickramasekera  
Erin C. Kolter  
Kevin Bendix

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**COURTROOM MINUTES**

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**Pretrial Conference**

**1:58 p.m. Court in session.**

Discussion regarding scope of plaintiff's claims.

Mr. Gibson states plaintiff's royalty claims for Capstone products/implants are made under either the Boomerang and Pyramesh Agreements and not the Consulting Agreement.

Mr. Gibson further states plaintiff's definition of medical device includes "method".

Ms. Wickramasekera explains Medtronic's surgical instruments loaner/lease fee and sale purchase agreement.

Mr. Dauchot states defendants' records indicate the first Capstone net sale, with respect to plaintiff's damages being sought, occurred approximately around the third quarter of 2004.

Court rules on parties pending motions as stated on record.

**ORDERED: Motion to Strike Portions of Defendants' August 26, 2013 Expert Witness Disclosures and Exclude Opinion Testimony Offered by Certain Expert Witnesses [104], is denied.**

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**ORDERED:** Motion to Strike Portions of Erik K. Antonsson's Report And Exclude Certain Testimony at Trial [105], is denied.

**Motion to Strike Portions of Mark J. Hosfield's Expert Report And Exclude Testimony [109], is resolved by plaintiff being permitted to conduct additional discovery and allowing Mr. Pedigo to provide a rebuttal report as stated on record.**

**Motion in Limine to Exclude Testimony Relating to Surgical Concepts and Patient Advocacy Coalition [113], is granted.**

**Defendants Warsaw Orthopedic, Inc. and Medtronic Sofamor Danek Usa, Inc.'s Motions in Limine [123]/[117], No.1: Dr. Chewning permitted to describe surgical method but not patent claims; No. 2: granted; and No. 3 resolved by Court's ruling on motion [109].**

Discussion regarding scheduling.

**ORDERED:** Two week jury trial set May 5, 2014.

Court states a trial preparation conference will be set at a date to be determined (approximately one month prior to the trial date).

Court instructs defendants' counsel to inform its chambers of the status of the Wisconsin patent infringement litigation, as soon as possible.

Court states its trial practices and procedures.

Counsel agree to confer regarding stipulating to limiting the jury pool to the Denver metro counties.

Court states punitive damages will not be a trial issue.

**2:40 p.m. Court in recess.**

Hearing concluded. Total time: 42 min.