

BN Medtronic to Pay \$1.35 Bln to End Spinal Doctor Suit (Update5)  
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(Updates share price in fifth paragraph.)

By Susan Decker and Keith Snider

April 22 (Bloomberg) -- Medtronic Inc., the world's biggest maker of spinal implants, agreed to pay \$1.35 billion to end a lawsuit by Los Angeles surgeon Gary K. Michelson over the use of his inventions.

The settlement, disclosed in a regulatory filing today, ends a three-year legal battle over Michelson's claim that Medtronic made money off his patents without compensating him properly. A federal jury last year found the company breached contracts related to spinal-implant and surgical-tool inventions and ordered Medtronic to pay \$559 million plus 10 percent of future sales of the products.

The devices to which Medtronic wins rights are part of a unit that accounted for 20 percent of its \$9.09 billion in sales last year. The agreement gives Medtronic ownership of Michelson's spinal-treatment patents, including inventions in the next 15 years. Medtronic is also the world's biggest maker of implantable defibrillators.

``It was cheaper for them to do this than to have it tangled up in court and have ongoing royalties to pay,'' said Jon Fisher, who helps manage \$22 billion at Fifth Third Asset Management in Cincinnati, including Medtronic shares, in a telephone interview. ``It's an important business to them and it's important technology.''

Shares of Minneapolis-based Medtronic fell 43 cents to \$50.72 at 2:58 p.m. in New York Stock Exchange composite trading. They had increased 3 percent this year before today.

The settlement won't affect earnings in the fiscal year starting April 30 and may add to future profit, Medtronic Treasurer Gary Ellis said on a conference call.

#### Seeds of Dispute

The dispute stemmed from two 1994 Michelson agreements with Medtronic's Sofamor Danek unit for production and marketing of several of his inventions. He was to receive 10 percent of all sales based on them, twice the average royalty rate of other doctors who signed contracts with Sofamor Danek.

The products at the center of the dispute involve devices Michelson invented to speed and simplify basic spinal surgery, in which doctors remove a damaged disk and fuse the adjacent vertebrae together. The inventions cut recuperation time from months to weeks or days.

Medtronic testified in a three-month trial in Memphis,

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Tennessee, that it paid more than \$60 million to Michelson. In 2001, the company sued the doctor seeking a ruling that it had a right to use all of his inventions. Michelson countered that Medtronic breached the 1994 agreements and no longer had rights to the inventions. He also accused Medtronic of using patented innovations that weren't covered by the contracts.

#### Medical Foundation

Michelson quit accepting payments in 2001 because of the dispute, and most of the money has been held in escrow while the lawsuit was pending. He also stopped practicing medicine after the suit was filed. For 20 years he had worked nights and weekends at his kitchen table and in his garage to develop instruments and devices.

Michelson won't give his age, saying it would hurt his social life. He started medical school in 1971 at Hahnemann Medical College and Hospital in his native Philadelphia. Before moving to California in 1980, he worked with the renowned spinal surgeon Alexander Brodsky at the Texas Medical Center near Houston in a post residential fellowship.

Under the settlement announced today, the doctor and his Karlin Technology Inc., a company named after his grandfather, will receive \$1.3 billion at closing and an additional \$50 million over five years. Michelson plans to use some of the money for a foundation that would further advance medical care, his lawyer, Robert Krupka, said in an interview.

#### Doctor's Goal

``Dr. Michelson's primary goal has always been to help patients,'' said Krupka, of Kirkland & Ellis in Los Angeles. ``This will put his pioneering technology in the hands of a company able to do that.``

Michelson's lawyers had estimated that damages awarded by the Memphis jury would reach \$1 billion based on continuing sales of products including Medtronic's Infuse Bone Graft System and LT Cage. In November, a month after the trial ended, Michelson agreed that he wouldn't seek a court order blocking sales of any Medtronic products while the two sides tried to reach a settlement.

Sales of Medtronic's spinal devices jumped 24 percent in the fiscal third quarter ended Jan. 28, the company reported Feb. 16. Total revenue climbed 15 percent in the same period.

Price Not `Unreasonable'

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Of the total settlement, \$550 million will be recorded as an expense in the current quarter, and as much as \$175 million will be accounted for as research costs when the agreement is completed, expected to be in the first quarter of fiscal 2006, Medtronic said. The remaining amount will be amortized over 20 years.

About \$800 million of the settlement is for the use of Michelson's inventions, and \$550 million will go toward the jury award, Medtronic spokesman David Folkens said. The \$800 million is an ``initial assessment'' of the value of Michelson's inventions, he said.

``This is how you do things as a company: you lose in court, acquire the intellectual property rights and move forward,'' said Michael Obuchowski, who helps manage about \$35 million for Altanes Investments LLC in New York and owns Medtronic shares, in an interview. ``They're locking the intellectual property within Medtronic, and I don't think it's an unreasonable price.''

The case is: Medtronic v. Michelson, 01cv2373, U.S. District Court, Western District of Tennessee.

--With reporting by Kristen Hallam and Keith Snider in Washington. Editor: Simison, Gienger, Simison

Story illustration: For an article about Dr. Gary Michelson, see {NXTW NSN I5HJGG0UQVI9 <GO>}. For Michelson's Bloomberg Profile, see {BBDP 6700959 <GO>}.

For a rolling screen of company information, see: {MDT US <Equity> CNP00094090108 <GO>}. For a chart of earnings, {MDT US <Equity> CH2 <GO>}. For a menu of legal information, click {BLAW <GO>}. For top legal stories, click {TLAW <GO>}.

To contact the reporter of this story:  
Susan Decker in Washington at (1)(202) 624-1941 or at sdecker1@bloomberg.net;  
Keith Snider in Washington at (1) (202) 624-1982 or ksnider1@Bloomberg.net

To contact the editor responsible for this story:  
Robert Simison at (1) (202) 624-1812 or rsimison@Bloomberg.net

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