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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CERTIFIED COPY

ATZE AKKERMAN and)
ELIZABETH AKKERMAN; each)
suing individually and on)
behalf of the general public,)
Plaintiffs,)
vs.)
MECTA CORPORATION, and DOES)
1-20,)
Defendants.)

Case No. 01-10362 RSWL(RZx)

VIDEOTAPED DEPOSITION OF ROBIN NICOL

AND

30 (b) (6) EXAMINATION OF MECTA CORPORATION

VOLUME I

PORTLAND, OREGON

NOVEMBER 18, 2004

ATKINSON-BAKER, INC.
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CENTRAL DISTRICT OF CALIFORNIA

- - -

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behalf of the general public,)

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vs.)

Case No. 01-10362 RSWL(RZx)

MECTA CORPORATION, and DOES)
1-20,)

Defendants.)

Deposition of ROBIN NICOL and 30(b)(6) Examination of
MECTA Corporation, taken on behalf of the Plaintiffs, at Allen
Sheridan & McClanahan, 190 Southwest Harrison Street,
Portland, Oregon, commencing at 9:13 a.m. on Thursday,
November 18, 2004, before Heather A. Summers, CSR No. 92-0246.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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ALSO PRESENT: Gaabriel Becket, paralegal
Jay Webster, videographer

1 for identification.)

2 MR. MOXON: Swear the witness, please.

3 THE COURT REPORTER: I did.

4
5 EXAMINATION

6 BY MR. MOXON:

7 Q. Could you please state and spell your name for
8 the record?

9 A. Robin Nicol, R-O-B-I-N, Nicol, N-I-C-O-L.

10 Q. Ms. Nicol, you have given depositions before?

11 A. One.

12 Q. It was in the Rohovit case?

13 A. Yes.

14 Q. Have you had an opportunity to speak with your
15 counsel concerning the scope of the deposition?

16 A. Which deposition?

17 Q. This deposition.

18 A. Can you clarify "scope," what you mean by
19 "scope"?

20 Q. Did you talk to your attorney about the fact that
21 you're having a deposition and he told you what it
22 encompassed?

23 A. Yes.

24 Q. If there is any question, such as the one I just
25 asked you that you don't fully understand, please do have me

1 clarify it. I want to make sure we're on the same page. I
2 will assume that you've understood every question I've asked
3 you if you have answered it. Okay?

4 A. Fine.

5 Q. And we will need an oral response to every
6 question since we're making an verbatim transcript by an
7 authorized court reporter sitting to your left.

8 A. Fine.

9 Q. What is your position in the MECTA Corporation?

10 A. I'm the president.

11 Q. How long have you been the president?

12 A. Since 1987.

13 Q. Did you have a position prior to that?

14 A. I was the sales manager.

15 Q. From when to when?

16 A. From 1980 until 1987.

17 Q. Did you have a position before that?

18 A. No. We purchased the company in 1980.

19 Q. What are the scope of your duties as the
20 president?

21 A. I'm primarily administrative in terms of the
22 company. I manage all of the departments within the company.
23 I'm responsible specifically for 12 areas that I manage.

24 Q. Do you have any formal education?

25 A. I do.

1 Q. After high school?

2 A. I do.

3 Q. Please tell me what it is.

4 A. I have two college degrees. I have a Bachelor of
5 Arts in English and a Master of Arts in English.

6 Q. Do you have any electrical training or
7 electronics training?

8 A. No, I don't.

9 Q. Do you have any training in the health-care
10 field?

11 A. Other than the 26 years I have been the president
12 of the company, no, I don't.

13 Q. No formal training in any health-care field,
14 correct?

15 A. Correct.

16 Q. Do you have any training in any research fields?

17 A. Can you be more specific? Researching --

18 Q. Well, you don't have any formal training beyond
19 high school except in English, correct?

20 A. Educational training, correct.

21 Q. Yes. Thank you. Can you tell me -- well, let me
22 ask you first, are you testifying now solely on your own
23 behalf or also on behalf of MECTA Corporation?

24 MR. OWENS: Well, that's a legal question. I'm going
25 to object on that basis. She has no foundation to answer

1 MR. MOXON: Could you read the question back to the
2 witness?

3 (The record was read as follows:

4 Q. After you read the complaint, were you
5 surprised by the allegations in the complaint
6 indicating that a number of writers and
7 practitioners of shock treatment in the
8 '40s and '50s stated the purpose of it in part
9 is to cause brain damage and to cause memory loss?)

10 Q. (By Mr. Moxon) Could you answer, please?

11 A. It is a ludicrous complaint. One would not
12 create a medical -- it would not happen in responsible medical
13 -- with a responsible medical community --

14 Q. I couldn't agree with you more.

15 A. -- under the auspices of the AMA.

16 Q. I couldn't agree with you more.

17 A. It is a very --

18 MR. OWENS: Just a minute. Ms. Nicol, you have
19 answered the question.

20 THE WITNESS: Right.

21 MR. OWENS: You are engaging in conversation with
22 counsel. That's not what this is.

23 THE WITNESS: Right.

24 Q. (By Mr. Moxon) So when you saw allegations in
25 the pleading that articles had been written indicating that

1 the purpose of ECT was to cause brain damage, you consider
2 that too ludicrous to consider?

3 A. As I said earlier, I don't accept that premise.

4 Q. I know.

5 A. I don't accept that premise.

6 Q. I know. But you consider it too ludicrous to
7 even consider that that might have been true?

8 MR. OWENS: The question is vague as to time.

9 Q. (By Mr. Moxon) Answer?

10 A. In an environment with medical -- M.D.s, I would
11 find that impossible to believe.

12 Q. I take it you didn't read any of the shock
13 literature written in the 1940s and 1950s; is that right?

14 MR. OWENS: At what point in time?

15 Q. (By Mr. Moxon) Ever.

16 A. I'm aware of it, as I said earlier. I'm aware of
17 excerpts from it. I have never read it. I have never read
18 it. I'm aware, very aware of it, but I have never read it.

19 Q. During the 1980s were you aware that there was
20 literature in the 1940s and 1950s indicating that the purpose
21 of ECT was to cause brain damage?

22 A. I would have been aware of that, again, but it's
23 a very fringe perspective.

24 Q. You rejected that, correct?

25 A. I was aware of it.

1 Q. You rejected it?

2 A. In terms of what? Rejected it?

3 Q. Rejected it in terms of finding out if there was
4 any truth to it?

5 A. Based on the work that was done by the clinicians
6 in the field and the research that was done that I mentioned
7 earlier, it was rejected in terms of science, in terms of the
8 work that's been done from 1980 to the present. So we had to
9 accept that research as it was the majority.

10 Q. In the 1980s were you aware of the articles
11 written in the 1940s and 1950s indicating that the purpose of
12 shock treatment was also to cause memory loss, i.e., that the
13 quote, "therapeutic effect," end quote, of shock treatment was
14 memory loss?

15 A. Once again, I wouldn't accept the premise.

16 Q. I didn't ask you if you accepted it, Ms. Nicol.
17 I simply wanted to know if you were aware of it?

18 A. Again, I was aware of it, but I would never have
19 read the articles.

20 Q. Did you conduct any investigation or research to
21 determine if the representations that the purpose of shock
22 treatment was to cause memory loss was accurate?

23 A. MECTA does not do research.

24 Q. The answer is no?

25 A. The answer is no.

1 Q. Now, neither John Friedberg, Peter Breggin or
2 Peter Sterling were physicians in the 1940s and 1950s. These
3 were articles written by other practitioners -- did you know
4 that -- not those three?

5 A. These are your questions. I wouldn't know.
6 These are your articles. I wouldn't know. You would have to
7 identify the articles. That's the only way I would know.

8 Q. Okay. I take it you never examined the
9 bibliographies in Dr. Friedberg's book or Peter Breggin's book
10 indicating that scientific tests demonstrated that ECT caused
11 brain damage, correct?

12 A. I didn't read their books.

13 Q. Let me just modify my initial kind of
14 instructions and admonitions to you that I gave you at the
15 beginning. I'm asking you a number of questions because I
16 seek answers specific to my questions, of course. If you
17 could specifically answer my questions, I have no problem with
18 you making further comments or conclusions thereafter. But
19 it's going to take quite a long time if I need to repeat the
20 questions to get direct answers. And I'm not even asserting
21 that you're doing it intentionally, but I'm just asking you to
22 please listen carefully to my questions, and if you could
23 please directly answer my questions. Then if you want to give
24 further justification, I have no problem with that.

25 MR. OWENS: Well, Mr. Moxon, she is answering your

1 questions specifically. If you don't like her answers, that's
2 another issue. If anybody is being repetitive in this
3 deposition, it's you.

4 MR. MOXON: That is because she's not answering the
5 questions.

6 MR. OWENS: That is your opinion.

7 MR. MOXON: That's right. That is my opinion.

8 MR. OWENS: I'm not going to have you instruct my
9 witness to the effect that you're not answering the question
10 the way I want you to; please do so. That's not going to
11 happen.

12 MR. MOXON: Could you please read the last question
13 back to the witness, and when you do that, can you retype it
14 into the record at that point?

15 (The record was read as follow:

16 Q. I take it you never examined the
17 bibliographies in Dr. Friedberg's book or
18 Peter Breggin's book indicating that
19 scientific tests demonstrated that ECT caused
20 brain damage, correct?)

21 MR. OWENS: Assumes facts not in evidence.

22 THE WITNESS: My response is the same. I did not
23 read the books; therefore, I did not see the bibliographies.

24 Q. (By Mr. Moxon) Did anyone tell you that you
25 should disregard what you have characterized as the minority

1 view of ECT, the minority view being that it causes brain
2 damage and causes memory loss?

3 A. No.

4 Q. So it was a decision made by MECTA?

5 A. Correct.

6 Q. Did you see the list of articles that I provided
7 to your counsel in response to some of the discovery requests
8 in this case?

9 A. Yes.

10 Q. Do you know if you have copies of any of the
11 articles that were listed in those discovery requests?

12 A. Not with me. The articles that we produced I
13 would have at work.

14 MR. OWENS: That was not the question that he asked,
15 Ms. Nicol. He asked you about articles that he has identified
16 in discovery; not that we've identified in discovery.

17 Q. (By Mr. Moxon) Let me give it to you again. I
18 provided responses to some discovery that was issued by
19 Mr. Owens.

20 A. Okay.

21 Q. And I listed a number of articles which had
22 reference to, in my view, brain damage and memory loss, about
23 some 40 articles that were in medical journals. Did you see
24 that list?

25 MR. OWENS: I'm going to object to the question. It

1 that, and that percentage was debated.

2 Q. I'm sorry. I didn't understand your answer.

3 A. In the literature, that percentage varied widely.
4 So, yes, we noted that. We noted that.

5 Q. I just want to understand your question (sic) so
6 let me see if I can clarify this. You noted that there was a
7 wide variance in the percentage of the number of psychiatrists
8 who believed that ECT caused permanent memory loss?

9 A. Yes. Correct. Based on the research that we did
10 and the literature.

11 Q. What were the highs and lows or the variance in
12 what you read of the number of psychiatrists that believed ECT
13 caused permanent memory loss?

14 A. I can't tell you that. That was in 1979. I
15 would have to go back and look at that literature from 1979
16 because the percentages have changed markedly in the 26 years,
17 and I have focused on research as it becomes available, and
18 the numbers have decreased markedly, of course, as you know.
19 So there is very little impairment and cognitive effect now
20 compared to what was perceived as being memory impairment. So
21 I have been very cognizant of that.

22 Q. Really? How many people have you spoken to who
23 have personally had ECT?

24 A. I have spoken to patients.

25 Q. How many?

1 A. Five or six.

2 Q. Over the last 30 years?

3 A. Over the last 25 years. And I have spoken to
4 their families also.

5 Q. Did any of the patients who had received ECT tell
6 you whether or not they had memory problems?

7 A. In cases -- where I spoke with patients, they
8 were thanking us for saving their lives. So I have spoken
9 with patients who are very grateful.

10 Q. Let me ask you the question I asked you again.
11 Did you talk to any of those five or six people over the last
12 25 years who indicated to you whether or not they had memory
13 problems arising out of their ACT?

14 A. And my answer would be they did not mention
15 memory problems.

16 Q. Did you ask them?

17 A. No, I did not.

18 Q. Have you ever received any letters of complaint
19 from any ECT practitioner that ECT harmed a patient?

20 A. Can you be more specific?

21 Q. Yes. Have you ever received any letter of
22 complaint from any practitioner of shock treatment that the
23 treatment harmed a patient?

24 A. In what way? Can you define "harm" in your
25 vernacular?

1 Q. Just a minute. You don't consider broken bones
2 from ECT to be an adverse effect from ECT?

3 A. I believe they're considered to be adverse
4 effects because they're not -- this doesn't happen with the
5 modified ECT that we have been giving for 26 years with muscle
6 relaxants, anesthetic, and the patient being oxygenated by an
7 anesthesiologist with a muscle relaxant that can occur.

8 Q. Is a broken bone an adverse effect? Would that
9 be an adverse effect or not?

10 MR. OWENS: The question is vague and ambiguous.

11 THE WITNESS: It would be, but it's not listed in any
12 of the professional textbooks on adverse effects by the
13 medical community.

14 Q. (By Mr. Moxon) How about broken teeth? Would
15 you consider that an adverse effect of ECT?

16 A. Yes, I would.

17 Q. That happens, doesn't it?

18 A. It's not listed, but I would consider it.

19 Q. That happens, doesn't it, from ECT? You're aware
20 that ECT causes --

21 A. It could happen.

22 Q. Let me finish my question. You're aware that ECT
23 and the convulsions caused by your machines causes people
24 sometimes to have broken teeth, correct?

25 MR. OWENS: When? The question is vague and

1 ambiguous as to time.

2 THE WITNESS: That would be a clinical occurrence
3 based on how the clinician was treating, but that could be an
4 adverse effect.

5 Q. (By Mr. Moxon) I'm not asking for a
6 justification. I'm just asking for yes or no. Are you
7 aware --

8 A. I believe I said yes two questions ago. I did.

9 Q. Let's just have the question clear. You're aware
10 that your machines sometimes cause people to have broken
11 teeth, right?

12 A. Yes.

13 Q. And you're aware that your machines cause people
14 sometimes to have permanent memory loss, right?

15 A. In what time frame? In the literature?

16 MR. OWENS: No. He's asking --

17 MR. MOXON: I'm asking --

18 MR. OWENS: Excuse me. If I may clarify.

19 THE WITNESS: As an adverse effect, correct?

20 MR. OWENS: No. He's not asking what adverse effects
21 are. He's asking if you are aware if these machines have
22 caused these various problems. Do you understand the
23 question?

24 THE WITNESS: I do understand the question.

25 Q. (By Mr. Moxon) Let me give you the question

1 again on the record. Are you aware that your machines cause
2 patients to have permanent memory loss?

3 MR. OWENS: Excuse me.

4 THE WITNESS: That can be a complication.

5 MR. OWENS: I have to get my objections in. I don't
6 know whether he's asking if your machines have caused these or
7 potentially can cause, and I don't know whether you
8 understand --

9 THE WITNESS: I don't.

10 MR. OWENS: -- the assumption. So the objection is
11 that it is vague and ambiguous.

12 Q. (By Mr. Moxon) It would actually help both
13 Mr. Owens and I out if you just listen to my question
14 carefully. I will try to make it as clear as possible. If
15 it's not clear I will clarify it. And then after you've
16 duplicated the question, then go ahead and give your answer.
17 Okay?

18 A. Right.

19 Q. Are you aware that your machines have caused
20 patients to experience permanent memory loss?

21 A. Yes.

22 Q. Do you consider that to be an adverse effect --

23 A. Yes.

24 Q. -- of shock treatment?

25 A. Yes.

1 Q. Do you have copies of any of them?

2 A. I don't.

3 Q. Have you read any of them?

4 A. At times I have seen them, yes, but I have not
5 kept the copies.

6 Q. Are you aware that this survivors group takes the
7 position that ECT is very harmful to patients?

8 A. Yes.

9 Q. Have you ever spoken to David Oaks?

10 A. No, I haven't.

11 Q. Have you ever made any effort to communicate with
12 the people that publish *Mind Freedom* --

13 A. No, I haven't.

14 Q. -- to see why they so vehemently assert that
15 their members have been gravely harmed by shock treatment?

16 A. I have not.

17 Q. Why not?

18 A. Again, we're very focused on what we do in terms
19 of the research and the literature that supports our products,
20 that it is a safe and effective treatment. We are very
21 convinced it is a safe and effective treatment given the work
22 that I have already produced to you in the form of five
23 textbooks, a substantial amount of manuals and articles. And
24 all of this indicates to us that it is a safe and effective
25 treatment. So I felt no need to go further other than relying

1 on science.

2 Q. And the stories and the reports of the actual
3 patients of ECT who say they have been severely harmed is not
4 in your view science?

5 A. It is not science in that regard.

6 Q. So it is disregarded by the company?

7 A. It is not disregarded, but that's not our role.

8 Q. Are you familiar with a group called ECT.org?

9 A. I have heard of them, yes.

10 Q. What have you heard about them?

11 A. That they are an antipsychiatry group.

12 Q. And they are an anti-ECT group, right?

13 A. Primarily I have just heard antipsychiatry.

14 Q. Have you ever looked on the ECT.org Web page?

15 A. No, I haven't.

16 Q. Have you communicated with any of the persons
17 that run ECT.org?

18 A. No, I have not.

19 Q. Why not?

20 A. Once again, I'm very focused on what we're doing.

21 And as this is considered a fringe organization by the
22 psychiatric community, there is -- there's nothing to be
23 gained. We're very focused on healing people and saving lives
24 and providing the psychiatric community with the safest
25 devices we can, and that's where our focus and energies lie.

1 Q. So if you had information that your devices
2 weren't as safe as they could be or that they weren't safe at
3 all, would that change your business?

4 A. It would have to be scientific evidence. It
5 would have to be proven. It would have to be controlled in
6 double-blind studies. Then, yes, I would be absolutely
7 interested.

8 Q. So 50 or a hundred individual patients said it
9 destroyed their memory; that wouldn't fit within the category
10 of the information that you would consider to change your
11 devices, correct?

12 MR. OWENS: The question is vague and ambiguous. It
13 is an incomplete hypothetical.

14 Q. (By Mr. Moxon) He's right. In the ECT.org
15 there's perhaps 200 people, 200 shock patients, who have
16 written in their personal stories about the results of their
17 shock treatment. Have you ever heard of that?

18 MR. OWENS: The question assumes facts not in
19 evidence. It lacks foundation.

20 Q. (By Mr. Moxon) It kind of does. I'm asking if
21 you have heard that.

22 MR. OWENS: Same objections. Go ahead.

23 THE WITNESS: No, I have not.

24 Q. (By Mr. Moxon) If you received credible reports
25 from 200 patients that weren't examined by any blind or

1 double-blind studies or not examined by any psychiatrist or
2 not examined by anybody but just reports from 200 former
3 patients saying that they were severely harmed by ECT, would
4 that have any effect on how you do business?

5 MR. OWENS: It is vague and ambiguous. It is an
6 incomplete hypothetical.

7 THE WITNESS: Certainly we would be very
8 compassionate. We know that in any medical environment there
9 is a risk/benefit, and when you make a choice to have a
10 therapy, any therapeutic -- any medical procedure, there is a
11 risk and there is a benefit.

12 Q. (By Mr. Moxon) So you balance --

13 A. There is a balance, and I'm sure with any medical
14 procedure there are what we would call failures and successes,
15 good experiences and bad experiences. And that's how I would
16 regard it. And I would regard it with compassion.

17 Q. But not enough compassion to actually acquire the
18 information to see what the balance should be?

19 MR. OWENS: The question is argumentative. It's
20 vague and ambiguous. Unintelligible.

21 THE WITNESS: Again, the science being done addresses
22 those issues. The goal, of course, is to eliminate any side
23 effect in terms of our devices, and that would be true in any
24 therapeutic -- any therapy for any medical procedure. That is
25 the goal.

1 Q. (By Mr. Moxon) What changes have you made in
2 your machines to eliminate permanent memory loss caused by the
3 machines?

4 A. We have made changes. There have been changes
5 over the last 20 years that have all decreased memory
6 deficits.

7 Q. So you have intentionally made changes in your
8 machines for the purpose of reducing memory loss caused by
9 ECT?

10 A. They have decreased memory deficits, yes,
11 features that we have introduced.

12 Q. What features have you introduced for the purpose
13 of lessening the memory loss that you know is caused by ECT?

14 A. In the last year we introduced a new parameter
15 set called Ultra-Brief, and I believe we produced a
16 document -- excuse me. Can I have a glass of water since I am
17 doing all of the talking -- an Ultra-Brief parameter set.
18 It's an Ultra-Brief ECT is what we call it, which uses much
19 lower pulse widths and in concert with titration it -- the
20 side effects are far less; the memory deficits are far less.

21 We have also developed a machine -- it is a pulse
22 waveform machine -- in 1980. The memory loss, the deficits,
23 are a third of the sinusoidal waveform. So you can bracket
24 from '80 to 2003 that we have worked very hard and diligently
25 on achieving this.

1 Q. We will get to these waveforms a little bit
2 later. Thank you for identifying them. Have you ever heard
3 of an Institute for Treatment in Psychiatry?

4 A. No, I haven't.

5 Q. Center for the Treatment - Psychiatry?

6 A. Perhaps. I'm not sure.

7 Q. It is a group that's organized by Linda Andre in
8 New York. Does that sound familiar?

9 A. Yes.

10 Q. And it is also an anti-ECT group?

11 A. Correct.

12 Q. Are you aware of any other treatments anywhere in
13 medicine that has at least three survivor groups adamantly
14 opposed to the form of the treatment?

15 A. I've not done --

16 MR. OWENS: The question assumes facts not in
17 evidence.

18 Q. (By Mr. Moxon) Answer?

19 A. I haven't done that kind of research.

20 Q. Well, do you know of any practice in medicine
21 other than ECT where there are survivor groups that seek to
22 oppose and legislate against the treatment?

23 A. I wouldn't know without researching it.

24 Q. So the answer is no?

25 A. The answer is no. Without researching it, yes.

1 Q. There are only two shock manufacturers in the
2 United States, correct?

3 A. Correct.

4 Q. You're one of them?

5 A. Yes.

6 Q. Aren't you curious to find out as one of the two
7 manufacturers in the country why there are victim groups
8 established to legislate against your machines?

9 MR. OWENS: Assumes facts not in evidence. It's
10 argumentative.

11 THE WITNESS: I'm not curious. I would be very
12 compassionate. But I also know, again, that in the
13 risk/benefit selections that people have to make there are
14 going to be some side effects over a 40- or 50-year period of
15 ECT being given and that certainly not all of it would be
16 given with our devices.

17 Q. (By Mr. Moxon) So you would be very
18 compassionate, you say?

19 A. Yes.

20 Q. What have you done in the exercise of this
21 compassion to communicate with any of the victims of your
22 machines?

23 MR. OWENS: That misstates the testimony. Assumes
24 facts not in evidence.

25 THE WITNESS: That is not our responsibility as a

1 medical-device manufacturer. We are responsible for our
2 medical devices. The physicians who treated those patients
3 would work with those patients. We are not responsible for
4 individual patients.

5 Q. (By Mr. Moxon) That's not your problem? That's
6 the psychiatrists' problem?

7 A. That is not our responsibility from the FDA
8 perspective or from our perspective as medical-device
9 manufacturers.

10 Q. Not your responsibility?

11 MR. OWENS: Wait a minute. She has answered the
12 question. You are being argumentative. Go on to the next
13 question.

14 Q. (By Mr. Moxon) Do you know why these victims
15 groups were established against ECT?

16 A. No, I don't.

17 Q. Have you had any curiosity over the past 25 years
18 to learn why some victims of ECT established groups to attempt
19 to legislate or control the practice?

20 MR. OWENS: Assumes facts not in evidence.

21 THE WITNESS: Of course it would be of interest, but
22 I haven't done that. I haven't researched it.

23 Q. (By Mr. Moxon) And why is that?

24 MR. OWENS: Same objection.

25 THE WITNESS: Objection?

1 MR. OWENS: I said same objection.

2 Q. (By Mr. Moxon) Why is that?

3 A. Because it's not in the purview of my ownership
4 of a medical-device electronics company. I'm very focused on
5 the device, making it the safest and most effective device I
6 can as an owner.

7 Q. You are more interested in the business end of
8 ECT, correct?

9 MR. OWENS: Object.

10 Q. (By Mr. Moxon) That is your focus?

11 MR. OWENS: Argumentative and vague.

12 THE WITNESS: I'm interested in providing a safe and
13 effective device for psychiatrists to use to heal people.

14 Q. (By Mr. Moxon) Do you know why in the state of
15 California there is only one medical treatment that has a
16 legislated form of standardized informed consent?

17 MR. OWENS: Assumes facts not in evidence.

18 THE WITNESS: No, I don't.

19 Q. (By Mr. Moxon) Did you know that you can't have
20 ECT in California without signing a very specific consent
21 form?

22 A. Yes, I was aware of that.

23 Q. Do you have any idea why?

24 A. No, I don't.

25 Q. Do you have any curiosity why the state would

1 require a specific consent form to be signed by a person
2 before they have this treatment?

3 MR. OWENS: It's argumentative.

4 THE WITNESS: No, I don't.

5 Q. (By Mr. Moxon) Did you ever hear that the city
6 of Berkeley banned ECT at one point in the '70s?

7 A. I remember that.

8 Q. Did you look into that at all?

9 A. Yes, that is one of the things that we researched
10 when we purchased the company.

11 Q. Did that give you any cause for concern?

12 A. No, it didn't. Again, it was a very tiny fringe
13 minority opinion at that time, in the 1970s in Berkeley.

14 Q. Did you see any of the anti-ECT demonstrations of
15 hundreds of people demonstrating against it in Berkeley?

16 MR. OWENS: Assumes facts not in evidence.

17 THE WITNESS: No, I wasn't there in the '70s. We
18 didn't own the company then.

19 Q. (By Mr. Moxon) Were you aware that that
20 happened?

21 MR. OWENS: Assumes facts not in evidence.

22 THE WITNESS: When did that happen? I'm not aware of
23 that.

24 Q. (By Mr. Moxon) In the 70s.

25 A. I wasn't aware of that.

1 Q. When the city of Berkeley banned ECT within the
2 city limits, is it your understanding that that was a minority
3 of persons that were interested in doing that?

4 A. It was a minority, assumed to be in the
5 psychiatric community and in the rest of the United States.
6 It was a minority opinion, if you will.

7 Q. But you did not --

8 A. It was not mainstream.

9 Q. Has you or your company made any effort to
10 solicit information from persons who have received ECT to see
11 whether or not they have been harmed?

12 A. No.

13 Q. Why not?

14 A. Again, that is not in the purview of our
15 company's responsibilities.

16 Q. That is a responsibility of the practitioners who
17 use your machines?

18 A. Correct.

19 Q. Now, you've paid money to Harold Sackeim as a
20 consultant, correct?

21 A. Correct.

22 Q. What did you pay him for?

23 A. As a consultant in some cases. In some case,
24 very few cases, he would travel, as would other physicians, to
25 speak in scientific meetings only. And because the community

1 damage, so no. The answer is no.

2 Q. (By Mr. Moxon) You're aware that many people who
3 have received ECT think that they have been caused brain
4 damage by ECT, correct?

5 MR. OWENS: Assumes facts not in evidence.

6 THE WITNESS: I'm aware there is a fringe minority
7 that believes that, a small group.

8 Q. (By Mr. Moxon) Do you think there is a fringe
9 minority of patients?

10 A. When you say "people," you need to be specific.

11 Q. Patients. I'm talking about patients, people who
12 have received ECT. Do you think that's --

13 A. I think it is a small.

14 MR. OWENS: Just a minute. You're not going to argue
15 with Mr. Moxon. Mr. Maxon is not going to argue with you.
16 It's not going to happen in this deposition.

17 Q. (By Mr. Moxon) I agree. Let me finish the
18 question. You used the term "fringe minority." Are you
19 referring to a fringe minority of commentators or fringe
20 minority of patients?

21 A. I will restate that. I would say small minority
22 of patients.

23 Q. Do you think the persons that have indicated they
24 received brain damage from ECT are lying?

25 MR. OWENS: Assumes facts not in evidence.

1 Speculation.

2 Q. (By Mr. Moxon) Is that your assumption?

3 A. Again, as we do not believe ECT causes brain
4 damage, the answer would be no.

5 Q. You don't think they're lying? You think they
6 are lying?

7 MR. OWENS: Same objections.

8 THE WITNESS: I do, because we don't believe brain
9 damage exists from ECT.

10 Q. (By Mr. Moxon) And if ECT patients have
11 indicated that immediately after the ECT they lost huge
12 chapters of their life, of the memory of their lives, do you
13 think that they're misrepresenting the truth?

14 MR. OWENS: Assumes facts not in evidence. It's
15 irrelevant.

16 Q. (By Mr. Moxon) Answer?

17 A. Yes.

18 Q. And have you talked to some of these people to
19 find out why they're saying these bad things about your
20 product that are untrue?

21 A. No, I have not.

22 MR. OWENS: Just a minute. It's argumentative.
23 We're going to take a break.

24 MR. MOXON: Let's take a lunch break. It is.

25 (Lunch recess taken at 12:20 p.m. to 1:31 p.m.)

1 Q. (By Mr. Moxon) Why is there a maximum amount of
2 voltage utilized by your machine?

3 A. Why would it be limited?

4 Q. Yes.

5 A. Because primarily we are a preamendment device.
6 We are -- the FDA has limited our maximum energy, limited our
7 maximums in all regards for safety and efficacy or safety and
8 effectiveness. So there would be a maximum number, of course.

9 Q. If the FDA didn't limit the amount of energy you
10 could use, would you use more in your machine?

11 A. No, we would not.

12 Q. So notwithstanding with the FDA does, you would
13 set a limit on the amount of voltage?

14 A. We would always set a limit, based again on the
15 literature and the research in the field.

16 Q. Would that be to prevent injury by the machines?

17 A. It would be for safety and effectiveness, yes; to
18 maximize that safety and effectiveness.

19 Q. Well, I don't understand your answer with respect
20 to effectiveness. Is there a voltage rate that is considered
21 more effective to a patient than another voltage rate?

22 MR. OWENS: Lacks foundation.

23 THE WITNESS: With any parameter, the decision would
24 be made based on the grandfathered, if you will, 1973 device,
25 the substantially equivalent designs of the four designs

1 following that, and the research that was current that we
2 would be constantly accessing.

3 Q. (By Mr. Moxon) So you can't really change the
4 electrical parameters, can you, because it has to be
5 substantially similar to a prior machine?

6 A. Correct.

7 Q. Well, as I understand it then the changes that
8 were made in the machine don't go to the electrical
9 parameters, correct?

10 A. Any changes that are made in the machine would be
11 consistent with the preamendment device.

12 Q. In terms of the electrical parameters?

13 A. Correct.

14 Q. And the purpose of the device, of course, is to
15 cause a grand mal seizure?

16 A. Correct.

17 Q. The position of your company is that there is a
18 therapeutic effect from shock treatment, right?

19 A. Correct.

20 Q. It has a therapeutic effect?

21 A. Yes.

22 Q. Is that therapeutic effect caused by the
23 convulsion?

24 A. The mechanisms of ECT.

25 Q. Is that alleged therapeutic effect caused by the

1 convulsion?

2 MR. OWENS: Lacks foundation.

3 THE WITNESS: It's caused by the mechanisms of ECT
4 that are caused by the convulsion, if you will.

5 Q. (By Mr. Moxon) Well, what are the mechanisms of
6 ECT that cause a therapeutic effect by virtue of a convulsion?

7 A. The convulsion causes many different things to
8 occur, and those are the theoretic mechanisms, if you will.

9 Q. So the therapeutic effect is not known?

10 A. There are numerous theories. They're well
11 understood in the world of neuropsychiatry, the
12 neuropsychiatric community. I just can't articulate them to
13 you.

14 Q. But they're theoretical?

15 A. They're very well-supported theories, yes.

16 Q. But they are still theories?

17 A. As with any medical procedure, yes.

18 Q. Well, I'm not going to argue that point with you.

19 You don't know then what the therapeutic -- what has an
20 alleged therapeutic effect by virtue of ECT, do you?

21 MR. OWENS: The question is vague, ambiguous, and
22 unintelligible.

23 THE WITNESS: Is that a question?

24 MR. MOXON: Yes.

25 MR. OWENS: Do you understand the question?

1 THE WITNESS: I do understand the question. And the
2 therapeutic effect is well understood.

3 Q. (By Mr. Moxon) Well, I asked you --

4 A. It is well understood in the clinical community
5 and we understand it, but we are not able to articulate it as
6 the clinicians would articulate those mechanisms to you
7 because they would be articulated by neuropsychiatrists, not
8 medical manufacturers of ECT devices. That wouldn't be our
9 role.

10 Q. So you're not able to articulate what the
11 therapeutic effect is of ECT, correct?

12 A. There are excellent articles and books on the
13 mechanisms of ECT --

14 Q. Ms. Nicol, I'm sorry but --

15 A. But they're in the clinical arena.

16 Q. I am just asking you --

17 MR. OWENS: Are you asking her by therapeutic effect
18 whether the ECT alleviates depression?

19 Q. (By Mr. Moxon) I will give you an example. You
20 have a broken bone and you set a bone and you put it back in
21 place and you know that when you put it back in place the bone
22 mends through a well-known mechanism. You know exactly how a
23 bone mends and heals. Okay?

24 Do you know what the purported therapeutic effect
25 is, the cause of a therapeutic effect, arising out of ECT?

1 to cause a convulsion?

2 MR. OWENS: Lacks foundation. It is an incomplete
3 hypothetical.

4 THE WITNESS: I can't agree with that question
5 because this doesn't send energy through the brain, as you
6 just expressed. It causes a convulsion.

7 Q. (By Mr. Moxon) Of course it does. The only way
8 a convulsion -- I don't want to argue with you. My question
9 to you is the convulsion is caused by electricity passing
10 through the brain, right?

11 A. Partially, yes.

12 Q. Partially? What else causes --

13 A. A small amount, correct.

14 Q. What else causes a convulsion other than the
15 electricity passing through the brain?

16 A. Nothing else.

17 Q. Okay. Is there any reason then to send more
18 electricity through the brain than is necessary to cause a
19 convulsion?

20 A. Yes.

21 Q. What's that?

22 A. In this case we had a preponderance of APA,
23 American Psychiatric Association, members, including task
24 force members, ask us to please increase the parameters on our
25 devices.

1 Q. Why?

2 A. The patients were not getting better. So we --
3 again, this was all based on research coming from numerous
4 centers in the U.S. And as we have always done, we used that
5 double-blind, peer-reviewed research to make that decision,
6 and we made it over five years.

7 Q. Correct me if I am wrong. As I understand your
8 testimony then a certain amount of energy is required for a
9 convulsion but a number of practitioners told you in their
10 view more energy was needed to cause a benefit?

11 A. Therapeutic response.

12 Q. Therapeutic response than just what causes the
13 convulsion?

14 A. Correct.

15 Q. Okay. Do you know what the point is of sending
16 electricity through a brain if it's not just to cause a
17 convulsion? Why? Why would you send electricity through a
18 brain beyond what's necessary to cause a convulsion? Do you
19 understand why?

20 MR. OWENS: The question is argumentative. It is
21 vague and ambiguous. Lacks foundation.

22 THE WITNESS: No.

23 Q. (By Mr. Moxon) Who made the decision to increase
24 the amount of energy the machine puts out? Who made that
25 final decision?

1 going to instruct her not to answer in an effort to expedite
2 the deposition. She can go ahead. Do you have the question
3 in mind?

4 Q. (By Mr. Moxon) I don't even have the question in
5 mind anymore.

6 MR. OWENS: Shoot away.

7 THE WITNESS: I don't. You will have to repeat it.
8 There has been too much discussion.

9 MR. OWENS: Fair enough.

10 Q. (By Mr. Moxon) When you heard that ECT had a bad
11 reputation, were you curious as to why?

12 A. Yes.

13 Q. What did you determine?

14 MR. OWENS: Asked and answered.

15 THE WITNESS: I determined that it was a fringe group
16 of people that felt that way and that it didn't represent the
17 mainstream medical community and the clinicians in ECT and
18 researchers that were the large, large majority of the
19 psychiatric community who believed in ECT.

20 Q. (By Mr. Moxon) Who told you that it was a fringe
21 group?

22 A. When?

23 Q. Or how did you come to believe that it was a
24 fringe group that had this bad impression of ECT?

25 A. It is just an assumption I have made based on

1 reading -- based on reading, based on literature, based on
2 impressions in the psychiatric community.

3 Q. As one of the two manufacturers of these devices
4 in the United States, were you curious to communicate with any
5 of the people of these which you concluded to be a fringe
6 group to see why they held this bad opinion of your business?

7 MR. OWENS: The question is vague and ambiguous.

8 THE WITNESS: I think we answered this this morning
9 also.

10 Q. (By Mr. Moxon) Humor me. I don't think I asked
11 it like that.

12 A. I think I said this morning -- and I will say it
13 again -- my focus was very specific in terms of running a
14 company and being very concerned about developing products
15 that were safe and effective. So I wasn't -- and I had also a
16 huge burden to work with the research and the developers that
17 are mainstream. So I didn't take the time to understand
18 because it wasn't in my purview. It wasn't within the job
19 description that I would have within my company as a
20 president.

21 Q. To talk to --

22 A. It just wouldn't be part of our focus.

23 Q. To talk to the detractors of ECT?

24 A. Correct.

25 Q. Do you know where Rex Hiatt lives?

1 THE WITNESS: Right. It doesn't address the claim.

2 Q. (By Mr. Moxon) Are there any governmental or
3 nongovernmental entities to whom you are required to send
4 reports concerning your machines, the manufacturer of your
5 machines, the effects of your machines, complaints, anything
6 relating to ECT or ECT machines?

7 A. Of course the FDA we would.

8 Q. What reports --

9 A. And --

10 Q. I'm sorry. Go ahead.

11 A. Requirements to file reports regarding the
12 machines, that would be the only organization in the United
13 States.

14 Q. What about the rest of the world?

15 A. To file reports, the European Union.

16 Q. Any others?

17 A. There are no others.

18 Q. What reports are required to be filed with the
19 FDA?

20 A. The only reports that would be required by the
21 FDA is if there were an adverse event. We would have to file
22 one form, an MDR, and that's it.

23 Q. Have you produced to me every single adverse
24 event report that you've filed with the FDA?

25 MR. OWENS: An MDR, in other words?

1 THE WITNESS: An adverse event.

2 Q. (By Mr. Moxon) If MDRs are the only one.

3 A. There haven't been any other than the one we
4 produced.

5 Q. So since 1980 there has only been one adverse
6 event that you reported to the FDA?

7 A. That was reported to us, correct.

8 Q. Are you required or were you ever required to
9 make any submissions to any state in the United States
10 concerning the sale of your machines?

11 A. No.

12 Q. Do you know if MECTA has ever had any
13 communication with the California Department of Mental Health?

14 A. No.

15 Q. How about the Oregon Department of Mental Health?

16 A. No.

17 MR. OWENS: No, you don't know or --

18 THE WITNESS: I don't know. I don't know. I would
19 have to go back and look at records in order to determine if
20 we had any contact over 26 years.

21 Q. (By Mr. Moxon) Do you sell machines in Asia
22 also?

23 A. Yes.

24 Q. Japan?

25 A. No.

1 placement, correct.

2 Q. Is it your understanding that your machine can
3 cure some ailment?

4 A. No.

5 Q. Do you represent that your machine can cure
6 anything?

7 A. No.

8 Q. Do you believe it can cure anything?

9 A. No.

10 Q. Then why do you market it?

11 A. Because endogenous depression can be alleviated.

12 There is no cure for it at this time.

13 Q. I guess it is not a disease then?

14 MR. OWENS: Well, wait a minute.

15 Q. (By Mr. Moxon) Is it a disease?

16 MR. OWENS: Lacks foundation.

17 Q. (By Mr. Moxon) Is depression a disease?

18 MR. OWENS: Lacks foundation.

19 THE WITNESS: It is considered a DSM criteria. It's
20 a category in the DMS.

21 Q. (By Mr. Moxon) Is it a disease?

22 A. I think the APA categorizes it as such.

23 Q. As a disease?

24 A. In the DSM the APA -- you would have to -- I
25 would have to resource that to give you that answer. And,

REPORTER'S CERTIFICATE

I, HEATHER A. SUMMERS, CSR. NO. 92-0246, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney or of any of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of Oregon that the foregoing is true and correct.

Dated this 29th day of November 2004.



Heather Summers
HEATHER A. SUMMERS, C.S.R. No. 92-0246

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CERTIFIED COPY

ATZE AKKERMAN and)
ELIZABETH AKKERMAN; each)
suing individually and on)
behalf of the general public,)
Plaintiffs,)
vs.)
MECTA CORPORATION, and DOES)
1-20,)
Defendants.)

Case No. 01-10362 RSWL(RZx)

VIDEOTAPED DEPOSITION OF ROBIN NICOL

AND

30 (b) (6) EXAMINATION OF MECTA CORPORATION

VOLUME II

PORTLAND, OREGON

NOVEMBER 19, 2004

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FILE NO.: 9E09AFF

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

- - -

ATZE AKKERMAN and)
ELIZABETH AKKERMAN; each)
suing individually and on)
behalf of the general public,)

Plaintiffs,)

vs.)

Case No. 01-10362 RSWL(RZx)

MECTA CORPORATION, and DOES)
1-20,)

Defendants.)

Deposition of ROBIN NICOL and 30(b)(6) Examination of
MECTA Corporation taken on behalf of the Plaintiffs, at Allen
Sheridan & McClanahan, 190 S.W. Harrison Street, Portland,
Oregon, commencing at 9:13 a.m. on Friday, November 19, 2004,
before Heather A. Summers, CSR No. 92-0246.

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Jay Webster, videographer
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1 A. As I'm not a medical doctor --

2 Q. I'm asking you what you're referring to. Are you
3 referring to any other cognitive -- severe cognitive side
4 effects arising out of ECT other than memory loss and
5 confusion?

6 A. No.

7 Q. Are you aware of any other cognitive deficits
8 caused by ECT beyond memory loss and confusion?

9 A. No.

10 Q. If you're aware of potential serious cognitive
11 side effects caused by ECT, why didn't you endeavor to make
12 sure that every single patient who received ECT from one of
13 your machines was warned of its potential harms?

14 MR. OWENS: Asked and answered.

15 THE WITNESS: We warn regarding potential side
16 effects and memory impairment in our instruction manuals that
17 we provide. We also warn in our videotapes. The clinician
18 who counsels the patient prior to ECT uses these materials,
19 this instruction manual and our videotape, to counsel the
20 patient. In addition, that could mean making copies of those
21 sections, verbally working, teaching, counseling his patient.
22 In addition he has the opportunity to purchase the patients
23 and family materials from the University of Michigan or
24 Dartmouth and send them home.

25 Q. (By Mr. Moxon) I take it from your answer then

1 that you don't endeavor to provide it to the patient because
2 you rely entirely upon the physician or hospital to provide
3 any warning information to the patient; is that right?

4 A. That is because our device is sold, and we are
5 under the auspices of the FDA, and we cannot counsel the
6 patient or treat the patient.

7 Q. Is your answer yes?

8 A. My answer is yes.

9 Q. Now, you have mentioned this FDA again. Is there
10 some FDA regulation that prohibits you from providing
11 warnings, written warnings to patients?

12 A. We don't directly treat. The warnings are very
13 specific in the Federal Register regarding that. We are
14 medical-device manufacturers.

15 Q. Let me give you that question again. Is there
16 some FDA regulation that prohibits you from providing written
17 warnings to patients?

18 A. I would have to look at the Federal Register
19 again to determine if there is a prohibition.

20 Q. You're not aware of any, are you?

21 MR. OWENS: That is not what she said. That
22 misstates the testimony.

23 THE WITNESS: I would have to look at it. It is a
24 very extensive section.

25 Q. (By Mr. Moxon) You have been the president of

1 this company for 25 years. I'm asking you your personal
2 knowledge.

3 A. Right.

4 Q. Are you aware, without telling me if there is a
5 number -- I'm not asking you for a number. I'm asking if you
6 are aware of some federal regulation that prohibits you from
7 providing written warnings to patients?

8 A. I think it would be more likely in the domain of
9 the AMA and The American Psychiatric Association that -- where
10 the warnings may be. Psychiatrists would in their medical
11 practices treat their patients and want to provide that
12 material to their patients. That would be where the warnings
13 would be, in the domain of the medical community.

14 Q. Ms. Nicol, are you aware of any FDA regulation
15 that prohibits you from providing written warnings to
16 patients?

17 A. I believe I said I would have to review the
18 Federal Register again to determine if there is a warning.

19 Q. So the answer is no?

20 A. The answer is I'd have to review it. I can't
21 answer yes or no.

22 Q. Because you don't know?

23 A. I don't have it memorized. It is a very large
24 portion of the Federal Register.

25 Q. Let me ask you this question. Are you as you sit

1 here now, after having been the president of MECTA for 25
2 years, aware of any federal regulation which prohibits MECTA
3 from providing written warnings to patients?

4 MR. OWENS: Okay. Rick, this is the third, perhaps
5 fourth time you have asked this same question.

6 MR. MOXON: I agree. I have yet to receive an
7 answer.

8 MR. OWENS: She's told you she understands the FDA
9 prohibits it.

10 MR. MOXON: No, she didn't.

11 Q. (By Mr. Moxon) Are you adopting Mr. Owens'
12 testimony; you believe the FDA prohibits you? That's exactly
13 what I'm asking you. Is it your understanding that the FDA
14 prohibits you from providing warnings to patients?

15 A. Yes, it is. I just haven't been able to resource
16 that section --

17 Q. Okay.

18 A. -- in this.

19 Q. But you have read it in the past? You have read
20 somewhere where the FDA says you MECTA or you device
21 manufacturer, you're prohibited from providing written
22 warnings to patients?

23 A. Again, the answer is yes with the caveat that I
24 would need to resource that material.

25 Q. How long have you held that view, that the FDA

1 prohibited you from providing written warnings to patients?

2 MR. OWENS: Rick, this is so fundamental. Why are
3 you spending 30 minutes on it? MECTA can't practice medicine.
4 They can't contact patients.

5 MR. MOXON: Joe, please. This is completely --

6 MR. OWENS: This is a matter of law.

7 MR. MOXON: This is an improper objection. Now
8 you're just going to spin her off and she just repeats your
9 objections.

10 MR. OWENS: No. She has already said that, Rick.

11 Q. (By Mr. Moxon) I'm trying to get an answer to
12 the question. How long have you held the view that the FDA
13 prohibits you from providing written warnings to patients?

14 A. Since 1980 when we purchased the company.

15 Q. Is memory loss a side effect or direct effect of
16 ECT?

17 A. It's a side effect.

18 Q. What makes it a side effect?

19 A. It's an effect from the therapeutic effect of the
20 treatment. After the therapy is finished, completed there are
21 side effects. And it is the only side effect.

22 Q. How about brain damage?

23 A. Brain damage is not an effect from ECT. ECT does
24 not cause brain damage.

25 Q. It's your view that the articles that were

1 written in the 1940s and '50s and '60s indicating the ECT
2 causes brain damage were written by fringe psychiatrists?

3 A. It's my view that it is a small, very small
4 community of psychiatrists that are fringe.

5 Q. And the ones that wrote about brain damage in the
6 '40s and '50s were part of the fringe community also?

7 A. I would have to see those articles in the '40s
8 and '50s. I don't know what articles you're referring to.

9 Q. So you don't know whether or not those articles
10 were written by fringe psychiatrists or not?

11 A. That's correct.

12 MR. OWENS: She doesn't even know the articles were
13 written, Rick, other than your statement to her. You haven't
14 shown her the articles. The question lacks foundation.

15 MR. MOXON: She has answered it.

16 MR. OWENS: Well, yes, she has answered it, but the
17 judge still gets to rule on the question.

18 Q. (By Mr. Moxon) If you look at page 316 of the
19 instruction manual in front of you, M 00316, which is page 31
20 of the manual. The second paragraph, could you please read
21 that to yourself?

22 The bottom sentence -- actually, I will read the
23 whole thing. "In selecting a stimulus intensity some facts
24 should be kept in mind. The available evidence indicates that
25 a stimulus intensity that is barely above the seizure

1 necessary to cause a seizure or slightly above a seizure, it
2 could cause more serious cognitive deficits?

3 MR. OWENS: Well, it's now all those objections, plus
4 it's argumentative.

5 Q. (By Mr. Moxon) Answer?

6 A. 100 joules is a very responsible and low maximum
7 energy. The FDA has approved it.

8 Q. That is not responsive. Was it your intention
9 that the machine not necessarily be cranked up all the way
10 with each patient in order to lessen the cognitive deficits
11 that would be caused by too much electricity?

12 MR. OWENS: Same objections.

13 THE WITNESS: As I mentioned earlier, these are
14 parameter sets that will be selected by the clinician. It is
15 in their domain and their determination as to the energy that
16 they choose with each patient and what parameter selections
17 they choose. They would be the appropriate trained personnel
18 to determine what the cognitive effects are of their decision.

19 Q. (By Mr. Moxon) Did you understand my question?

20 A. Yes, I did.

21 MR. MOXON: Could you read the question back to the
22 witness?

23 Q. (By Mr. Moxon) Since you have understood it,
24 could you please answer it?

25 MR. OWENS: You have answered the question. It has

1 been asked and answered. Ask the next question.

2 MR. MOXON: Please read the question back to the
3 witness.

4 MR. OWENS: She has answered the question.

5 (The record was read as follows:

6 Q. Was it your intention that the machine
7 not necessarily be cranked up all the way
8 with each patient in order to lessen the
9 cognitive deficits that would be caused by
10 too much electricity?)

11 MR. OWENS: She has answered the question. Next
12 question.

13 MR. MOXON: She has not. She told me about what --
14 some clinicians make the decision. That had nothing to do
15 with my question. My question sought the intention of the
16 company, not what she thinks clinicians think. Can you please
17 repeat the question back to the witness. I would like a
18 direct answer, please.

19 MR. OWENS: This is the last time.

20 MR. MOXON: I hope.

21 (The record was read as follow:

22 Q. Was it your intention that the machine
23 not necessarily be cranked up all the way
24 with each patient in order to lessen the
25 cognitive deficits that would be caused by

1 too much electricity?)

2 MR. OWENS: It has been asked and answered.

3 Q. (By Mr. Moxon) Answer, please.

4 A. The clinician has to make that determination.

5 The FDA has designed the devices to be safe and effective with
6 the 100-joule limit. They make that decision. I cannot
7 evaluate nor can I dispense medicine as a medical-device
8 manufacturer.

9 Q. That is completely unresponsive. My question --

10 MR. OWENS: It is not going to be asked again, Rick.

11 If you have a problem, take it to the judge.

12 MR. MOXON: Read back the question to the witness.

13 MR. OWENS: No.

14 MR. MOXON: Please listen very carefully to the
15 question. If you're going to instruct her not to answer, I
16 will read it back one more time.

17 MR. OWENS: Well, if you want to use your seven hours
18 having the court reporter read back questions three or four or
19 five times, that's your prerogative.

20 MR. MOXON: She's not answering the question.

21 MR. OWENS: We are getting very close to that seven
22 hour time period.

23 MR. MOXON: Please read the question back to the
24 witness.

25 MR. OWENS: You can go ahead, but she's not going to

1 answer it again, Rick. I'm instructing her not to answer.

2 Q. (By Mr. Moxon) Ms. Nicol, you understand that
3 I'm asking what your intention was. And I don't care what the
4 FDA said. I don't care what you think a clinician thinks. I
5 don't care whose responsibility it is. I'm asking for the
6 intention of you and your company, nothing else with this
7 question.

8 MR. MOXON: Please read the question back to the
9 witness.

10 MR. OWENS: Did you understand that in responding to
11 the question?

12 THE WITNESS: That it was the intention of the
13 company?

14 MR. OWENS: He is asking you about the intention of
15 the company. When you responded to the question, were you
16 responding to that?

17 THE WITNESS: No, I was not.

18 MR. MOXON: Please read the question back to the
19 witness.

20 THE WITNESS: Joe, can we take a break?

21 MR. OWENS: We can.

22 (Recess taken at 10:20 a.m. to 10:37 a.m.)

23 Q. (By Mr. Moxon) Could you read back the
24 question, please.

25 (The record was read as follows:

1 Q. Was it your intention that the machine
2 not necessarily be cranked up all the way
3 with each patient in order to lessen the
4 cognitive deficits that would be caused by
5 too much electricity?)

6 THE WITNESS: As I would repeat again, it is not
7 in -- MECTA Corporation cannot make decisions for the
8 clinician. The clinician will make the decisions regarding
9 his or her choices of stimulus parameters and access the
10 cognitive effects. We are not licensed medical practitioners.

11 Q. (By Mr. Moxon) So you're still not answering
12 my question, but let me try to phrase it this way -- and I
13 will seek to move to compel an answer. After seven times I
14 give up.

15 Do you have any intention whatsoever -- do you
16 care, not to be pejorative, but do you care whether or not
17 practitioners use the full amount of electricity in their
18 machine with every patient?

19 A. We provide a range of parameters for the
20 clinician. It is -- all ranges are applicable and appropriate
21 determinations, and those determinations will be made by the
22 clinicians. So we provide them, they're appropriate, their
23 use can be determined by the clinical population or the
24 medical doctors.

25 Q. So basically it's not your concern whether or not

1 the physician uses more electricity than is necessary?

2 MR. OWENS: It is argumentative.

3 THE WITNESS: These are safe and effective limits
4 from one to 100 joules. They have been determined safe and
5 effective by the FDA for the last 25 years for four
6 generations of devices.

7 Q. (By Mr. Moxon) Ms. Nicol, I didn't ask you that.

8 A. So we feel very comfortable --

9 Q. I understand you have positions and you're fully
10 capable of articulating your view on things --

11 A. Right.

12 Q. -- but the only reason I'm here is to ask you the
13 questions I need answered.

14 A. Right.

15 Q. Is it of no concern to you what amount of
16 electricity the clinicians use with their patients?

17 MR. OWENS: It is asked and answered. It is
18 argumentative.

19 THE WITNESS: It is a concern, and we are -- we
20 provide our clinicians with these parameters because they are
21 appropriate parameters.

22 Q. (By Mr. Moxon) Why is it a concern? Is it
23 because if too much electricity is used or more electricity
24 than is necessary the patient can be harmed?

25 A. It is a concern that we have addressed by

1 submitting our devices to be tested and approved by the FDA,
2 and that concern was answered by their approvals.

3 Q. I didn't ask you anything about the FDA. I asked
4 you absolutely nothing about the FDA.

5 MR. OWENS: Rick, you really have to --

6 MR. MOXON: Please read the question back?

7 MR. OWENS: Rick, you have to cut back on the
8 argument.

9 MR. MOXON: You took her out to instruct her, I
10 thought, to answer the questions, but she's still refusing to
11 answer them.

12 MR. OWENS: Rick, don't argue with me; don't argue
13 with the witness. It's not getting us anywhere. It is not
14 appropriate to make statements like that on the record.

15 MR. MOXON: I will just keep repeating the question
16 until I get an answer. Please read the question back?

17 MR. OWENS: Well, you're not going to do that. She's
18 answering the question. You disagreed with the answer.
19 Badgering is not an appropriate approach. This is a fact
20 deposition. You are here to ask for factual information, not
21 for her to agree with your concepts and your statements.

22 MR. MOXON: That is exactly right. That is exactly
23 what we are here for. I'm here to get the intentions,
24 viewpoints, and facts of the company. I didn't ask her any
25 question about the FDA whatsoever. Completely unresponsive.

1 promote your product?

2 A. No.

3 Q. What was the purpose of sending the videos?

4 A. The purpose was to clinically teach. Much as the
5 instruction manual, to give our clinicians as much clinical
6 education as we can, and the basis for that would be to have
7 clinicians who understood the treatment, to teach the
8 treatment and to share that, either in videotape format or an
9 instruction format or in a textbook format.

10 Q. Did you want the clinicians to take the
11 representations as accurate?

12 A. Yes, I did. Yes, we did as a corporation.

13 Q. Yesterday we mentioned a lawsuit, Rohovit, a suit
14 in Iowa. Do you remember that?

15 A. Yes, I do.

16 Q. Is there any other litigation that has been filed
17 against MECTA other than the Rohovit suit and the instant
18 suit?

19 A. Yes.

20 Q. Tell me what that is.

21 A. I could give you the names of the plaintiffs. I
22 can't give you the dates exactly.

23 MR. OWENS: That is fine. Just give him the names.

24 THE WITNESS: I think you mentioned one yesterday,
25 which was Andre.

1 Q. (By Mr. Moxon) Linda Andre?

2 A. I believe you mentioned that yesterday. And, of
3 course, I mentioned Rohovit. And Torres.

4 Q. Spell it.

5 A. T-O-R-R-E-S. And Adam Chick, A-D-A-M, C-H-I-C-K.
6 And Tuch, T-U-C-H. And of course this.

7 Q. When was the Torres suit filed?

8 A. I can't tell you. I really would have to go back
9 and look. I don't have them memorized.

10 Q. Approximately.

11 A. Sometime in the '90s.

12 Q. Where was it filed?

13 A. I can't tell you that either.

14 Q. Do you have any papers at all --

15 MR. OWENS: We have produced that to you.

16 Q. (By Mr. Moxon) -- relating to that suit?

17 MR. OWENS: It has been produced.

18 Q. (By Mr. Moxon) Do you have any papers relating
19 to that suit?

20 MR. OWENS: It has been produced.

21 Q. (By Mr. Moxon) So I guess the answer is yes?

22 A. Yes.

23 MR. MOXON: Do you have a Bates number for it?

24 MR. OWENS: I can get it. Do you want me to?

25 Q. (By Mr. Moxon) What records do you have

1 concerning the Torres suit?

2 A. Very few records. Most of the records are in the
3 possession of my attorney.

4 Q. Who is that?

5 A. Bill Sheridan.

6 Q. What was that suit about?

7 A. I believe the claim was brain damage. Again, I
8 would have to look at the complaint.

9 Q. So it was filed up here in Oregon?

10 A. I can't tell you where it was filed. I can't
11 remember them. I haven't memorized them prior to this
12 deposition. I'm sorry.

13 Q. What happened to the case?

14 A. It was -- it did not go to trial. I think for
15 some -- there were reasons that it was settled. It -- there
16 was a legal issue. I'm not sure what the legal issue was.
17 I'm not an attorney.

18 Q. You settled the case?

19 A. No, we did not settle the case.

20 Q. Was it dismissed?

21 A. It was dismissed.

22 Q. Did you settle the Rohovit case?

23 A. Yes, we did.

24 Q. What was the amount of the settlement?

25 MR. OWENS: Well, I don't know whether that

1 settlement -- I haven't seen the agreement, and I don't know
2 whether it is confidential.

3 THE WITNESS: I think it is.

4 MR. OWENS: Do you know whether it is confidential?

5 THE WITNESS: I don't know, and I think we need to
6 know.

7 MR. OWENS: We don't know whether it is confidential,
8 Rick.

9 MR. MOXON: Okay. Well --

10 MR. OWENS: I'm not going to have her testify and
11 violate --

12 MR. MOXON: Are you instructing her not to answer?

13 MR. OWENS: -- violate the terms of an agreement
14 without knowing if it is confidential or not. Do you have any
15 information on that? Do you have a document, perhaps copy of
16 the settlement agreement?

17 MR. MOXON: I haven't seen it.

18 MR. OWENS: Well, she can't answer that question
19 without knowing more.

20 MR. MOXON: Are you instructing her not to answer?

21 MR. OWENS: Yes, without any proof by you that it is
22 not confidential.

23 Q. (By Mr. Moxon) When was the Adam Chick case
24 filed?

25 A. It also was in the '90s, I believe.

1 Q. Where was it?

2 A. Again, I can't tell you the location.

3 Q. Was it in Oregon?

4 A. No, I'm sure it wasn't, but I can't tell you
5 where it was, again.

6 Q. What was the nature of the suit?

7 A. I believe it was brain damage also.

8 Q. What happened to the suit?

9 A. It was dismissed.

10 Q. Was it settled?

11 A. No.

12 Q. And you identified -- do you have any documents
13 concerning the Adam Chick case?

14 A. I think they were produced.

15 Q. So you gave them to your attorney?

16 A. Yes, I did.

17 MR. MOXON: I haven't seen those, Mr. Owens.

18 THE WITNESS: I think --

19 MR. OWENS: There is no question. Okay?

20 Q. (By Mr. Moxon) What documents did you have
21 concerning the Adam Chick case?

22 A. I believe I produced those.

23 MR. OWENS: Well, the question is what documents do
24 you have relating to the Adam Chick case.

25 THE WITNESS: Again, my attorney would have those.

1 MR. OWENS: The question is not what your attorney
2 has, Robin.

3 THE WITNESS: Right.

4 MR. OWENS: The question is what documents do you
5 have?

6 THE WITNESS: I believe I produced everything that I
7 have.

8 Q. (By Mr. Moxon) What documents did you have?

9 A. I believe it was the complaint.

10 Q. Nothing else?

11 A. Nothing else.

12 Q. T-U-C-H?

13 A. Correct.

14 Q. Who was that?

15 A. That's the plaintiff, again. And I can't tell
16 you where that was filed. That was also in the 1990s.

17 MR. OWENS: You have answered the question.

18 Q. (By Mr. Moxon) What was the nature of the case?

19 A. What was the claim? I believe it was brain
20 damage. I would have to look at that again. I'm not sure. I
21 haven't looked at that.

22 Q. Is the case over?

23 A. It was dismissed.

24 Q. Not settled?

25 A. It was not settled.

1 Q. Who was your attorney on that case?

2 A. Bill Sheridan.

3 MR. OWENS: He represented MECTA in that case?

4 THE WITNESS: In each case --

5 MR. OWENS: No, no. The question is on Tuch.

6 THE WITNESS: Right. I can't tell you because the
7 insurance company would select an attorney to represent them.

8 MR. OWENS: Was that Bill Sheridan?

9 THE WITNESS: In each case the insurance company
10 would make that decision, and it would never be Bill Sheridan.
11 Bill Sheridan is our corporate attorney.

12 MR. OWENS: So Bill Sheridan did not represent the
13 company in the Tuch case?

14 THE WITNESS: That's correct. I misunderstood. That
15 is correct. Right.

16 Q. (By Mr. Moxon) Do you have any documents
17 concerning the Tuch case?

18 A. I don't, and I wasn't able to provide them to
19 Mr. Owens.

20 Q. Did you ask Mr. Sheridan to give you any of the
21 documents?

22 MR. OWENS: Hold on. It is attorney-client
23 privileged. Do you know whether Mr. Sheridan has any
24 documents regarding the Tuch case?

25 THE WITNESS: I don't. I don't know.

1 Q. (By Mr. Moxon) He represented you in that case
2 in some manner, correct, Ms. Nicol?

3 MR. OWENS: Well, that's vague.

4 Q. (By Mr. Moxon) Did Mr. Sheridan advise you with
5 respect to the Tuch case?

6 A. He is our corporate attorney. I would have to go
7 back and look at the records during that time, but I don't
8 have any records.

9 Q. Did Mr. Sheridan advise you with respect to the
10 Tuch case?

11 A. Our attorney at the time would have advised me --

12 Q. Who is that?

13 A. -- who the insurance company would have selected.
14 And since I don't have records, I can't tell you who that was.

15 Q. You don't know who the attorney was in the Tuch
16 case?

17 A. I do not.

18 Q. Have you made any effort to find out?

19 A. No, I haven't, because I don't have any records.

20 Q. Who was your insurance company?

21 MR. OWENS: Currently?

22 THE WITNESS: I'd have to look back.

23 MR. OWENS: Wait a minute.

24 Q. (By Mr. Moxon) Who was your insurance company in
25 the Tuch case that hired the attorney to represent you?

1 A. I don't have that memorized. I would have to go
2 look at that information.

3 Q. Have you changed insurance since the 1990s?

4 A. Yes, I have.

5 Q. So you do have records that would tell you who
6 the insurance company was?

7 A. That's correct.

8 MR. OWENS: In the 1990s?

9 THE WITNESS: In the 1990s.

10 Q. (By Mr. Moxon) Do you have records concerning
11 the case filed by Linda Andre against you?

12 A. I believe I produced -- well, I didn't produce
13 those. That's right. I think I have something.

14 MR. OWENS: The question, Robin, is not whether you
15 produced documents. The question is whether you have
16 documents with respect to the Linda Andre case.

17 THE WITNESS: I looked for a complaint and couldn't
18 find one.

19 Q. (By Mr. Moxon) Do you have any other documents?

20 A. I would have to look.

21 Q. You haven't looked yet?

22 A. I have looked and haven't found anything, but I
23 can look again because I do need to look further. I wasn't
24 able to locate a complaint.

25 Q. You have other places you can look?

1 A. I do.

2 Q. Do you have a copy of the complaint in the Torres
3 case?

4 MR. OWENS: We have produced it, Counsel, if that's
5 what you're curious about.

6 THE WITNESS: We have produced that, correct.

7 MR. MOXON: I may be wrong, Joe. I don't recall
8 seeing that, but I'm happy to be corrected.

9 MR. OWENS: We have produced it. If you go back to
10 your office and you don't find them, I am happy to provide
11 copies again.

12 MR. MOXON: Thank you.

13 Q. (By Mr. Moxon) Are there any arbitrations or
14 mediations that were filed with respect to alleged harm by
15 patients other than these suits that you have identified?

16 A. No.

17 Q. Have there been any claims which have been filed
18 against you or letters of complaint asking for compensation
19 which didn't go to litigation?

20 A. No.

21 Q. Was it your view that in each of the five cases,
22 the Andre case, Rohovit, Torres, Chick, and Tuch, that the
23 allegations of the complaints were false that the plaintiffs
24 received brain damage arising out of ECT from your machines?

25 MR. OWENS: Well, I'm going to object to the question

1 to the extent it assumes facts not in evidence. Go ahead.

2 You can answer.

3 THE WITNESS: Yes. My assumption was that the claim
4 was false as I don't accept the premise that ECT causes brain
5 damage.

6 Q. (By Mr. Moxon) That is your belief?

7 A. That's the belief of mainstream researchers of
8 ECT worldwide.

9 Q. Did you talk to any of these five people that
10 filed lawsuits against you to see why they felt that they had
11 been brain damaged by your machines?

12 A. No, I did not.

13 Q. Why not?

14 A. In most cases I was not available. I was not
15 even in the same state. They didn't go to trial. We had no
16 communication --

17 Q. Are you curious why --

18 A. In four of the six cases --

19 Q. Aren't you curious why at least six people now
20 have sued your company alleging serious harm and brain damage
21 arising out of your machines --

22 MR. OWENS: The question is argumentative. It is
23 vague and ambiguous. It is irrelevant.

24 Q. (By Mr. Moxon) Well, I didn't finish the
25 question. Aren't you curious as to why these people claim

1 they have been brain damaged by your machines enough to find
2 out what it is they're talking about?

3 MR. OWENS: It's argumentative.

4 THE WITNESS: Since it is not mainstream, not
5 accepted by the medical community, it is not a mainstream
6 philosophy, it's not proven in science by a very large
7 majority of the medical community, I would say that I'm not
8 curious because I would regard them as frivolous lawsuits.

9 Q. (By Mr. Moxon) You are a true believer?

10 MR. OWENS: Don't answer the question. It is
11 argumentative.

12 Q. (By Mr. Moxon) Do you have a philosophical
13 belief that ECT doesn't cause brain damage?

14 MR. OWENS: The question is vague and ambiguous.

15 THE WITNESS: No. I accept the research and the work
16 that is done by mainstream medicine in the United States and
17 around the world in all the major teaching hospitals and
18 leading university centers that ECT does not cause brain
19 damage.

20 Q. (By Mr. Moxon) So it's -- no point in arguing
21 with you or even commenting on it, I suppose. But it's your
22 position then that all the major universities all over the
23 world have found that ECT does not cause brain damage, flatly
24 does not?

25 MR. OWENS: Lacks foundation.

1 Q. (By Mr. Moxon) Correct?

2 A. I said mainstream community of researchers and
3 the majority, a very large majority.

4 Q. Have you seen any publication which flatly says
5 ECT does not cannot cause brain damage, any publication of any
6 type?

7 A. Yes, I have.

8 Q. Tell me what that is.

9 A. I'd have to go back, get you the reprints, the
10 articles.

11 Q. Tell me any one of the ones you claim that are
12 all over the world.

13 A. I don't have the articles memorized, but I can
14 provide them to you.

15 Q. Can you think of a single publication or author
16 who has flatly said unquestionably that ECT doesn't cause
17 brain damage?

18 A. Yes.

19 Q. Who?

20 A. But I can't give you the title of the article. I
21 can give you the author. Dr. Harold Sackeim is one.

22 Q. Okay.

23 A. I can get that information to Mr. Owens and he
24 can --

25 MR. OWENS: No. It is not your obligation to get